

IN THE SUPREME COURT OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC,
a Nevada Limited Liability Company,

Appellant,

vs.

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

Respondent/Cross-Appellant,

vs.

WYETH RANCH COMMUNITY
ASSOCIATION,

Cross-Respondent.

SFR INVESTMENTS POOL 1, LLC

Appellant,

vs.

MARCHAI, B.T.,

Respondent.

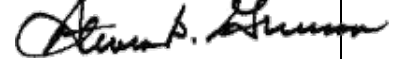
Supreme Court Case No. 82771
Consolidated with Case No. 83175
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APPEAL

From the Eighth Judicial District Court
The Honorable Elizabeth Gonzalez

Respondent's Appendix (Volume 1)

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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

14 Plaintiff,

15 vs.

16 CRISTELA PEREZ, an individual; *et al.*

17 Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

18 **AND ALL RELATED CLAIMS AND**
19 **ACTIONS**

20 **Joint Pre-Trial Memorandum**

21 Under EDCR 2.67(b), Marchai, B.T., SFR Investments Pool 1, LLC, and Wyeth Ranch
22 Community Association submit their joint pretrial memorandum.

23 **(1) A brief statement of the facts of the case.**

24 In 2004, Cristela Perez acquired the property at 7119 Wolf Rivers Avenue, Las Vegas,
25 Nevada 89131. To purchase the property, Perez entered into two loans secured by deeds of trust.
26 In 2005, Perez refinanced her loans and entered into one InterestFirst Adjustable Rate Note,
27 secured by a first deed of trust. After a few transfers of the note and assignments of the deed of
28 trust that secured the note, Marchai, B.T. became the holder of the note and deed of trust.

In January 2008, Perez became delinquent on the assessments owed to Wyeth Ranch
Community Association. On September 30, 2008, Wyeth Ranch instituted an action to enforce

1 its assessment lien. After Wyeth Ranch instituted an action to enforce its lien, Perez made
2 payments towards her assessments.

3 On August 28, 2013, Wyeth Ranch foreclosed its lien. SFR Investments Pool 1, LLC
4 submitted the winning bid of \$21,000.00. Perez owed Wyeth Ranch \$10,679.12 in assessments,
5 late fees, and interest at the time of the foreclosure. From the foreclosure proceeds, Wyeth
6 Ranch received \$10,679.12 and applied the payment to Perez's account.

7 **(2) A list of all claims for relief designated by reference to each claim or paragraph of a pleading**
8 **and a description of the claimant's theory of recovery with each category of damage**
9 **requested.**

10 **Marchai's Claims for Relief**

11 1. Judicial Foreclosure of Deed of Trust (Compl. 1st Cause of Action (Sept. 30,
12 2013).) Marchai asks the Court to order that its deed of trust be foreclosed, for a sale of the
13 property, and an award of any deficiency against the borrower.

14 2. Wrongful Foreclosure (Compl. 3d Claim for Relief (Aug. 25, 2016).) To the extent
15 Wyeth Ranch or SFR claims that Wyeth Ranch foreclosed upon a superpriority lien, then that
16 foreclosure was wrongful because Perez's payments satisfied the superpriority portion of Wyeth
17 Ranch's lien.¹

18 3. Violation of NRS § 116.1113 (Compl. 4th Claim for Relief (Aug. 25, 2016).) To the
19 extent Wyeth Ranch claims it foreclosed upon a superpriority lien, then Wyeth Ranch did not act
20 in good faith because Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien.
21 Also, if the Court concludes that Perez did not satisfy the lien's superpriority part, then Wyeth
22 Ranch did not act in good faith when it accepted the proceeds of the foreclosure to which it was
23 not entitled.

24 4. Intentional Interference with Contractual Relations (Compl. 5th Claim for Relief
25 (Aug. 25, 2016).) To the extent Wyeth Ranch or SFR claims that Wyeth Ranch foreclosed upon a
26 superpriority lien, then Wyeth Ranch and SFR intentionally interfered with Marchai's

27 ¹ The Court previously granted summary judgment against Marchai on its First and Second Claims for Relief
28 for declaratory relief under the takings and due process clauses of the United States and Nevada Constitutions. *See*
Decision & Order at 6:23–28 (Oct. 3, 2017); *see also* Decision & Order at 7:21–18:7 (Mar. 22, 2016).

1 contractual relationship with Perez because Perez's payments satisfied the superpriority portion
2 of Wyeth Ranch's lien.

3 5. Quiet Title (Compl. 6th Claim for Relief (Aug. 25, 2016).) Marchai seeks an order
4 quieting title and concluding that Marchai's deed of trust remains as a valid encumbrance against
5 the property.²

6 **SFR's Claims for Relief**

7 1. Declaratory Relief/Quiet Title (Answer, Countercl. & Crosscl. 1st Claim for
8 Relief (Nov. 13, 2013).) SFR seeks an order quieting title to the property and declaring that
9 Wyeth Ranch's foreclosure extinguished Marchai's deed of trust.

10 2. Preliminary and Permanent Injunction (Answer, Countercl. & Crosscl. 2nd Claim
11 for Relief (Nov. 13, 2013).) SFR seeks an order enjoining Marchai from foreclosing upon its deed
12 of trust.

13 **(3) A list of affirmative defenses.**

14 **SFR's affirmative defenses to Marchai's judicial foreclosure claim**

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

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

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

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

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

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

26
27 ² The Court previously dismissed Marchai's quiet title claim against Wyeth Ranch. *See* Order Denying, in
28 Part, and Granting, in Part, Def. Wyeth Ranch Cmty. Ass'n's Mot. to Dismiss at 2:6-7 (Jan. 24, 2017).

1 7. Plaintiff's causes of action are barred in whole or in part by the applicable statutes
2 of limitations or repose, or by the equitable doctrine of laches, waiver, estoppel, and ratification.

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

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

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

8 **Marchai's affirmative defenses to SFR's counterclaim**

9 1. Defendant fails to state a claim on which relief can be granted.

10 2. All causes of action alleged by Defendant are barred by the applicable statute of
11 limitations.

12 3. All causes of action alleged by Defendant are barred by the doctrine of waiver,
13 laches, and estoppel.

14 4. All causes of action alleged by Defendant are barred by the doctrine of unclean
15 hands.

16 5. All causes of action alleged by Defendant are barred by the applicable statute of
17 frauds.

18 6. The conduct of Defendant bars any relief under the principles of equitable
19 estoppel.

20 7. Marchai incorporates by reference all affirmative defenses enumerated in Rule 8
21 of the Nevada Rules of Civil Procedure as though fully set forth herein.

22 8. All injuries or damages alleged by Defendant, if any, are a direct and proximate
23 cause of intervening or supervening acts of a person or persons other than Plaintiff and over
24 which Plaintiff did not nor reasonably could have exercised control.

25 9. Defendants failed to satisfy conditions precedent to bring an action against
26 Plaintiff.

27 10. There is no basis for recovery of attorney's fees or costs from Marchai.
28

11. Any lien interest purportedly held by Defendant in the property that is the subject of this litigation is inferior to Marchai's first deed of trust interest in the property.

Wyeth Ranch's affirmative defenses

1. Defendant denies that by reason of act, omission, fault, conduct or liability on Defendant's part, whether negligent, careless, unlawful or whether as alleged or otherwise, Plaintiff was injured or damaged in any of the amounts alleged, or in any manner whatsoever.

2. Defendant is informed and believes, and thereon alleges, that the complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against Defendant.

3. Defendant is informed and believes, and thereon alleges, that the Complaint is barred by issue preclusion and/or claim preclusion (*i.e.* the Doctrine of Res Judicata).

4. Defendant is informed and believes, and thereon alleges, that if Plaintiff suffered or sustained any loss, damage, or detriment, the same is directly and proximately caused or contributed to, in whole or in part, breach of warranty, breach of contract, or the acts, omissions, activities, recklessness, negligence, and/or intentional misconduct of Plaintiff, thereby completely or partially barring his recovery herein.

5. Defendant is informed and believes, and thereon alleges, that it is not legally responsible in any fashion with respect to the damages and injuries claimed by Plaintiff; however, if Defendant is subjected to any liability to Plaintiff, it will due, in whole or in part, to the breach of warranty, breach of contract omissions, activities, carelessness, recklessness, or negligence of others; wherefore any recovery obtained by Plaintiff against Defendant should be reduced in proportion to the respective negligence, fault, and legal responsibility of all other parties, persons, or entities who contributed to or caused any such injury or damage, in accordance with the laws of comparative negligence.

6. Defendant is informed and believes, and thereon alleges, that at the time of the incident alleged in Plaintiff's claims, Plaintiff knew of and fully understood the danger and risk incident to its undertaking, but despite such knowledge, freely and voluntarily assumed and

1 exposed itself to all risk of harm and the consequent injuries or damages, if any, resulting
2 therefrom.

3 7. Plaintiff is informed and believes, and thereon alleges, that the cross-claims, and
4 each and every cause of action in the cross-claims, is barred by the applicable Statutes of Repose.

5 8. Defendant is informed and believes, and thereon alleges, that as to each alleged
6 cause of action, Plaintiff has failed, refused, and neglected to take reasonable steps to mitigate his
7 own alleged damages, if any, thus barring or diminishing Plaintiff's recovery.

8 9. Defendant is informed and believes, and thereon alleges, that the crossclaims, and
9 each and every cause of action contained therein, is barred by the applicable Statutes of
10 Limitation.

11 10. Defendant is informed and believes, and thereon alleges, that Plaintiff
12 unreasonably delayed by the filing of the crossclaims, and notification of the alleged causes of
13 action, and the basis for the causes of action alleged against Defendant, all of which has unduly
14 and severely prejudiced Defendant in its defense of this action, thereby barring or diminishing
15 Plaintiff's recovery under the Doctrine of Estoppel.

16 11. Defendant is informed and believes, and thereon alleges, that Plaintiff
17 unreasonably delayed both the filing of the crossclaims and notification or the alleged cause of
18 action, and the basis for the causes of action alleged against this answering Defendant, all of
19 which has unduly and severely prejudiced Defendant, thereby barring or diminishing Plaintiff's
20 under the Doctrine of Laches.

21 12. Defendant is informed and believes, and thereon alleges, that Plaintiff failed to
22 join all necessary and indispensable parties to this lawsuit.

23 13. Defendant is informed and believes, and thereon alleges, that the injuries and
24 damages of which Plaintiff complains were proximately caused by, or contributed by, the acts of
25 other Defendants, Cross-Defendants, Third-Party defendants, persons and/or other entities, and
26 that said acts were an intervening and superseding cause of the injuries and damages, if any, for
27 which the crossclaims complains, thus barring Plaintiff from recovering against Defendant.
28

1 14. Defendant is informed and believes, and thereon alleges, that the crossclaims are
2 barred by the Statute of Frauds.

3 15. It has been necessary for this Defendant to retain the services of an attorney to
4 defend this action, and this Defendant is entitled to a reasonable sum for attorney's fees and
5 costs.

6 16. Defendant is informed and believes, and thereon alleges, that the claims of
7 Plaintiff are reduced, modified, or barred by the Doctrine of Unclean Hands.

8 17. Defendant is informed and believes, and thereon alleges, that Plaintiff's claims are
9 reduced, modified, and/or barred because Counterclaimant received payment.

10 18. Defendant is informed and believes, and thereon alleges, that Plaintiff's claims are
11 reduced, modified, and/or barred because of changed circumstances.

12 19. Defendant is informed and believes, and thereon alleges, that Plaintiff's claims are
13 reduced, modified, and/or barred because Plaintiff released its claims.

14 20. Defendant is informed and believes, and thereon alleges, that Plaintiff's claims are
15 reduced, modified, and/or barred because of the Parol Evidence Rule.

16 21. Defendant is informed and believes and thereon alleges that Plaintiff's
17 performance was excused because of cardinal change.

18 22. Defendant is informed and believes that Plaintiff's first and second causes of
19 action are barred by the Nevada Supreme Court's decision in *Saticoy Bay LLC Series 350 Durango*
20 *104 v. Wells Fargo Home Mortgage*, Case No. 68630.

21 23. Defendant is informed and believes and thereon alleges that Plaintiff failed to
22 comply with the mediation requirements set forth in NRS Chapter 38.

23 **SFR's affirmative defenses to Marchai's remaining claims**

24 1. The Bank fails to state a claim upon which relief may be granted.

25 2. The Bank is not entitled to relief from or against SFR, as the Bank has not
26 sustained any loss, injury, or damages that resulted from any act, omission, or breach by SFR.

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

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

4 5. SFR did not breach any statutory or common law duties allegedly owed to the
5 Bank.

6 6. The Bank failed to mitigate its damages, if any.

7 7. The Bank's claims are barred because SFR complied with applicable statutes and
8 with the requirements and regulations of the State of Nevada.

9 8. The Banks' claims are barred because the Association and its agents complied
10 with applicable statutes and regulations.

11 9. The Bank's causes of action are barred in whole or in part by the applicable
12 statutes of limitations or repose, or by the equitable doctrines of laches, waiver, estoppel,
13 ratification, and unclean hands.

14 10. The Bank is not entitled to equitable relief because it has an adequate remedy at
15 law.

16 11. The Bank has no standing to enforce the first deed of trust and/or the underlying
17 promissory note.

18 12. The Bank has no standing to enforce the statutes and regulations identified in the
19 Counterclaim.

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

22 14. The Bank has no standing to challenge the constitutionality of NRS 116.

23 15. The Banks claims are barred because the Association and its agents complied with
24 the foreclosure noticing requirements outlined in the CC&Rs.

25 16. The Bank has no remedy against SFR because, pursuant to NRS 116.31166, SFR is
26 entitled to rely on the recitals contained in the Association foreclosure deed that the sale was
27 properly noticed and conducted.
28

1 17. The bank has no remedy against SFR because SFR is a bona fide purchaser for
2 value.

3 18. The Bank has no remedy against SFR because the amounts owed under the first
4 deed of trust have been satisfied.

5 **(4) A list of all claims or defenses to be abandoned.**

6 **Marchai's claims or defenses to be abandoned**

7 None.

8 **SFR's claims or defenses to be abandoned**

9 None.

10 **Wyeth Ranch's claims or defenses to be abandoned**

11 None.

12 **(5) A list of all exhibits, including exhibits which may be used for impeachment, and a**
13 **specification of any objections each party may have to the admissibility of the exhibits of an**
14 **opposing party. If no objection is stated, it will be presumed that counsel has no objection to**
15 **the introduction into evidence of these exhibits.**

16 *See the attached Joint Exhibits List.*

17 **(6) Any agreements as to the limitation or exclusion of evidence.**

18 None.

19 **(7) A list of the witnesses (including experts), and the address of each witness which each party**
20 **intends to call. Failure to list a witness, including impeachment witnesses, may result in the**
21 **court's precluding the party from calling that witness.**

22 **Marchai's witnesses**

- 23 1. Chaim Freeman
24 c/o David J. Merrill, P.C.
25 10161 Park Run Drive, Suite 150
26 Las Vegas, Nevada 89145
- 27 2. Scott Sawyer
28 Sebastian Investment Corporation
6320 Canoga Avenue, Suite 1500
Woodland Hills, California 91367
3. R. Scott Dugan
R. Scott Dugan Appraisal Company, Inc.
8930 West Tropicana Avenue, Suite 1
Las Vegas, Nevada 89147

1 Mr. Dugan is an expert witness who will opine on the value of the property as of the day
2 Wyeth Ranch foreclosed.

- 3 4. Yvette Saucedo
4 Complete Association Management Company
4 4775 West Teco Avenue, Suite 140
5 Las Vegas, Nevada 89118

5 5. Marchai reserves the right to call any witnesses necessary for the authentication of
6 any exhibits.

7 **SFR's witnesses**

- 8 1. Chris Hardin
9 c/o Kim Gilbert Ebron
10 7625 Dean Martin Drive, Suite 110
11 Las Vegas, Nevada 89139

11 **Wyeth Ranch's witnesses**

- 12 1. Yvette Saucedo
13 c/o Lipson Neilson P.C.
14 9900 Covington Cross Drive, Suite 120
15 Las Vegas, Nevada 89144

16 **(8) A brief statement of each principal issue of law which may be contested at the time of trial.**
17 **This statement shall include with respect to each principal issue of law the position of each**
18 **party.**

- 19 1. **Whether Wyeth Ranch treated the lien's superpriority and subpriority portions as separate**
20 **accounts or one running account.**

21 **Marchai's position**

22 Wyeth Ranch treated the superpriority and subpriority portions of its lien as one running
23 account, not separate accounts. When Wyeth Ranch charged an assessment, interest, or fee to
24 Perez, it noted the charge on one account ledger. And when Wyeth Ranch received payment
25 towards Perez's account, it noted it on the same account ledger. Although Wyeth Ranch
26 maintained separate ledgers for assessments and fines, it did not keep a different account for its
27 lien's superpriority and subpriority portions.
28

SFR and Wyeth Ranch's position

Cranesbill does not limit the review of multiple accounts to the superpriority portion or subpriority portions of the lien, but also includes costs of foreclosure, and therefore allows payments to be applied separately to cost of foreclosure. *See Cranesbill* at 231-232, stating: "[t]he resolution of this issue may vary depending on whether the district court considers the unpaid HOA assessments and other costs the homeowner is required to pay to the HOA, such as the costs of foreclosure, to be on a running account, and therefore a single debt, or whether it considers there to be multiple accounts. *Compare* 60 Am. Jur. 2d *Payment* § 72 [*232] (2019) (addressing a single running account), *with* [*12] *Able Elec.*, 104 Nev. at 33, 752 P.2d at 220 (addressing multiple accounts)."

2. Whether Wyeth Ranch and Perez had an agreement directing the application of Perez's payments.

Marchai's position

Wyeth Ranch and Perez did not have any agreement directing the application of Perez's partial payments to any specific charges on her account. Although Perez and Wyeth Ranch entered into a payment plan in March 2010, which specified how Wyeth Ranch would apply each payment, that payment plan required Perez to make monthly payments of \$669.87 starting on April 1, 2010. Perez *never* made a payment of \$669.87 on or after April 1. And the payment plan terminated on July 2, 2010.

SFR and Wyeth Ranch's position

Cranesbill does not require an agreement between a homeowner and the homeowner's association on how to apply the homeowner's partial payments. *Cranesbill* instead states: [i]n general, "[w]hen a debtor partially satisfies a judgment, that debtor has the right to make an appropriation of such payment to the particular obligations outstanding." *Id.* at 30-31, 32, 752 P.2d at 219, 220. The debtor must direct that appropriation "at the time the payment is made." [*10] *Id.* at 32, 752 P.2d at 220. If the debtor does not direct how to apply the payment to her account, the creditor may determine how to allocate the payment. *Id.* at 32, 752 P.2d at

220. But, in that circumstance, once the creditor applies the partial payment, "the creditor may not thereafter change the application to another debt." *Id.*

3. How Wyeth Ranch applied Perez's payments.

Marchai's position

For each payment Perez made after April 2008, Alessi & Koenig first removed a portion of each payment for its collection costs. Wyeth Ranch then applied the remaining amount to Perez's account. Wyeth Ranch has not produced any document (and its witness testified that no such record exists), demonstrating how Wyeth Ranch applied each of Perez's partial payments made after April 2008. But the documents reveal that Wyeth Ranch applied partial payments *first* to assessments (as opposed to interest or late fees). And, a September 2008 report produced by Wyeth Ranch reflects that it applied payments to the *oldest* association dues first.

SFR's position

Here, the evidence will establish the Association directed the payments as follows: First, a portion of each payment paid collections costs and fees. Second, the remaining portion was forwarded to the Association who then applied the funds to the most recent past due assessments, and then if any remained, to the oldest debt due. With the exception of two payments, the borrower never made any further payments that could both cover the collection costs and fees and the then-most recent past due assessment, such that when the Association foreclosed, the lien still contained super-priority amounts.

Wyeth Ranch's position

If a homeowner does not direct payments to a superpriority portion, under *Cranesbill* an HOA (or Wyeth here) can decide how to direct payments. In choosing how to direct those payments the HOA has no obligation to guarantee a superpriority sale or protect from a superpriority sale. *Id.*, and See also Nev. Rev. Stat. § 116.31164(3)(a) ("Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, **a deed without warranty . . .**" The HOA either conducted a valid superpriority or a valid subpriority sale and should prevail on Marchai's alternative claims for damages.

1 **4. Whether Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien.**

2 **Marchai's position**

3 Because the documentary evidence suggests that Wyeth Ranch applied payments first to
4 the oldest assessments, Perez's payments satisfied the lien's superpriority portion. But even if
5 the Court receives conflicting evidence on how Wyeth Ranch applied payments, under the
6 common law, it is presumed that payments are applied to the oldest amounts first when the
7 parties have a running account.

8 **SFR's position**

9 No. Here, the evidence will establish the Association directed the payments as follows:
10 First, a portion of each payment paid collections costs and fees. Second, the remaining portion
11 was forwarded to the Association who then applied the funds to the most recent past due
12 assessments, and then if any remained, to the oldest debt due. With the exception of two
13 payments, the borrower never made any further payments that could both cover the collection
14 costs and fees and the then-most recent past due assessment, such that when the Association
15 foreclosed, the lien still contained super-priority amounts.

16 **Wyeth Ranch's position**

17 If a homeowner does not direct payments to a superpriority portion, under *Cranesbill* an
18 HOA (or Wyeth here) can decide how to direct payments. In choosing how to direct those
19 payments the HOA has no obligation to guarantee a superpriority sale or protect from a
20 superpriority sale. *Id.*, and See also Nev. Rev. Stat. § 116.31164(3)(a) ("Make, execute and, after
21 payment is made, deliver to the purchaser, or his or her successor or assign, **a deed without**
22 **warranty . . .**" The HOA either conducted a valid superpriority or a valid subpriority sale and
23 should prevail on Marchai's alternative claims for damages.

24 **5. Whether the equities weigh in favor of applying Perez's partial payments towards the lien's superpriority portion.**

25 **Marchai's position**

26 If the Court weighs the equities, it should conclude that Perez's payments satisfied the
27 lien's superpriority portion. SFR acquired its interest in the property for a mere \$21,000. Yet the
28

1 property had a market value of \$360,000. SFR has rented the property for seven years and
2 received (or had the right to receive) far above \$21,000. If Wyeth Ranch's foreclosure
3 extinguished Marchai's deed of trust, it loses its security for the loan. And, it subjects Perez to a
4 deficiency judgment of the *entire amount* of the loan. Further, if Wyeth Ranch foreclosed upon a
5 superpriority lien, then it must disgorge any excess proceeds it retained, plus interest, costs, and
6 potentially attorney's fees.

7 **SFR's position**

8 Under *Cranesbill*, because the Association directed the payment at the time it received it,
9 this Court does not reach the equitable analysis. This analysis only comes into play when neither
10 the homeowner nor the Association directed payment. The evidence here will show the
11 Association did direct the payment, first to collection costs and fees, then to the most recent past
12 due assessments then to the oldest debt. With the exception of two payments, the borrower never
13 made any further payments that could both cover the collection costs and fees and the then-most
14 recent past due assessment, such that when the Association foreclosed, the lien still contained
15 super-priority amounts.

16 **Wyeth Ranch's position**

17 If a homeowner does not direct payments to a superpriority portion, under *Cranesbill* an
18 HOA (or Wyeth here) can decide how to direct payments. In choosing how to direct those
19 payments the HOA has no obligation to guarantee a superpriority sale or protect from a
20 superpriority sale. *Id.*, and See also Nev. Rev. Stat. § 116.31164(3)(a) ("Make, execute and, after
21 payment is made, deliver to the purchaser, or his or her successor or assign, **a deed without**
22 **warranty . . .**" The HOA either conducted a valid superpriority or valid subpriority sale and
23 should prevail on Marchai's alternative claims for damages, that do not include a claim for
24 proceeds after the sale or disgorgement damages.

6. **Whether a rebuttable presumption applies that Wyeth Ranch followed the law when it applied the foreclosure sale proceeds to Perez's account.**

Marchai's position

NRS § 47.250(16) creates a rebuttable presumption that "the law has been obeyed." Here, Wyeth Ranch applied \$10,679.12 to Perez's account following the foreclosure. It could only have received and applied that amount to Perez's account if Perez's payments had satisfied the lien's superpriority portion.

SFR's position

There is no law that governs how an Association must apply funds to any given delinquent account. Thus, the presumption that the Association followed the law does not apply to the Association's application of payments. Here, the Court must abide by how the Association applied the payments at the time the payments were received. This application cannot be changed after the fact.

SFR is unclear as to what Marchai means when it talks about application of the sales proceeds to the Association's lien, but under NRS 116.31164, the order of payment is as follows:

1. reasonable expenses of sale;
2. reasonable expenses of securing possession before sale;
3. satisfaction of the association's lien;
4. satisfaction of junior liens;
5. remittance of excess to unit's owner.

Most importantly, NRS 116.31166(9) provides, "[t]he receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money." Thus, even if the Association applied the sale proceeds incorrectly (something SFR does not believe happened), this misapplication would not affect SFR's title or that the sale extinguished the deeds of trust.

Wyeth Ranch's position

Even assuming a superpriority sale, Marchai would have the burden of demonstrating that proceeds of the sale were applied incorrectly, that cannot be presumed. Nev. Rev. Stat. Ann. §

1 47.250(5) has a disputable presumption "that money paid by one to another was due to the
2 latter." Here, SFR paid to purchase the property, some of those funds were paid to Alessi as
3 collection costs, some went to Wyeth Ranch, and the remainder were interplead. Marchai does
4 not have a claim that proceeds from the sale were misapplied to seek those proceeds.

5 **7. Whether Wyeth Ranch foreclosed upon a superpriority or subpriority lien.**

6 **Marchai's position**

7 As discussed above, because Perez's partial payments satisfied the superpriority portion
8 of Wyeth Ranch's lien, Wyeth Ranch foreclosed upon a subpriority lien.

9 **SFR's position**

10 The Association foreclosed upon its lien which at the time of the sale contained super-
11 priority amounts.

12 **Wyeth Ranch's position**

13 If a homeowner does not direct payments to a superpriority portion, under *Cranesbill* an
14 HOA (or Wyeth here) can decide how to direct payments. In choosing how to direct those
15 payments the HOA has no obligation to guarantee a superpriority sale or protect from a
16 superpriority sale. *Id.*, and See also Nev. Rev. Stat. § 116.31164(3)(a) ("Make, execute and, after
17 payment is made, deliver to the purchaser, or his or her successor or assign, **a deed without**
18 **warranty** . . ." The HOA either conducted a valid superpriority or valid subpriority sale and
19 should prevail on Marchai's alternative claims for damages.

20 **8. Whether SFR acquired its interest in the property subject to Marchai's deed of trust.**

21 **Marchai's position**

22 Because Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien,
23 Wyeth Ranch foreclosed upon a subpriority lien. Hence, Marchai's deed of trust survived the
24 foreclosure, and SFR acquired its interest in the property subject to Marchai's deed of trust.

25 **SFR's position**

26 No. SFR acquired title to the Property free and clear of the Deeds of Trust.
27
28

Wyeth Ranch's position

If a homeowner does not direct payments to a superpriority portion, under *Cranesbill* an HOA (or Wyeth here) can decided how to direct payments. In choosing how to direct those payments the HOA has no obligation to guarantee a superpriority sale or protect from a superpriority sale. *Id.*, and See also Nev. Rev. Stat. § 116.31164(3)(a) ("Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, **a deed without warranty . . .**" The HOA either conducted a valid superpriority or valid subpriority sale and should prevail on Marchai's alternative claims for damages.

(9) An estimate of the time required for trial.

Two-three days.

(10) Any other matter which counsel desires to bring to the attention of the court prior to trial.

The parties are working on a stipulated statement of facts that may significantly curtail the trial's length.

Wyeth Ranch has a pending Motion for Summary Judgment.

SFR objects to Scott Dugan's report and testimony as the issue of commercial reasonableness is not an issue before this Court on remand. If that issue did exist, it was waived when it was not raised on appeal. Because the remand is limited to the homeowner payment

1 issue, SFR objects to Mr. Dugan's report and testimony regarding the retrospective market value
2 of the Property on the date of the sale as it has no bearing on the issues being tried.

3 Dated this 6th day of November 2020.

4 David J. Merrill, P.C.

Kim Gilbert Ebron

5
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22 Association
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28

EXHIBIT(S) LIST

Case No.: A-13-689461-C

Trial Date: November 16, 2020

Dept. No.: 11

Judge: Honorable Elizabeth Gonzalez

Court Clerk: _____

MARCHAI, B.T.

Recorder: _____

Plaintiff,

Counsel for Plaintiff: David J. Merrill, David J. Merrill, P.C. for Marchai, B.T.

vs.

CRISTELA PEREZ, *et al.*

Counsel for Defendants: Karen Hanks, Kim Gilbert Ebron for SFR Investments Pool 1, LLC and David Ochoa, Lipson Neilson P.C. for Wyeth Ranch Community Association

Defendants.

TRIAL BEFORE THE COURT

JOINT EXHIBITS

Exhibit Number	Bates Number(s)	Exhibit Description	Date Offered	Objection ¹	Date Admitted
1	MBT0001	Legal Description			
2	MBT0675	Peak Loan Servicing Spreadsheet		X	
3	MBT0679	SFR Delinquency Review		X	
4	WY000386 – WY000390	Log			
5	WY000001 – WY000055	Declaration of Covenants, Conditions and Restrictions for Wyeth Ranch (Oct. 4, 2002)			
6	WY000056 – WY000063	Amendment to Declaration of Covenants, Conditions and Restrictions for Wyeth Ranch (Nov. 14, 2002)			
7	WY000064 – WY000069	Amendment to Declaration of Covenants, Conditions and Restrictions for Wyeth Ranch (Feb. 28, 2003)			

¹ Unless objected to, the parties stipulate to the admissibility of the exhibits.

EXHIBIT(S) LIST

Case No. A-13-689461-C

Marchai, B.T. v. Cristela Perez, et al.

Exhibit Number	Bates Number(s)	Exhibit Description	Date Offered	Objection¹	Date Admitted
8	WY000070 – WY000073	Amendment to Declaration of Covenants, Conditions and Restrictions for Wyeth Ranch (May 20, 2003)			
9	WY000074 – WY000077	Amendment to Declaration of Covenants, Conditions and Restrictions for Wyeth Ranch (Aug. 25, 2003)			
10	WY000078 – WY000081	Amendment to Declaration of Covenants, Conditions and Restrictions for Wyeth Ranch (Nov. 10, 2003)			
11	WY000082 – WY000086	Amendment to Declaration of Covenants, Conditions and Restrictions for Wyeth Ranch (Feb. 10, 2004)			
12	WY000087 – WY000090	Amendment to Declaration of Covenants, Conditions and Restrictions for Wyeth Ranch (May 4, 2004)			
13	WY000432 – WY000444	Deed of Trust (July 15, 2004)			
14	WY000445 – WY000471	Deed of Trust (July 15, 2004)			
15	WY000591 – WY000593	Grant, Bargain, Sale Deed (July 16, 2004)			
16	WY000587 – WY000590	Grant, Bargain, Sale Deed (July 19, 2004)			
17	WY000091 – WY000094	Amendment to Declaration of Covenants, Conditions and Restrictions for Wyeth Ranch (July 22, 2004)			

EXHIBIT(S) LIST

Case No. A-13-689461-C

Marchai, B.T. v. Cristela Perez, et al.

Exhibit Number	Bates Number(s)	Exhibit Description	Date Offered	Objection¹	Date Admitted
18	WY000095 – WY000098	Amendment to Declaration of Covenants, Conditions and Restrictions for Wyeth Ranch (Nov. 4, 2004)			
19	MBT0002– MBT0010	InterestFirst Adjustable Rate Note (Oct. 19, 2005)		X	
20	MBT0011– MBT0032	Deed of Trust (Oct. 19, 2005)			
21	MBT0754– MBT0769	Loan Policy of Title Insurance (Nov. 9, 2005)			
22	6–7	Substitution of Trustee and Full Reconveyance (Nov. 4, 2005)			
23	9–10	Substitution of Trustee and Full Reconveyance (Nov. 7, 2005)			
24	WY000402 – WY000409	Deed of Trust (Dec. 26, 2006)			
25	WY000339	Email from Rose to Parker (Dec. 28, 2006)			
26	MBT0058	Letter from Cristela Perez (Jan. 23, 2007)			
27	MBT0270	Letter from Roses to Wyeth Ranch (Jan. 24, 2007)			
28	MBT0279	Email from Johnson to Crystal Parker (Jan. 24, 2007)			
29	WY000327	Letter from Perez to Wyeth Ranch (Jan. 24, 2007)			
30	WY000336	Email from Parker to Johnson (Jan. 24, 2007)			
31	WY000337	Email from Johnson to Rose (Jan. 25, 2007)			
32	WY000338	Email from Parker to Johnson (Jan. 25, 2007)			

EXHIBIT(S) LIST

Case No. A-13-689461-C

Marchai, B.T. v. Cristela Perez, et al.

Exhibit Number	Bates Number(s)	Exhibit Description	Date Offered	Objection¹	Date Admitted
33	WY000334	Email from Rose to Johnson (Jan. 30, 2007)			
34	WY000335	Email from Rose to Johnson (Jan. 30, 2007)			
35	WY000116	Letter from Wyeth Ranch to Perez (Apr. 4, 2007)			
36	WY000329	Email from Rose to Johnson (May 24, 2007)			
37	WY000330	Email from Ritchey to Johnson (June 1, 2007)			
38	WY000331	Email from Rossol to Johnson (June 1, 2007)			
39	WY000333	Email from Chris to Johnson (June 1, 2007)			
40	WY000332	Email from Christians to Johnson (June 2, 2007)			
41	WY000324	Letter from Wyeth Ranch to Perez (Aug. 21, 2007)			
42	WY000323	Letter from Wyeth Ranch to Perez (Sept. 18, 2007)			
43	WY000322	Letter from Wyeth Ranch to Perez (Oct. 5, 2007)			
44	WY000284	Letter from Wyeth Ranch to Perez (Sept. 11, 2008)			
45	WY000392	Account Statement (Sept. 17, 2008)			
46	WY000477 – WY000478	Lien Letter (Sept. 30, 2008)			
47	WY000628	Notice of Delinquent Assessment (Lien) (Sept. 30, 2008)			
48	WY000108 – WY000109	Retainer Agreement (Oct. 28, 2008)			

EXHIBIT(S) LIST

Case No. A-13-689461-C

Marchai, B.T. v. Cristela Perez, et al.

Exhibit Number	Bates Number(s)	Exhibit Description	Date Offered	Objection¹	Date Admitted
49	WY000476	Notice of Default and Election to Sell Under Homeowners Association Lien (Dec. 17, 2008)			
50	WY000472 – WY000475	Certified Mail Receipts (Jan. 7, 2009)			
51	WY000099 – WY000100	Delinquent Collection Policy (Sept. 10, 2009)			
52	WY000350	Authorization to Conclude Non-Judicial Foreclosure and Conduct Trustee Sale (Nov. 5, 2009)			
53	WY000505	Notice of Trustee's Sale (Dec. 18, 2009)			
54	WY000493 – WY000498	Record Property Information Report (Dec. 21, 2009)			
55	WY000507 – WY000509	Certified Mail Receipts (Jan. 25, 2010)			
56	WY000511 – WY000512	Certified Mail Receipts (Jan. 25, 2010)			
57	WY000504	Facsimile Cover Letter (Feb. 3, 2010)			
58	WY000506	Payment Receipt (Feb. 18, 2010)			
59	WY000521 – WY000522	Payment Plan Detail (Mar. 11, 2010)			
60	WY000523 – WY000524	Letter from Alessi & Koenig to Perez (Apr. 13, 2010)			
61	WY000533	Payment Receipt (May 11, 2010)			

EXHIBIT(S) LIST

Case No. A-13-689461-C

Marchai, B.T. v. Cristela Perez, et al.

Exhibit Number	Bates Number(s)	Exhibit Description	Date Offered	Objection¹	Date Admitted
62	MBT0504	Pre-Notice of Trustee Sale Notification (July 13, 2010)			
63	WY000539 – WY000540	Facsimile Cover Letter (July 27, 2010)			
64	WY000541	Payment Receipt (Aug. 4, 2010)			
65	WY000542 – WY000543	Payment Plan Detail (Aug. 6, 2010)			
66	WY000544	Payment Receipt (Sept. 29, 2010)			
67	WY000545	Payment Receipt (Nov. 30, 2010)			
68	WY000136	Letter from Wyeth Ranch to Perez (Dec. 27, 2010)			
69	MBT0628– MBT0629	Email from Charlene Fan to Branko Jeftic (Mar. 8, 2011)			
70	14	Rescission of Notice of Trustee's Sale (Mar. 8, 2011)			
71	WY000631	Notice of Trustee's Sale (Mar. 8, 2011)			
72	WY000546	Payment Receipt (Mar. 11, 2011)			
73	MBT0513– MBT0517	Certified Mail Receipts (Apr. 4, 2011)			
74	MBT0286– MBT0287	Notice of Delinquent Violation Lien (Apr. 21, 2011)			
75	MBT0519	Payment to Alessi & Koenig (May 25, 2011)			
76	WY000110	Authorization to Conclude Non-Judicial Foreclosure and Conduct Trustee Sale (June 2, 2011)			

EXHIBIT(S) LIST

Case No. A-13-689461-C

Marchai, B.T. v. Cristela Perez, et al.

Exhibit Number	Bates Number(s)	Exhibit Description	Date Offered	Objection¹	Date Admitted
77	MBT0526	Breach of Payment Plan Letter (July 27, 2011)			
78	WY000562	Payment Receipt (Aug. 4, 2011)			
79	WY000101 – WY000102	Delinquent Collection Policy Wyeth Ranch Homeowners Association (Nov. 10, 2011)			
80	WY000657	Lien Letter (Nov. 29, 2011)			
81	WY000658 – WY000659	Lien Letter (Nov. 29, 2011)			
82	WY000727	Notice of Delinquent Assessment (Lien) (Nov. 29, 2011)			
83	MBT0539	Pre-Notice of Default (Jan. 25, 2012)			
84	WY000646	Notice of Default and Election to Sell Under Homeowners Association Lien (Feb. 14, 2012)			
85	WY000570 – WY000581	Real Estate Listing Report (Feb. 15, 2012)			
86	WY000582 – WY000584	Real Property Parcel Record (Feb. 23, 2012)			
87	WY000645	Certified Mail Receipts (Mar. 5, 2012)			
88	WY000753 – WY000754	First Class Mail Envelopes (Mar. 5, 2012)			
89	WY000352 – WY000353	Email from O'Connor to Rose (Mar. 9, 2012)			
90	MBT0744– MBT0745	Corporate Assignment of Deed of Trust (Mar. 14, 2012)			

EXHIBIT(S) LIST

Case No. A-13-689461-C

Marchai, B.T. v. Cristela Perez, et al.

Exhibit Number	Bates Number(s)	Exhibit Description	Date Offered	Objection¹	Date Admitted
91	WY000649	Payment Receipt (Mar. 19, 2012)			
92	MBT0719– MBT0720	Corporate Assignment of Deed of Trust (May 5, 2012)			
93	WY000680	Payment Receipt (May 8, 2012)			
94	MBT0710– MBT0711	Corporate Assignment of Deed of Trust (May 25, 2012)			
95	MBT0576	Pre-Notice of Trustee Sale Notification (July 18, 2012)			
96	MBT0577	Pre-Notice of Trustee Sale Notification (July 18, 2012)			
97	WY000672 – WY000673	Assignment of Mortgage (July 26, 2012)			
98	WY000681	Payment Receipt (July 28, 2012)			
99	MBT0047– MBT0049	Notice of Intent to Foreclose (Oct. 3, 2012)			
100	WY000719	Notice of Trustee's Sale (Oct. 10, 2012)			
101	WY000691 – WY000694	Certified Mail Receipts (Oct. 25, 2012)			
102	MBT0297– MBT0299	Email from Eden to O'Connor (Oct. 30, 2012)			
103	MBT0300	Letter from Perez to Wyeth Ranch (Oct. 31, 2012)			
104	WY000103 – WY000104	Delinquent Collection Policy (Nov. 15, 2012)			
105	WY000107	Executive Session Meeting (Nov. 15, 2012)			

EXHIBIT(S) LIST

Case No. A-13-689461-C

Marchai, B.T. v. Cristela Perez, et al.

Exhibit Number	Bates Number(s)	Exhibit Description	Date Offered	Objection¹	Date Admitted
106	WY000696 – WY000697	Affidavit of Service (Nov. 26, 2012)			
107	MBT0590	Payment to Alessi & Koenig (Nov. 27, 2012)			
108	MBT0037– MBT0038	Assignment of Deed of Trust (Mar. 12, 2013)			
109	WY000720 – WY000721	Letter from Alessi & Koenig to Perez (Apr. 11, 2013)			
110	MBT0702– MBT0705	Transfer of Servicing Letter (June 17, 2013)			
111	MBT0699– MBT0701	Loan Master Report (July 3, 2013)		X	
112	MBT0697	Letter from Peak Loan Servicing to Perez (July 10, 2013)			
113	MBT0698	Affiliated Business Arrangement Disclosure Statement (July 10, 2013)		X	
114	MBT0617	Notice of Trustee's Sale (July 11, 2013)			
115	MBT0691– MBT0694	Peak Loan Servicing Financial Statement (July 15, 2013)		X	
116	MBT0636– MBT0637	Email from Bates to Nicole Gaudin (July 29, 2013)			
117	MBT0638– MBT0639	Email from Fran Brockett to Bates (July 29, 2013)			
118	WY000722 – WY000724	Certified Mail Receipts (July 29, 2013)			
119	WY000760	Affidavit of Posting Notice of Sale (July 30, 2013)			

EXHIBIT(S) LIST

Case No. A-13-689461-C

Marchai, B.T. v. Cristela Perez, et al.

Exhibit Number	Bates Number(s)	Exhibit Description	Date Offered	Objection¹	Date Admitted
120	MBT0640– MBT0643	Email from Nevada Legal Support Services to Bates (July 31, 2013)			
121	MBT0696	Loan Reinstatement Calculation (Aug. 7, 2013)		X	
122	WY000762	Affidavit of Publication (Aug. 16, 2013)			
123	WY000105 – WY000106	Collection Policy (Aug. 21, 2013)			
124	MBT0645	Email from Bates to Maximum Financial (Aug. 28, 2013)			
125	WY000358 – WY000360	Email from Michaels to O'Connor (Aug. 28, 2013)			
126	MBT0050– MBT0051	Trustee's Deed Upon Sale (Aug. 29, 2013)			
127	MBT0627	Cashier's Check (Aug. 29, 2013)			
128	WY000766	Payment Receipt (Aug. 29, 2013)			
129	WY000361	Check Stubs (Sept. 3, 2013)			
130	MBT0673– MBT0674	Letter from Peak Loan Servicing to Cristela Perez (Sept. 5, 2013)			
131	WY000365	Adjustment Register (Oct. 1, 2013)			
132	MBT0680– MBT0690	Preliminary Report for Title Insurance (Oct. 9, 2013)			
133	MBT0651– MBT0670	Complaint for Interpleader (Oct. 23, 2013)			
134	MBT0676	Letter from Peak Loan Servicing to Cristela Perez (Nov. 8, 2013)			

EXHIBIT(S) LIST

Case No. A-13-689461-C

Marchai, B.T. v. Cristela Perez, et al.

Exhibit Number	Bates Number(s)	Exhibit Description	Date Offered	Objection¹	Date Admitted
135	MBT0695	Evidence of Lender Place Insurance (Feb. 15, 2015)			
136	MBT0052– MBT0053	Certificate of Custodian of Records Pursuant to NRS 52.260 (Oct. 9, 2015)			
137	MBT0678	Insurance Coverage Notification (Oct. 13, 2015)			
138	WY000377 – WY000380	Resident Transaction Detail (Oct. 16, 2015)			
139	WY000381 – WY000385	Resident Transaction Detail (Oct. 16, 2015)			
140	MBT0329– MBT0332	Affidavit of David Alessi (Nov. 10, 2015)			
141	18–20	Records Search & Order System (Jan. 11, 2016)			
142		Appraisal of Real Property Expert Report Prepared by Scott Dugan (Apr. 14, 2017)		X	
143		Notice of Accounting for Injunction Pending Appeal: September 2020 (Oct. 13, 2020)			
144		Second Amended Notice of Taking Deposition of Wyeth Ranch Community Association			

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Attorneys for Defendant Wyeth Ranch Community Association

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust

Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.

Defendants.

Case No.: A-13-689461-C
Dept. No.: XII

Consolidated with: A-16-742327-C

**DEFENDANT WYETH RANCH
COMMUNITY ASSOCIATION'S
MOTION FOR
RECONSIDERATION OR
CLARIFICATION UNDER NRCP
60, ALTERNATIVELY MOTION IN
LIMINE**

(HEARING DATE REQUESTED)

AND ALL RELATED CLAIMS AND ACTIONS.

Defendant WYETH RANCH COMMUNITY ASSOCIATION ("HOA"), by and through its counsel of record at the law firm of LIPSON NEILSON P.C., respectfully submits the following Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine.

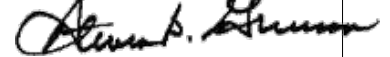
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1 This Motion is made and based upon the Memorandum of Points and Authorities,
2 the exhibits attached hereto, the pleadings and papers on file herein, and any oral
3 argument that may be presented at any hearing on the Motion.

4 DATED this 4th day of December, 2020.

5
6 LIPSON NEILSON P.C.

7 */s/ David T. Ochoa*
8 By: _____
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11 DAVID T. OCHOA, ESQ.
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16 *Attorneys for Defendant*
17 *Wyeth Ranch Community Association*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Despite the case having been litigated for years, recently remanded, and set for trial, Marchai is attempting to amend its claims and argue new damages presented for the first time in its November 2, 2020, Opposition to the HOA's Summary Judgment Motion. Marchai has never before asserted anything different than either the deed of trust survived the sale, or otherwise the sale should be set aside as a wrongful foreclosure. Now Marchai alleges for the first time that if the foreclosure on superpriority portion of the lien is found and upheld, it has still been damaged by misapplication of the proceeds of the sale, after the sale. As will be explained below, Marchai has never asserted this before in its Complaint, prior motions, written discovery responses, or disclosures, including never providing a computation of damages for this assertion.

If Marchai knew this was where it was going to go after remand, it had the burden to amend its pleadings and update its disclosures. To this point, Marchai is obviously aware of this burden as it has previously, in this case, filed a Motion to amend its claims after the deadline and argued a change in law as a basis. Additionally, Marchai filed a motion to reopen discovery after the remand, but on a limited basis not related to the application of proceeds after a valid sale.

Asserting a claim for the first time in an Opposition is not a request to amend, and no request to amend has been submitted. No computation of the new alleged damages has ever been provided. Marchai made the choice to not litigate the scenario of whether a superiority sale was actually upheld and application of the proceeds after the sale. Marchai should not be able to amend its claims or assert those damages now.

Marchai raised this issue for the first time in its Opposition. The HOA attempted to address Marchai's untimely assertion in its Reply. The HOA sought clarification of the Summary Judgment Order at the November 10 Calendar Call shortly after the hearing. See opening minutes of November 10 Calendar Call. Counsel for the HOA and Marchai

1 conferred about the dispute of whether Marchai is raising this issue for the first time and
2 a dispute about the Court's clarification. See **Exhibit 1**, attached hereto. The HOA
3 submitted a competing Order it believed incorporated the clarification by the Court,
4 however, the Court signed Marchai's Order that does not address this issue. Marchai
5 has expressed that intends to bring this new claim at trial. Exhibit 1. Thus, this motion
6 is necessary to seek reconsideration or clarification of the prior order, or alternatively
7 this is a motion in limine seeking a separate order that this issue should not be raised at
8 trial.

9 **II. STATEMENT OF UNDISPUTED FACTS**

10 On or around October 19, 2005, Cristela Perez ("Borrower") obtained a loan to
11 purchase the Property. See Complaint in Case No. A-16-742327-C, attached hereto as
12 **Exhibit 2** ¶ 7. The loan was secured by a deed of trust with CMG Mortgage named as
13 beneficiary. *Id.* ¶ 8. The deed of trust was subsequently assigned to CitiMortgage, Inc.
14 and Stanwich Mortgage Loan Trust, Series 2012-6. *Id.* ¶¶ 22, 24. In March 2013, the
15 deed of trust was assigned to Plaintiff. *Id.* ¶ 27.

16 Sometime after purchasing the Property, Borrower defaulted on her quarterly
17 homeowners' assessments. See generally *id.*; The HOA's, sold the Property to SFR
18 Investment Pool 1 LLC ("SFR") for \$21,000. Ex. 1 ¶ 30. A trustee's deed upon sale was
19 recorded in SFR's favor in September 2013. See Trustee's Deed Upon Sale, **Exhibit 3**.

20 **III. STANDARD OF REVIEW**

21 **Reconsideration**

22 EDCR 2.24(b) provides in part that "[a] party seek reconsideration of ruling of the
23 court, . . . , must file a motion for such relief within 14 days after service of written notice
24 of the order." The Nevada Supreme Court has held that motions for reconsideration are
25 appropriate when decision is clearly erroneous," *Masonry and Tile Contractors v. Jolly*
26 *Urga & Wirth*, 113 Nev. 737, 741 (1997). Given that Marchai's Opposition
27 inappropriately raised a new issue it is unclear if the Court's Order allows that issue to
28 proceed; respectfully, if the issue is allowed to be raised in this way and allowed to

1 proceed the decision is clearly erroneous. You do not ask for around ten thousand in
2 proceeds from a valid sale by alleging the sale was wrongful and asking for an alleged
3 value of the property of hundreds of thousands of dollars.

4 **Clarification**

5 NRCP 60(a) provides: “[t]he court may correct a clerical mistake or a mistake arising
6 from oversight or omission whenever one is found in a judgment, order, or other part of
7 the record. The court may do so on motion or on its own, with or without notice. If the
8 Court meant to address that a party cannot for the first time raise a new claim and new
9 damages in an Opposition at the motion deadline after years of litigation, the Court can
10 clarify the prior order.
11

12 **Motion in Limine**

13 Motions in Limine have long been recognized as a vehicle by which a party may
14 seek to preclude the introduction of evidence prior to trial to avoid undue prejudice.
15 Determinations about admissibility of evidence are properly “conducted out of the
16 hearing of the jury, to prevent the suggestion of inadmissible evidence.” NRS 47.080.
17 The purpose of a motion in limine is to allow the trial court to rule in advance of trial on
18 the admissibility and relevance of certain forecasted evidence. *See Luce v. United*
19 *States*, 469 U.S. 38, 41 n. 4 (1984). In fact, motions in limine are the preferred method
20 for making pre-trial determination on the admissibility of evidence. Otherwise valuable
21 time and judicial resources can be wasted when objections to the admissibility of
22 evidence are brought during trial. *See State ex rel. Dept. of Highways v. Nevada*
23 *Aggregates & Asphalt Co.*, 92 Nev. 370, 373, 551 P.2d 1095, 1098 (1976).
24 Furthermore, “[t]he decision to admit or exclude testimony is within the sound discretion
25 of the trial court and will not be disturbed unless it is manifestly wrong.” *Hall v. SSF,*
26 *Inc.*, 112 Nev. 1384, 1392-93, 930 P.2d 94, 99 (1996); *Nevada Aggregates & Asphalt*
27
28

1 Co., 92 Nev. at 376, 551 P.2d at 1098. Specifically, it is within the sound discretion of
2 the trial court to exclude as evidence at trial any discovery completed after the discovery
3 cut-off date. See *Dow Chem. Co. v. Mahlum.*, 114 Nev. 1468, 1506, 970 P.2d 98, 122-
4 23 (1998), overruled on other grounds by *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11
5 (2011); *Leiper v. Margolis*, 111 Nev. 1012, 899 P.2d 574 (1995).

6 7 **IV. PROCEDURAL BACKGROUND**

8 In the District Court's Order entered March 22, 2016, the Court found that Marchai
9 failed to establish the sale was commercially unreasonable, violated the takings or due
10 process clauses, or that the statute was unconstitutionally vague. **Exhibit 4.**

11 In the District Court's Order entered January 24, 2017, the Court dismissed
12 Marchai's Quiet Title Claim against the HOA. **Exhibit 5.**

13 In the District Court's October 3, 2017 Order, the Court found that Notice was
14 proper, however, found for Marchai based on a determination that Borrower's partial
15 payments paid off the superpriority portion of the lien. **Exhibit 6.**

16 On November 6, 2017, SFR filed its Case Appeal Statement and Notice of Appeal,
17 appealing the determination on the application of Borrower's partial payments. **Exhibit**
18 **7.**

19 Marchai did not appeal the earlier orders or the determination on notice from the
20 October 3, 2017.

21 On March 18, 2020, the Nevada Supreme Court entered its Order Vacating
22 Judgment and Remanding. **Exhibit 11.** Within that Order the Nevada Supreme Court
23 found and affirmed that the 2008 Notice of Delinquent Assessment was the operative
24 notice to review superpriority and that a Borrower's payments could satisfy the
25 superpriority portion of an HOA lien. However, the Court remanded on finding that
26 under *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev., Adv. Op. 8 (Mar. 5,
27 2020), the facts surrounding the payments needed to be analyzed to determine if the
28 payments actually satisfied the superpriority portion of the lien.

1 On August 13, 2020, Marchai filed its Motion to Reopen Discovery “to allow Marchai
2 to take the N.R.C.P. 30(b)(6) deposition of Wyeth Ranch Community Association or its
3 property manager,” referencing the Nevada Supreme Court’s decision was based on
4 *Cranesbill*. See Motion to Reopen at 1-2. *Cranesbill* does not deal with proceeds after
5 the sale, but a homeowner’s partial payments on a HOA’s lien prior to the sale.

6 On September 25, 2020, the HOA filed its Motion for Summary Judgment arguing
7 the remaining *Cranesbill* issue remanded is irrelevant to the elements of the wrongful
8 foreclosure claim, because It is undisputed that the HOA foreclosed on the remaining
9 balance of the lien, whether it was all subpriority or still split at the time of foreclosure,
10 and thus was not a wrongful foreclosure.¹

12 On October 19, 2020, Marchai in addition to arguing issues of fact remain for trial,
13 also raised a new claim and damages. Marchai’s Opposition at 15, stating: “Wyeth
14 Ranch could only apply \$640.50 to its lien and should have remitted the remaining
15 \$10,038.62 to Marchai.” This new claim in the Opposition was alleging misapplication of
16 proceeds during a scenario of a valid superpriority foreclosure.

18 On November 2, 2020, the HOA filed its Reply, where it pointed out that Marchai
19 was raising a new claims and new damages for the first time, with supporting case law
20 on why such a tactic is not allowed.

21 On November 10, 2020, at the Calendar Call the HOA sought clarification of the
22 Summary Judgment decision, specifically addressing the new claim. See opening
23 minutes of November 10 Calendar Call. Counsel for the HOA and Marchai conferred
24 about the dispute of whether Marchai is raising this issue for the first time and a dispute
25 about the Court’s clarification. See Exhibit 1, attached hereto. The HOA submitted a
26

27
28 ¹ The HOA disputes that issue of fact remain on Marchai’s claim for alternative damages against
the HOA. However, the point of this Motion is to argue the alternative damages in the
Complaint are not the damages Marchai raised for the first time in its Opposition.

1 competing Order it believed incorporated the clarification by the Court, however, the
2 Court signed Marchai's Order that does not address this issue. Marchai has expressed
3 that intends to bring this new claim at trial. Exhibit 1.

4 **V. LEGAL ARGUMENT**

5 **A. Marchai Alleges a New Claim for Relief and New Damages for the**
6 **First Time in its Opposition, Which Should Not Be Allowed.**

7 **1. Marchai's reference to proceeds after the sale in its Opposition is**
8 **the introduction of a New Claim and New Damages**

9 In its Opposition, Marchai is alleging for the first time that it suffered damages
10 from a misapplication of proceeds after the sale, if in fact it was a superpriority sale. See
11 Marchai's Opposition at 15, stating: "Wyeth Ranch could only apply \$640.50 to its lien
12 and should have remitted the remaining \$10,038.62 to Marchai."

13 Marchai is asserting SFR paid to purchase an interest in the property at the
14 foreclosure sale, and that payment became proceeds from the sale that went to Alessi &
15 Koenig, as well as the HOA and its management company. Further, Marchai alleges it
16 should have obtained a majority of what went to the HOA. This is distinguishable from
17 what Marchai previously pled and what damages they previously sought. As argued
18 below, Marchai has only ever asserted a wrongful foreclosure, however, these new
19 damages deal with proceeds from the sale and the issue only arises from a scenario
20 where a valid superpriority sale has been recognized. Marchai simply could not have
21 previously pled this claim because it never previously entertained within pleadings to
22 this Court the possibility of a valid superpriority foreclosure.

23 Review of the record demonstrates that Marchai has not previously alleged it is
24 entitled to proceeds that went to the HOA. In its Complaint Marchai's Fourth Cause of
25 Action is for a violation of NRS 116.1113 stating:

26 ///

27 ///

28 ///

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.

Marchai's Complaint at 11 (emphasis added). Thus, Marchai's violation of NRS 116.1113 is pled similar to wrongful foreclosure and directs the review to wrongful foreclosure. It makes sense that Marchai would do this as Wrongful foreclosure is actually limited to whether the debt foreclosed on existed, and other allegations such as notice issues are better pled as a violation of the statute. Or in otherwords, most of Marchai's Third claim for wrongful foreclosure should have been pled just as a breach of NRS 116.1113. Marchai essentially links these claims, arguing they are wrongful foreclosure or breach of NRS 116.1113. However, in linking the claims, Marchai does not address these proceeds after the sale in either the violation of NRS 116.1113 or the wrongful foreclosure claim. Marchai does not address proceeds after the sale, and does not provide a calculation for any related damages: See Cause of Action for Wrongful foreclosure as stated below:

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.

Marchai's Complaint at 9 -11 (emphasis added). None of the allegations in the Third Claim for Relief of Wrongful foreclosure above and emphasized in bold address the new claim of misapplication of proceeds after the sale. Further, nothing in the Fourth Claim that refers back to the Third Claim of wrongful foreclosure addresses these proceeds from the sale either.

///

1 First, paragraph 69(e) in the Third Claim discusses the prior homeowner's partial
2 payments during the foreclosure process; not the new owner SFR's (the Purchaser at
3 the Foreclosure Sale's) payment at the sale. These prior homeowner payments are
4 relevant to the *Cranesbill* analysis that was remanded by the Nevada Supreme Court.
5 However, these payments by the Homeowner to pay down the debt during the
6 collection/foreclosure process are obviously different then the payment from SFR to
7 purchase the property at the foreclosue sale. Mentioning the prior homeowners partial
8 payments toward the debt, does nothing to put the HOA on notice that Marchai believed
9 there was an issue with or was seeking damages related to SFR's payment at the
10 foreclosure sale. Marchai, arguing now that the payment from SFR was misapplied is a
11 new claim.
12

13 Second, Marchai only referencing wrongful foreclosure in its Fourth Claim for
14 Breach of NRS 116.1113 makes it more obvious that an issue with proceeds from the
15 foreclosure sale was not addressed. Not only did we just review that the Third Claim for
16 Wrongful Foreclosure did not address this, including paragraph 69(e), but wrongful
17 foreclosure is the exact opposite of what needs to be pled for this claim because this
18 new claim presumes a valid foreclosure (more specifically a valid superpriority
19 foreclosure). See Marchai's Opposition at 15 and see *Bank of Am., N.A. v. Las Vegas*
20 *Rental & Repair, LLC*, 2019 Nev. Unpub. LEXIS 1256, *2-3, 451 P.3d 547, 2019 WL
21 611913. In *Las Vegas Rental & Repair, LLC*, 2019 Nev. Unpub. LEXIS 1256, *2-3, 451
22 P.3d 547, 2019 WL 611913, It was either not disputed that misapplication of proceeds
23 was being persued, or if it was, the Nevada Supreme Court determined that Lender
24 actually sought the excess proceeds from the foreclosure sale, stating: "However, we
25 conclude that summary judgment was improper on appellant's claim for breach of the
26 duty of good faith. In particular, appellant sought the excess proceeds from the
27
28

1 foreclosure sale after the HOA was paid the superpriority portion of its lien and
2 allowable costs and fees. **If the foreclosure sale extinguished appellant's deed of**
3 **trust**, appellant would have been entitled to the excess proceeds. See *SFR Invs. Pool*
4 *1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 743, 334 P.3d 408, 409 (2014).” Marchai
5 would have needed to plead in its Fourth Claim alternatively to wrongful foreclosure,
6 that if a valid superpriority foreclosure took place that it may be entitled to proceeds
7 from what SFR paid for the property. Its Complaint does not address this alternative,
8 and perhaps because Marchai did not want to discuss the alternative of a valid
9 superpriority or its alleged damages being substantially limited. However, in its
10 Opposition it did raise this for the first time stating: “Wyeth Ranch could only apply
11 \$640.50 to its lien and should have remitted the remaining \$10,038.62 to Marchai.”
12 Marchai’s Opposition at 15. Wyeth Ranch is now entitled to clarification on this issue
13 and an order that this new claim cannot be raised at trial. Here, Marchai has not timely
14 sought these damages or even made a request to amend.

15
16
17 Review of additional documents from the litigation also demonstrate that Marchai
18 has not previously sought proceeds that went to the HOA. As argued above Marchai’s
19 violation of NRS 116.1113 claim in the Complaint directs review to wrongful foreclosure.
20 In responses to written discovery requests regarding wrongful foreclosure Marchai
21 never alleges facts related to the application of the proceeds after the sale. See
22 Responses to Written Discovery (specifically responses to interrogatories 13 – 15)
23 attached hereto as **Exhibit 8**. Marchai’s response also incorporates its Motion for
24 summary judgment at the time into its written discovery response for further information.
25 *Id.* However, the motion for summary judgment similarly does not seek proceeds after
26 the sale. See Marchai’s January 14, 2016 Motion for Summary Judgment.

27
28 ///

Further, Marchai's last disclosure of witnesses and documents does not include a computation of damages that seeks proceeds after the sale. Marchai's last disclosure states:

(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

Marchai primarily judicial foreclosure and a ruling that Wyeth Ranch Community Association's foreclosure did not extinguish Marchai's deed of trust or, if it did, that the sale was void or voidable. If the Court does not grant judicial foreclosure, declare that Wyeth Ranch's foreclosure did not extinguish Marchai's deed of trust, or set aside the foreclosure sale as void or voidable, Marchai seeks damages in the amount of the fair market value of the property. According to Marchai's expert, the property had a fair market value of \$360,000 at the time of Wyeth Ranch's foreclosure. See Marchai, B.T.'s Initial Expert Disclosure (Apr. 25, 2017).

See Marchai's Third Supplemental Disclosure and Expert Report, attached hereto as **Exhibit 9**. The damages requested demonstrate Marchai has not sought proceeds from the sale. This is a new claim and newly requested damages.

2. Marchai's New Claim and New Damages should not be allowed in on the eve of trial.

Pursuant to NRCP 15(a), "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court may properly deny leave to amend when factors such as bad faith, dilatory motive, undue delay, futility of amendment, or undue prejudice are present. See *Stephens v. Southern Nev. Music Co.*, 89 Nev. 104., 106, 507 P.2d 138, 139 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Additionally, the deadline to amend pleadings has passed. Pursuant to NRCP 16(b)(4), good cause is required to amend a schedule. "[T]he purpose of NRCP 16(b) is 'to offer a measure of certainty in pretrial proceedings, ensuring that at some point both the parties and the pleadings will be fixed.'" *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 971 (Nev. App. 2015) quoting *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 339-40 (2d Cir.2000). Because "[d]isregard of the

1 [scheduling] order would undermine the court's ability to control its docket, disrupt the
2 agreed-upon course of the litigation, and reward the indolent and the cavalier” in order
3 to extend a deadline imposed by a court order, the party seeking such an extension
4 must establish good cause. *Nutton*, 131 Nev. Adv. Op. 34, 357 P.3d at 972 quoting
5 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992). NRCP 16
6 was drafter precisely to prevent this from occurring, and “[i]ts standards may not be
7 short-circuited by an to those of Rule 15.” *Id.* at 971 *quoting Johnson*, 975. F.2d at 610.
8 “[I]f the moving party was not diligent in at a least attempting to comply with the
9 deadline, ‘the inquiry should end [there].’” *Id. quoting Johnson*, 975 F.2d at 609
10 (emphasis added). Thus, if there was a delay in moving to extend the deadline to
11 amend pleadings, the moving party would be barred from doing so.

12 The foreclosure sale occurred in 2013. Exhibit 19 1. An interpleader action was
13 filed the same year and provided a breakdown of the distribution of the proceeds.
14 Interpleader Complaint case # A-13-690586-C, attached hereto at **Exhibit 10**. Thus,
15 there is no good cause for Marchai making this claim at this point in the litigation, and it
16 was instead done in bad faith with the realization that the Quiet Title claim against the
17 HOA had been dismissed. See Exhibit 21 (Dismissal of Quiet Title Claim).

18 Additionally, Nevada Rule of Civil Procedure 16.1(a)(1)(A)(iv) requires a party to
19 disclose a computation of damages without awaiting a discovery request:

20 (a) Required Disclosures.

21 (1) Initial Disclosure.

22 (A) In General. Except as exempted by Rule
23 16.1(a)(1)(B) or as otherwise stipulated or ordered by the
24 court, **a party must, without awaiting a discovery**
25 **request, provide to the other parties:**

26 (iv) **a computation of each category of damages**
27 **claimed** by the disclosing party — who must make available for
28 inspection and copying as under Rule 34 the documents or other
evidentiary material, unless privileged or protected from disclosure,
on which each computation is based, including materials bearing on
the nature and extent of injuries suffered;

27 Nev. R. Civ. P. 16.1(a)(1)(A)(iv) (emphasis added in bold and underlined). If, as here, a
28 party fails to comply with the rules of disclosure under NRCP 16.1, the court must

1 impose appropriate sanctions, such as "[a]n order prohibiting the use of any witness,
2 document or tangible thing which should have been disclosed, produced, exhibited, or
3 exchanged pursuant to Rule 16.1(a)." NRCP 16.1(e)(3)(b). Moreover, the Nevada
4 Supreme Court recently clarified that "when a party has failed to abide by NRCP 16.1's
5 disclosure requirements, NRCP 37(c)(1) provides the appropriate analytical framework
6 for district courts to employ in determining the consequence of that failure." *Pizarro-*
7 *Ortega v. Cervantes-Lopez*, 396 P.3d 783, 787 (Nev. 2017), reh'g denied (Sept. 28,
8 2017). NRCP 37(c)(1) provides that a party cannot rely upon any undisclosed
9 evidence or witnesses unless it shows that there was a substantial justification for
10 the failure to disclose or it shows the failure was harmless. *Id.* (quoting NRCP 37(c)(1);
11 and citing NRCP 16.1(e)(3)(B)). As such, the Court in *Pizzaro-Ortega* held that the trial
12 court erred as a matter of law to the extent it absolved the plaintiffs of their obligation to
13 provide a computation of damages
14 under NRCP16.1(a)(1)(C). *Id.*

15
16
17 Such failures are not justified as the Plaintiff presumably had in its possession
18 the documents, facts, and information necessary to calculate damages. *See Pizarro-*
19 *Ortega v. Cervantes-Lopez*, 396 P.3d 783, 787 (Nev. 2017), reh'g denied (Sept. 28,
20 2017). Furthermore, the failure to produce a timely and compliant damages
21 computation was not harmless as this case has continued for years without the
22 Association knowing about the request for these damages. Thus, even assuming
23 something in the Complaint actually tipped the HOA off that Marchai was asserting a
24 misapplication of proceeds after the sale, Marchai would have had to provide a
25 computation of the related damages and it has not. Further, the HOA could have filed a
26 Motion in Limine on this basis previously, if the claim was actually asserted in the past
27 and not in Marchai's Opposition at the motion deadline.
28

1 Marchai, has never previously alleged the HOA misapplied proceeds after the
2 sale. Marchai has not requested to amend to add this claim. Marchai has never
3 provided a computation of damages for misapplied proceeds. To put it simply, when
4 Marchai asserts in its Complaint a wrongful foreclosure, it did not also assert an issue
5 with a valid foreclosure. When it asserted an issue with Homeowners payments, it did
6 not also assert an issue with SFR's payment at the sale. When Marchai failed to
7 disclose these damages, it did not also disclose the damages.

8
9 Marchai's Complaint alleges it should keep its deed of trust, or alternatively that it
10 was a wrongful foreclosure and it should receive fair market value. Those assertions do
11 not amount to an assertion that there was a valid superpriority foreclosure, and the
12 assertions to not amount to an assertion they are now entitled to additional proceeds
13 from SFR's payment to purchase the property. Marchai has not sought leave to make
14 this claim or allege these damages.

15
16 Marchai, may allege the 2019 case is new law, but the case cites to the 2014
17 SFR decision, and Marchai has already alleged it was not new law. See Opposition at
18 15, note 5, stating: "Presumably Wyeth Ranch will argue that it did not understand the
19 law at the time of the foreclosure when it applied the full amount of the proceeds to
20 Perez's account." Even assuming it is new law, Marchai is aware of how to file for leave
21 to amend based on the same and did not do so. Marchai previously filed a Motion to
22 amend its claims after the deadline and argued a change in law as a basis. See
23 Marchai's August 18, 2016 Motion. Marchai did not previously seek these damages and
24 the case was not remanded to review these damages as *Cranesbill* deals with
25 homeowner partial payments prior to the sale, not the purchase payment at the sale.
26 Additionally, Marchai filed a motion to reopen discovery after the remand, but on a
27 limited basis (*Cranesbill* and prior homeowner's partial payments) not related to the
28

1 application of proceeds after the sale. See Marchai's August 13, 2020, Motion to
2 Reopen Discovery.

3 Marchai has stated that it intends to bring this claim at trial. See Declaration of
4 Attorney David Ochoa and Exhibit 1. For the reasons provided above, any request to
5 amend or provide proof of these damages at this point in the litigation should be denied.
6 The HOA is entitled to reconsideration or clarification of the previous order indicating
7 Marchai cannot raise this claim at trial, or alternatively the HOA is entitled to a separate
8 order that Marchai cannot raise this claim at trial.
9

10 **VI. CONCLUSION**

11 Based on the foregoing arguments, the HOA respectfully requests an addition or
12 clarification to the prior order stating that Marchai cannot raise this claim at trial, or
13 alternatively, a separate order that Marchai cannot raise this claim at trial.

14 DATED this 4th day of December, 2020.

15 LIPSON NEILSON P.C.

16
17 */s/ David T. Ochoa*

18 By: _____
19 KALEB D. ANDERSON, ESQ.
20 Nevada Bar No. 7582
21 DAVID T. OCHOA, ESQ.
22 Nevada Bar No. 10414
23 9900 Covington Cross Drive, Suite 120
24 Las Vegas, Nevada 89144

25 *Attorneys for Defendant*
26 *Wyeth Ranch Community Association*
27
28

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 – fax (702) 382-1512

CERTIFICATE OF SERVICE

I certify that on the 4th day of December, 2020, I electronically transmitted the foregoing **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S MOTION FOR RECONSIDERATION OR CLARIFICATION UNDER NRCP 60, ALTERNATIVELY MOTION IN LIMINE** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
david@djmerillpc.com

Attorney for Plaintiff Marchai, B.T.

Diana Cline Ebron, Esq.
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Attorneys for SFR Investments Pool 1, LLC

/s/ Juan Cerezo
An employee of LIPSON NEILSON P.C.

DECLARATION OF DAVID OCHOA, ESQ.

David Ochoa, declares as follows:

1. I am an attorney licensed to practice in the State of Nevada. I am counsel in the above captioned matter for Wyeth Ranch Community Association ("HOA").

2. I make this declaration upon personal knowledge, and if called as a witness, I could and would competently testify to the facts contained in this declaration.

3. On November 10, 2020, the parties participated in a hearing on the HOA's Motion for Summary Judgment and Calendar Call.

4. At the Calendar Call I requested clarification on the Court's Order.

5. On November 18, 2020, counsel for Marchai David Merrill emailed a proposed order and requested input or e-signatures. Exhibit 1.

6. I sent additions to counsel for Marchai that incorporated what I believed to be the clarification from the Court. Exhibit 1.

7. I exchanged emails with Marchai over the competing drafts of the Order, explaining my belief that he was inappropriately adding new claims for trial. See emails at Exhibit 1.

8. Counsel for Marchai expressed his belief that it was not a new claim and that he intended to bring the claims at trial. Exhibit 1.

9. Given that the claim was not previously asserted, the HOA could not file a Motion in Limine before the deadline and attempted to address the new issue in its Reply.

10. The Order Denying the HOA's MSJ does not address this ongoing dispute.

11. The HOA respectfully request that this issue be resolved at a hearing prior to trial. Given that a new trial date is currently pending, the HOA's motion may require a hearing on shorten time in the future, and the HOA intends to seek an order shortening time if it becomes necessary.

///

///

DAVID OCHOA

“EXHIBIT 1”

“EXHIBIT 1”

From: David Ochoa
Sent: Wednesday, November 18, 2020 5:23 PM
To: 'David Merrill' <david@djmerillpc.com>
Cc: Karen Hanks <karen@kgelegal.com>; Jason Martinez <jason@kgelegal.com>
Subject: RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment

David,

to follow up our call, we will be submitting a competing order that is substantially similar to yours except for the additional paragraph at the end we requested you add. I understand your position is that you previously sought these damages, however, as argued in our Reply your NRS 116.1113 claim alleges only wrongful foreclosure, and the new damages you seek only come up in a scenario where there was a valid superpriority foreclose, thus you needed to plead both alternative scenarios in your complaint and you did not. Additionally, your reference at the hearing that you discussed homeowners partial payments in the complaint is completely separate idea to misapplication of proceeds after the sale, which would deal with payment from SFR to Purchaser the property, not a partial payment from the homeowner. Thus, your reference to the allegation in the Complaint that homeowners partial payments paid off the superpriority portion of the lien which led to a subpriority sale, would not tip us off that you were also alleging a superpriority sale and damages related to proceeds from the payment by SFR.

Our additional paragraph clarifies you requested these damages for the first time in a Opposition after the motion deadline and it should not be an issue for trial.

Sincerely,

David



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From: David Merrill <david@djmerrellpc.com>
Sent: Wednesday, November 18, 2020 4:15 PM
To: David Ochoa <DOchoa@lipsonneilson.com>
Cc: Karen Hanks <karen@kgelegal.com>; Jason Martinez <jason@kgelegal.com>
Subject: Re: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment

Yes, I am aware of what your reply argued. And I argued at the hearing that Marchai had asserted that claim and sought those damages. The court unequivocally denied your motion. If the Court had agreed with your characterization, then it would have granted the motion (at least in part). It did not. It denied the motion. My recollection of the hearing differs remarkably from yours. My recollection is that you asked for clarification whether the Court was allowing Marchai to amend its complaint to assert the claim and the Court said she was not allowing an amendment. I can be reached on my cell phone (702) 577-0268 if you would like to discuss. But unless you show me the transcript that unequivocally says I am wrong, I am not willing to add any language to the order that even implies Marchai is not allowed to proceed on this theory. Let me know how you would like to proceed. Thank you.

On Wed, Nov 18, 2020 at 4:01 PM David Ochoa <DOchoa@lipsonneilson.com> wrote:

David,

I disagree with your statement that I was only asking if you could amend the Complaint. I laid out in my Reply how you clearly never sought these damages and how you never even previously entertained the idea that there could have been a valid superpriority sale (which is the only scenario where these newly asserted damages would become an issue). I asked the Court to clarify that you could not pursue this new claim, and she said you could not. She didn't say she found it to be the same claim and you could pursue it. Further, you never sought additional clarification. It prejudices my client to have to prepare for a trial to defend against damages you raised for the first time in an Opposition as the motion in limine deadline passed.

Do you have time for a call to discuss the order?

David



David Ochoa, Esq.

**Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120**

Las Vegas, Nevada 89144

702-382-1500

702-382-1512 (fax)

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From: David Merrill <david@djmerrillpc.com>
Sent: Wednesday, November 18, 2020 2:46 PM
To: David Ochoa <DOchoa@lipsonneilson.com>
Cc: Jason Martinez <jason@kgelegal.com>; Karen Hanks <karen@kgelegal.com>
Subject: Re: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment

No, you asked if the Court was allowing Marchai to amend its complaint and she said no. My argument was that Marchai has asserted that claim and did not need to amend. The judge did not decide that issue. If you want to send me the competing order I can submit them at the same time. Let me know. Thanks.

On Wed, Nov 18, 2020 at 14:31 David Ochoa <DOchoa@lipsonneilson.com> wrote:

David,

I asked the Court to clarify if she was allowing you to pursue this new claim and she said no. The language below clarifies from the briefing what you were asserting in your opposition and what damages you cannot seek at trial. If your position is you cannot begin to tweak this language, then yes I would submit a competing order.

Sincerely,

David



David Ochoa, Esq.

Lipson Neilson P.C.
[9900 Covington Cross Drive, Suite 120](#)

[Las Vegas, Nevada 89144](#)

702-382-1500

702-382-1512 (fax)

E-Mail: dochoa@lipsonneilson.com

Website: www.lipsonneilson.com

OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO

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From: David Merrill <david@djmerillpc.com>

Sent: Wednesday, November 18, 2020 12:56 PM

To: David Ochoa <DOchoa@lipsonneilson.com>

Cc: Karen Hanks <karen@kgelegal.com>

Subject: Re: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment

I am definitely not adding this language because (1) the Court never said this; and (2) I strongly disagree with your characterization. Do you intend to prepare a competing order?

On Wed, Nov 18, 2020 at 12:52 PM David Ochoa <DOchoa@lipsonneilson.com> wrote:

David,

I would like to add the following:

Marchai's Opposition alleges for the first time that if a valid superpriority foreclosure took place that it was damaged by not receiving certain proceeds from the sale. Marchai's Opposition at 15, stating: "Wyeth Ranch could only apply \$640.50 to its lien and should have remitted the remaining \$10,038.62 to Marchai." Marchai alleges these damages for the first time in its Opposition and cannot seek these damages at trial.

Sincerely,

David



David Ochoa, Esq.

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From: David Merrill <david@djmerillpc.com>
Sent: Wednesday, November 18, 2020 11:24 AM
To: David Ochoa <DOchoa@lipsonneilson.com>; Karen Hanks <karen@kgelegal.com>
Subject: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment

David and Karen,

I have attached a draft of the Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment. Please advise as soon as possible if you have any suggested revisions. If I do not hear from you, I will submit to the Court on Friday. Thank you.

--

David J. Merrill

David J. Merrill, P.C.

[10161 Park Run Drive, Suite 150](#)

[Las Vegas, Nevada 89145](#)

[Office: \(702\) 566-1935](#)

Mobile: (702) 577-0268

Fax: (702) 993-8841

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EXHIBIT 2

EXHIBIT 2


CLERK OF THE COURT

1 **COMP**
2 **DAVID J. MERRILL**
3 Nevada Bar No. 6060
4 **DAVID J. MERRILL, P.C.**
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1936
8 Facsimile: (702) 993-8841
9 E-mail: david@djmerrillpc.com
10 Attorney for MARCHAI, B.T.

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

13 **MARCHAI, B.T., a Nevada business**
14 **trust,**

15 **Plaintiff,**

16 **vs.**

17 **SFR INVESTMENTS POOL 1, LLC, a**
18 **Nevada limited liability company;**
19 **WYETH RANCH COMMUNITY**
20 **ASSOCIATION, a Nevada non-profit**
21 **corporation; ALESSI & KOENIG, LLC,**
22 **a Nevada limited liability company;**
23 **DOES 1 through 10, inclusive, and**
24 **ROES 1 through 10, inclusive.**

25 **Defendants.**

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

EXEMPT FROM
ARBITRATION: ACTION
CONCERNING TITLE TO
REAL ESTATE

26 **COMPLAINT**

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

28 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

1 Rivers Avenue, Las Vegas, Nevada 89131, Clark County Assessor's Parcel Number
2 125-15-811-013.

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

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

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

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

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

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

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

3 9. On November 5, 2007, Complete Association Management Company
4 recorded on behalf of Wyeth Ranch a Notice of Delinquent Violation Lien as
5 Document No. 20071105-0000841 in which Wyeth Ranch claimed a lien for unpaid
6 violations in the amount of \$1,400.00.

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

9 11. On October 8, 2008, the Clark County Recorder recorded a Notice of
10 Delinquent Assessment (Lien) as Document No. 200810080003311, which Alessi &
11 Koenig executed as agent for Wyeth Ranch. According to the notice, as of September
12 30, 2008, Perez owed Wyeth Ranch \$1,425.17.

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

18 13. On January 14, 2010, Alessi & Koenig, on behalf of Wyeth Ranch,
19 recorded with the Clark County Recorder as Document No. 201001140002589 a
20 Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch
21 \$6,964.25 in unpaid assessments. The notice set a sale for February 17, 2010.

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

24 15. On March 9, 2011, Alessi & Koenig, on behalf of Wyeth Ranch,
25 recorded with the Clark County Recorder as Document No. 201103090001741 a
26 Rescission of Notice Trustee's Sale, in which Wyeth Ranch rescinded the January
27 14, 2010, notice of sale.

28

1 16. On March 29, 2011, Alessi & Koenig, on behalf of Wyeth Ranch,
2 recorded with the Clark County Recorder as Document No. 201103290002937 a
3 Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch
4 \$7,306.62 in unpaid assessments. The notice set a sale for May 8, 2011.

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

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

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

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

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

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

26 23. Marchai is informed and believes that on July 26, 2012, Perez made a
27 \$165.00 payment to Wyeth Ranch.
28

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

5 25. On October 31, 2012, Alessi & Koenig, on behalf of Wyeth Ranch,
6 recorded with the Clark County Recorder as Document No. 201210310000686 a
7 Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch
8 \$11,656.07. The notice set a sale for November 28, 2012.

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

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

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

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

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

25 31. Alessi & Koenig and Wyeth Ranch wrongfully foreclosed against the
26 property in reliance upon NRS §§ 116.3116 *et seq.* (the "Statute").
27
28

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

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

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

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

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

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

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

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

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

27 41. Alessi & Koenig and Wyeth Ranch failed to market, sell, or auction the
28 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

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

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

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

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

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

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

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

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

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

26 59. The Statute on its face violates Marchai's constitutional rights, in
27 particular those rights to due process secured by both the United States and
28 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.

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

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

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

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

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

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

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

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

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

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

24 74. Based upon the foregoing, Marchai requests an order declaring that
25 the purported foreclosure sale be voided and set aside because SFR is not a bona
26 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.

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

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

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

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

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

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

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

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

26 (e) Perez paid more than nine months of association dues following
27 Wyeth Ranch's institution of an action to enforce its lien.
28

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

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

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

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

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

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

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

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

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

26 97. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi &
27 Koenig's conduct as specified herein in an amount to be proven at trial.
28

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

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

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Marchai prays for relief as follows:

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

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

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

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

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

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

17 DATED this 25th day of August 2016.

18 DAVID J. MERRILL, P.C.

19
20 By: *David J. Merrill*
21 DAVID J. MERRILL
22 Nevada Bar No. 6060
23 10161 Park Run Drive, Suite 150
24 Las Vegas, Nevada 89145
25 (702) 566-1935
26 Attorneys for MARCHAI, B.T.
27
28

EXHIBIT 3

EXHIBIT 3

Inet #: 201308090001816
Fees: \$17.00 N/C Fee: \$0.00
RPTT: \$1668.25 Ex: #
09/09/2013 10:59:58 AM
Receipt #: 1783390
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 Korbow, Esq.
Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC

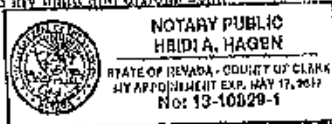
State of Nevada)
County of Clark)

SUBSCRIBED and SWORN before me

AUG 29 2013

Ryan Korbow

WITNESS my hand and official seal.
(Seal)

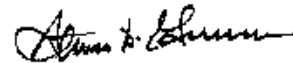


(Signature)

WY000743

EXHIBIT 4

EXHIBIT 4



CLERK OF THE COURT

1
2 DAO

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 MARCHAI B.T.,

7 Plaintiff,

8 vs.

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

11 Defendants.

Case No. A-13-689461-C

Dep't No. VII

12
13 And all related actions.

14
15 **DECISION AND ORDER**

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

22 **I. Factual Background**

23 The residential property in this case, the Wolf Rivers property, is subject to the terms
24 of the Wyeth Ranch Community Association's ("the HOA") Declaration of Covenants,
25 Conditions and Restrictions (CC&Rs). In 2004, Cristela Perez entered into two loan
26 agreements with Countrywide Home Loans in order to purchase the property. The loans
27 were secured by two deeds of trust on the Wolf Rivers property. Perez refinanced these two
28

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

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

3 **A. First Notice of Delinquent Assessment Lien**

4 The HOA recorded its first Notice of Delinquent Assessment Lien on October 8,
5 2008. At that time, the HOA collected \$140.00 per month in association dues. At the
6 beginning of 2009, the HOA increased its monthly dues to \$152.50. The HOA recorded a
7 Notice of Default and Election to Sell on January 7, 2009. The HOA recorded a Notice of
8 Trustee's Sale on January 14, 2010. In 2010, the HOA increased its monthly dues to
9 \$159.50.

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

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

18 On March 29, 2011, the HOA recorded a second Notice of Sale. On July 27, 2011, the
19 HOA sent Perez a letter stating Perez was in breach of the payment plan. On August 4,
20 2011, Perez paid the HOA \$165.00.

21 **B. Second Notice of Delinquent Assessment Lien**

22 On December 20, 2011, the HOA recorded a second Notice of Delinquent
23 Assessment lien. The HOA recorded a Notice of Default and Election to Sell on February
24 28, 2012. Perez paid the HOA \$760.00 between March 19 and July 26, 2012. CMG
25 Mortgage assigned its deed of trust to CitiMortgage in May of 2012. CitiMortgage assigned
26 the deed to U.S. Bank in July of 2012. The HOA recorded a Notice of Trustee's Sale on
27 October 31, 2012. Perez paid the HOA \$300.00 on November 13, 2012.
28

1 In March of 2013, U.S. Bank assigned its deed of trust to Marchai. Neither U.S.
2 Bank nor Marchai recorded the transfer of interest for approximately five months. During
3 this gap, U.S. Bank did not inform Marchai of the HOA's foreclosure proceedings. The
4 HOA mailed a Notice of Trustee's sale to CMG Mortgage, CitiMortgage, and U.S. Bank on
5 July 29, 2013. Marchai recorded its interest in the Wolf Rivers property on August 12,
6 2013. Marchai's loan servicer received notice of the trustee's sale on August 27, 2013, the
7 day before the sale was scheduled to take place. The servicer contacted the HOA's trustee
8 conducting the sale, Alessi & Koenig, to ask that the sale be postponed. The HOA declined.

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

13 Alessi & Koenig, LLC (herein called Trustee), as the duly appointed
14 Trustee under that certain Notice of Delinquent Assessment Lien...
15 does hereby grant, without warranty expressed or implied to: SFR... all
16 its right, title and interest in the property...

17 This conveyance is made pursuant to the powers conferred upon the
18 Trustee by NRS 116 et seq... All requirements of law regarding the
19 mailing of copies of notices and the posting and publication of the
20 copies of the Notice of Sale have been complied with.

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

24 II. Procedural History

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

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

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

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

19 III. Discussion

20 A. Motion to Strike

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

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

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

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

19 **B. Motions for Summary Judgment**

20 Summary judgment is appropriate "when the pleadings and other evidence on file
21 demonstrate that no genuine issue as to any material fact remains and that the moving
22 party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 P.3d 1026,
23 1029 (Nev. 2005) (internal quotation marks and alterations omitted). "If the party moving
24 for summary judgment will bear the burden of persuasion at trial, that party must present
25 evidence that would entitle it to a judgment as a matter of law in the absence of contrary
26 evidence." Francis v. Wynn Las Vegas, LLC, 262 P.3d 705, 714 (Nev. 2011) (citing Cuzzo v.
27 Univ. & Cmty. Coll. Sys. of Nev., 172 P.3d 131, 134 (Nev. 2007)). "When requesting
28 summary judgment, the moving party bears the initial burden of production to

1 demonstrate the absence of a genuine issue of material fact. If the moving party meets its
2 burden, then the nonmoving party bears the burden of production to demonstrate that
3 there is a genuine issue of material fact. Las Vegas Metro. Police Dep't v. Coregis Ins. Co.,
4 256 P.3d 958, 961 (Nev. 2011) (internal citations omitted).

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

10 **1. Retroactive Application of the SFR Decision**

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

15 The Nevada Supreme Court has ruled that:

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

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

28 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

1 a matter of first impression for the Nevada Supreme Court, but the resolution was
2 foreshadowed. The Nevada Supreme Court relied on the language of NRS Chapter 116 and
3 official comments to the Uniform Common Interest Ownership Act of 1982. Id. The
4 language establishing the nature of the superpriority lien was amended in 2009, several
5 years before the foreclosure sale in this case. The SFR decision also relied on a December
6 2012 Nevada Real Estate Division advisory opinion holding an HOA could enforce its
7 superpriority lien through a non-judicial foreclosure. 334 P.3d at 416-417.

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

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

21 **2. Constitutionality of NRS Chapter 116**

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

26 **a. Procedural Requirements of NRS Chapter 116**

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

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

11 For an HOA foreclosure sale to be valid, Chapter 116 requires the foreclosing HOA
12 and its agent comply with several requirements related to notifying interested parties,
13 including junior lienholders, of the impending foreclosure sale. To initiate foreclosure
14 under Chapter 116, a Nevada HOA must first notify the owner of the delinquent
15 assessments. See NRS 116.31162(1)(a). If the owner does not pay within thirty days, the
16 HOA must then provide the owner a notice of default and election to sell. See NRS
17 116.31162(1)(b).

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

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

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

18 **b. Due Process Clause**

19 Marchai alleges NRS 116.3116 is unconstitutional because Chapter 116's
20 express notice provisions do not require HOAs to provide mandatory notice to lenders of an
21 impending non-judicial foreclosure; rather, Chapter 116 requires lenders to request notice
22 in advance of foreclosure in order to receive notice of foreclosure. Marchai argues Chapter
23 116's notice provisions, on their face, fail to meet the notice requirements of the due process
24 clause and therefore render Chapter 116's non-judicial foreclosure scheme unconstitutional
25 on its face.

26 **i. Constitutional Notice Requirement**

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

1 must provide 'notice reasonably calculated, under all circumstances, to apprise interested
2 parties of the pendency of the action and afford them an opportunity to present their
3 objections.'" Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 795 (1983) (holding
4 statutory notice requirements posting and publishing announcement of pending tax sale
5 did not meet requirements of the Due Process Clause of the Fourteenth Amendment)
6 (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)). "In
7 Mennonite, the Supreme Court applied this principle and found that mere constructive
8 notice afforded inadequate due process to a readily ascertainable mortgage holder." Cont'l
9 Ins. Co. v. Moseley, 683 P.2d 20, 21 (Nev. 1984). The Court held that personal service or
10 mailed notice is required: "Notice by mail or other means as certain to ensure actual notice
11 is a minimum constitutional precondition to a proceeding which will adversely affect the
12 liberty or property interests of any party, whether unlettered or well versed in commercial
13 practice, if its name and address are reasonably ascertainable." Mennonite, 462 U.S. at
14 800 (emphasis in original).

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

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

1 In Small Engine Shop, Inc. v. Cascio, the Fifth Circuit Court of Appeals held that
2 Louisiana's "request-notice" statute "prospectively shift[ed] the entire burden of ensuring
3 adequate notice to an interested property owner regardless of the circumstances." 878 F.2d
4 883, 884 (5th Cir. 1989). Such a shift in the burden of ensuring adequate notice, the Small
5 Engine Court held, does not afford a defaulting property owner facing foreclosure adequate
6 notice under Mennonite and therefore violates the Due Process Clause. Id. at 890; see also
7 USX Corp. v. Champlin, 992 F.2d 1380, 1385 (5th Cir. 1993) ("[second mortgagee]'s
8 interest, even though terminable by foreclosure of the superior loan was sufficient to trigger
9 due process"). For that reason, the court held the "request-notice" statute only serves to
10 supplement the preexisting notice scheme, to allow creditors who are not otherwise
11 reasonably ascertainable to become ascertainable. Small Engine, 878 F.2d at 892-3.

12 Chapter 116, if read in a vacuum, could lead to the erroneous interpretation that a
13 mortgage holder is only entitled to receive notice of a homeowners' association's impending
14 foreclosure if that mortgage holder requests such notice from the association; however, this
15 reading would ignore the well-established canon of statutory interpretation—
16 constitutional avoidance. "It is elementary when the constitutionality of a statute is
17 assailed, if the statute be reasonably susceptible of two interpretations, by one of which it
18 would be unconstitutional and by the other valid, it is our plain duty to adopt that
19 construction which will save the statute from constitutional infirmity." U.S. ex rel Attorney
20 Gen. v. Delaware & Hudson Co., 213 U.S. 366 (1909); see also State v. Curler, 67 P. 1075,
21 1076 (Nev. 1902) ("it is a well-established rule of this and other courts that constitutional
22 questions will never be passed upon, except when absolutely necessary to properly dispose
23 of the particular case").

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

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

1 notice of sale. See NRS 116.31163(1) (notice of default must be given to "[e]ach person who
2 has requested notice pursuant to NRS 107.090 or 116.31168"), NRS 107.090(2) (a "request
3 for a copy of the notice of default or of sale" must be "record[ed] in the office of the county
4 recorder of the county in which any part of the real property is situated"), and NRS
5 116.31168(1) ("The request must identify the lien by stating the names of the unit's owner
6 and the common-interest community."); see also NRS 116.311635(1)(b)(1) (notice of sale
7 must be mailed to all persons entitled to receive a copy of the notice of default). This
8 request-notice provision exists to allow interested parties who are not otherwise
9 ascertainable an opportunity to receive notice and protect their interest.

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

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

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

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

5 **b. State Action Requirement**

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

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

1 West v. Atkins, 487 U.S. 42 (1988); Burton v. Wilmington Parking Authority, 365 U.S. 715,
2 722 (1961); and North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975)
3 (holding state's garnishment statute, which permitted writ of garnishment to be issued in
4 pending actions by court clerk, denied due process of law)).

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

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

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

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

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

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

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

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

19 **b. Taking Clause**

20 Marchai argues that NRS Chapter 116 effects a regulatory taking. The
21 Fifth Amendment to the United States Constitution prohibits "private property be[ing]
22 taken for public use without just compensation." U.S. Const. amend. V. Article One of the
23 Nevada Constitution correspondingly provides that "[p]rivate property shall not be taken
24 for public use without just compensation having been first made, or secured." Nev. Const.
25 art. I, § 8(6). The Nevada Supreme Court clarified regulatory taking jurisprudence as
26 follows: "a per se regulatory taking occurs when a public agency seeking to acquire property
27 for a public use... fails to follow the [statutory eminent domain] procedures... and
28 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

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

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

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

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

5 **c. Void for Vagueness Doctrine**

6 Marchai argues NRS Chapter 116 is unconstitutionally vague. Nevada's
7 two-factor test for vagueness examines whether the statute, "(1) fails to provide notice
8 sufficient to enable persons of ordinary intelligence to understand what conduct is
9 prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even
10 failing to prevent arbitrary and discriminatory enforcement." Flamingo Paradise Gaming,
11 LLC v. Chanos, 217 P.3d 546, 553-54 (Nev. 2009) (quoting Silvar v. Eighth Judicial Dist.
12 Court ex rel. County of Clark, 129 P.3d 682, 684-85 (Nev. 2006). "A statute which does not
13 impinge on First Amendment freedoms... may be stricken as unconstitutionally vague only
14 if it is found to be so in all its applications. Additionally, the standard of review is less strict
15 under a challenge for vagueness where the review is directed at economic regulations."
16 State v. Rosenthal, 819 P.2d 1296, 1300 (Nev. 1991). "Enough clarity to defeat a vagueness
17 challenge may be supplied by judicial gloss on an otherwise uncertain statute, by giving a
18 statute's words their well settled and ordinarily understood meaning, and by looking to the
19 common law definitions of the related term or offense." Rusefink v. State, 286 P.3d 599,
20 605 (Nev. 2012) (quoting Holder v. Humanitarian Law Project, 130 S.Ct. 2705, 2718
21 (2010)).

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

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

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

8 **3. Alleged Issues Prior to Sale**

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

12 **a. Notice**

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

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

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

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

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

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

5 Based on the language in Shadow Wood and the Court's equitable powers, the Court
6 is not persuaded that sending notices via certified mail as opposed to first class mail would
7 justify setting aside a foreclosure sale or its effect if the parties actually received notice in a
8 timely manner. Absent some further showing that notice was not actually received, recitals
9 in the foreclosure deed are sufficient to establish that the HOA complied with NRS Chapter
10 116.

11 Marchai only provides evidence that notice was not received by an interested party
12 in one case. Marchai asserts it did not receive the notice of trustee's sale mailed on July 29,
13 2013. At the time, Marchai had an interest in the Wolf Rivers property; however, Marchai
14 did not have a recorded interest in the property. Though U.S. Bank transferred its deed of
15 trust to Marchai in March of 2013, neither party recorded the transfer until August 12,
16 2013. U.S. Bank did receive the notice of trustee's sale mailed on July 29, 2013. Marchai's
17 failure to receive notice can be attributed to its own actions and the actions of U.S. Bank.
18 The HOA mailed notices to all parties that it could have known had an interest in the
19 property.

20 Marchai failed to show the HOA violated the notice provisions of NRA Chapter 116.
21 Therefore, the Court denies Marchai's motion for summary judgment on this ground.

22 **b. Tender**

23 Marchai asserts the homeowner tendered the HOA lien's superpriority
24 amount prior to the HOA foreclosure sale. Marchai argues this tender causes Marchai's
25 deed of trust to survive the HOA foreclosure sale.

26 The Court is faced with a novel set of facts in this case. The foreclosure process,
27 from the first notice of delinquent assessment to the actual foreclosure sale, spanned
28

1 almost five years. During this period, Perez, the homeowner, paid the HOA \$3,230.00.
2 This is definitely more than the value of nine months of assessment fees, regardless of
3 which year's rate is applied. At the end of the period, however, Perez still owed the HOA
4 \$14,677.80.

5 The Court must determine whether the homeowner's payments to an HOA in this
6 case constitute tender of the superpriority amount. NRS 116.3116(2) states the HOA lien is
7 prior to first deeds of trust "to the extent of the assessments for common expenses based on
8 the periodic budget adopted by the association... which would have become due in the
9 absence of acceleration during the 9 months immediately preceding institution of an action
10 to enforce the lien..." The statute does not state who can satisfy the superpriority portion of
11 the lien.

12 The Court finds the answer relies on the definition of "tender" rather than
13 distinguishing between homeowners and first deed of trust holders. A party's tender of the
14 super-priority amount is sufficient to extinguish the super-priority character of the lien,
15 leaving only a junior lien. See SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 414
16 (2014), reh'g denied (Oct. 16, 2014) and Sears v. Classen Garage & Serv. Co., 612 P.2d 293,
17 295 (Okla. Civ. App. 1980) ("a proper and sufficient tender of payment operates to
18 discharge a lien"). The common law definition of tender is "an offer of payment that is
19 coupled either with no conditions or only with conditions upon which the tendering party
20 has a right to insist." Fresk v. Kraemer, 99 P.3d 282, 286-7 (Or. 2004); see also 74 Am.
21 Jur. 2d Tender § 22. Tender is satisfied where there is "an offer to perform a condition or
22 obligation, coupled with the present ability of immediate performance, so that if it were not
23 for the refusal of cooperation by the party to whom tender is made, the condition or
24 obligation would be immediately satisfied." 15 Williston, A Treatise on the Law of
25 Contracts, § 1808 (3d. ed. 1972).

26 In the case of a first deed of trust holder offering to pay the HOA nine months of
27 assessments, a tender is undoubtedly taking place in order to satisfy the superpriority
28 amount. The deed of trust holder offers to perform a specific condition that the HOA is

1 clearly aware of. In the case of a homeowner paying an HOA, the case is not so clear. The
2 homeowner has a responsibility to pay the HOA fees every month. Payments to the HOA
3 could be directed towards old or new monthly fees. The homeowner paying the HOA is not
4 a clear offer to satisfy the HOA's superpriority lien amount. It could be an offer to satisfy
5 the homeowner's newer debts to the HOA.

6 The Court finds that further factual development is needed to determine whether
7 Perez's payments to the HOA constituted a valid tender. Marchai is careful in its motion for
8 summary judgment to phrase Perez's payments to the HOA during the foreclosure process
9 as continually being in response to the HOA's notices of delinquent liens and sales. If this
10 was the intent of Perez, Marchai can make the case that Perez's payments to the HOA were
11 designed to satisfy the HOA lien's superpriority amount. This would potentially protect
12 Perez, as Marchai would be able to sell the Wolf Rivers property to collect Perez's debt
13 rather than directly pursue Perez under the agreement secured by the deed of trust. On the
14 other hand, SFR could prove Perez was attempting to keep up with her monthly dues and
15 had no intent of directing her payments towards the HOA's superpriority amount. The
16 foreclosure process's length of time in this case further complicates the issue for both sides.

17 The Court finds genuine issues of material fact exist on the issue of tender.
18 Therefore, the Court denies both Marchai and SFR's motion for summary judgment on this
19 ground.

20 **4. Alleged Issues With Foreclosure Sale**

21 Marchai asserts there are also issues with the HOA's foreclosure sale.
22 Marchai argues issues regarding the wording in the foreclosure deed and commercial
23 reasonableness prevent the foreclosure sale from extinguishing Marchai's interest in the
24 property. SFR argues any issues in the foreclosure process cannot impact SFR's interest in
25 the property as a bona fide purchaser.

26 //

27 //

1 **a. Alessi & Koenig's Interest in the Property**

2 Marchai argues SFR actually purchased Alessi & Koenig's interest in
3 the Wolf Rivers property rather than the HOA's interest. Marchai bases its argument on a
4 sentence in the foreclosure deed:

5 Alessi & Koenig, LLC (herein called Trustee), as the duly appointed
6 Trustee under that certain Notice of Delinquent Assessment Lien...
7 does hereby grant, without warranty expressed or implied to: SFR... all
8 its right, title and interest in the property...

9 While the Court agrees this sentence is inartfully drafted, the Court does not agree
10 that it conclusively establishes that Alessi & Koenig were the grantors at the HOA
11 foreclosure sale. At most, this sentence creates an ambiguity in the deed. The deed
12 identifies the HOA as the foreclosing beneficiary. The deed also states:

13 This conveyance is made pursuant to the powers conferred upon the
14 Trustee by NRS 116 et seq... All requirements of law regarding the
15 mailing of copies of notices and the posting and publication of the
16 copies of the Notice of Sale have been complied with.

17 This ambiguity cannot be resolved in favor of Marchai on a motion for summary judgment.
18 Therefore, the Court denies Marchai's motion for summary judgment on this ground.

19 **b. Commercial Reasonableness**

20 Marchai argues the HOA foreclosure sale was commercially
21 unreasonable. SFR argues that there is no requirement that the sale be reasonable or, in
22 the alternative, there is not sufficient proof to demonstrate that the sale was unreasonable.

23 The decision in SFR did not address what commercial reasonableness was required
24 in HOA foreclosure sales. SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 418 n.6
25 (Nev. 2014), reh'g denied (Oct. 16, 2014). NRS Chapter 116, however, states, "[e]very
26 contract or duty governed by this chapter imposes an obligation of good faith in its
27 performance or enforcement." NRS 116.113.

28 It used to be clear that "[i]nferior bargains of price is not sufficient to justify setting
aside a foreclosure sale, absent a showing of fraud, unfairness or oppression." Long v.

1 Towne, 639 P.2d 528, 530 (Nev. 1982). The Nevada Supreme Court recently created room
2 for debate on this issue in its Shadow Wood decision. The Nevada Supreme Court states,
3 "demonstrating that an association sold a property at its foreclosure sale for an inadequate
4 price is not enough to set aside that sale; there must also be a showing of fraud, unfairness,
5 or oppression. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6
6 (2016). In the next sentence, the Nevada Supreme Court appears to distinguish a merely
7 inadequate price from a price that is "grossly inadequate as a matter of law" and indicates
8 that gross inadequacy may be sufficient grounds to set aside a sale. Id.

9 The Court finds that some other evidence of fraud, unfairness or oppression is still
10 required to set aside an HOA foreclosure sale, regardless of the price. Shadow Wood cites
11 Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev. 1963) which required some showing of fraud
12 "in addition to gross inadequacy of price" for a court to set aside a transaction. Though a
13 sales price may be extremely low, as in the instant case before the Court, the price alone is
14 insufficient proof of commercial unreasonableness.

15 The Court finds Marchai has established that there are material issues of fact
16 regarding whether the HOA foreclosure sale was commercially reasonable. Price is one
17 factor the Court may consider. Marchai also argues the HOA sale was conducted after the
18 homeowner tendered the superpriority amount to the HOA. Arguments regarding notice
19 that the Court negated in this Order could also be relevant on the issue of commercial
20 reasonableness with further factual development.

21 Marchai fails to establish as a matter of law that the HOA sale was commercially
22 unreasonable. Therefore, the Court denies Marchai's motion for summary judgment on
23 this ground.

24 **c. Bona Fide Purchaser**

25 SFR argues that any alleged deficiencies with the HOA foreclosure sale in this
26 case do not impact SFR's quiet title claim because SFR is a bona fide purchaser for value.
27 The Nevada Supreme Court recently held that potential harm to alleged bona fide
28 purchasers must be evaluated, but it is possible to "demonstrate that the equities swayed so

1 far in [the homeowner's] favor as to support setting aside [the] foreclosure sale." Shadow
2 Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *10 (2016).


3 Questions as to SFR's bona fide purchaser status and the balance of equities in this
4 case are questions of fact. This is especially true in the instant case. The HOA's foreclosure
5 proceedings lasted almost five years. Multiple notices of delinquency, default, and sale
6 were recorded. The Court cannot rule on whether a reasonable purchaser would be put on
7 notice by these circumstances at the summary judgment stage.

8 SFR fails to establish as a matter of law that it was a bona fide purchaser and that the
9 equities in this case prevent setting aside the foreclosure sale. Therefore, the Court denies
10 SFR's motion for summary judgment on this ground.

11 **IV. Conclusion**

12 The Court finds that genuine issues of material fact remain in this case. The Court
13 denies SFR and Marchal's Motions for Summary Judgment and SFR's Motion to Strike.

14
15
16 DATED this 13th day of March, 2016.

17
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19
20 
21 LINDA MARIE BELL
22 DISTRICT COURT JUDGE
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28

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

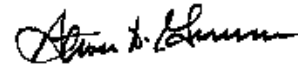
Pursuant to NRS 239B.030

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 3/21/2015
District Court Judge

EXHIBIT 5

EXHIBIT 5


CLERK OF THE COURT

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10 Attorney for MARCHAI, B.T.

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

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

15 Plaintiff,

16 vs.

17 CRISTELA PEREZ, an individual; et al.

18 Defendants.

Case No.: A-13-689461-C

Dept. No. VII

Consolidated with: A-16-742327-C

19 AND ALL RELATED CLAIMS AND
20 ACTIONS

21 **ORDER DENYING, IN PART, AND GRANTING, IN PART,**
22 **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S**
23 **MOTION TO DISMISS**

24 On January 3, 2017, Defendant Wyeth Ranch Community Association's
25 Motion to Dismiss came before the Court. David J. Merrill of David J. Merrill, P.C.
26 appeared on behalf of Marchai, B.T. Jacqueline A. Gilbert of Kim Gilbert Ebron
27 appeared on behalf of SFR Investments Pool 1, LLC. Julie A. Funai of Lipson,
28 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:

1 IT IS HEREBY ORDERED that Defendant Wyeth Ranch Community
2 Association's Motion to Dismiss shall be and hereby is DENIED, in part, and
3 GRANTED, in part;

4 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
5 Third, Fourth, and Fifth Claims for Relief shall be and hereby is DENIED; and

6 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
7 Sixth Claim for Relief for quiet title shall be and hereby is GRANTED.

8 DATED this 21 day of January 2017.

9
10 
11 HONORABLE LINDA MARIE BELL
12 *JB*

13 Submitted by:

14 DAVID J. MERRILL, P.C.

Approved as to form and content by:

KIM GILBERT EBRON

15
16 By: 

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Attorneys for WYETH RANCH
COMMUNITY ASSOCIATION

1 IT IS HEREBY ORDERED that Defendant Wyeth Ranch Community
2 Association's Motion to Dismiss shall be and hereby is DENIED, in part, and
3 GRANTED, in part;

4 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
5 Third, Fourth, and Fifth Claims for Relief shall be and hereby is DENIED; and

6 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
7 Sixth Claim for Relief for quiet title shall be and hereby is GRANTED.

8 DATED this ____ day of January 2017.

9
10
11 HONORABLE LINDA MARIE BELL

12
13 Submitted by:

14 DAVID J. MERRILL, P.C.

Approved as to form and content by:

KIM GILBERT EBRON

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EXHIBIT 6

EXHIBIT 6

Steven D. Grierson

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 1
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

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Def(s)	<input type="checkbox"/> Judgment of Arbitration

1

OCT 03 2017

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.

1 On March 29, 2011, the HOA recorded a second Notice of Sale. On July 27, 2011, the
2 HOA sent Perez a letter stating Perez was in breach of the payment plan. On August 4,
3 2011, Perez paid the HOA \$165.00.

4 **B. Second Notice of Delinquent Assessment Lien**

5 On December 20, 2011, the HOA recorded a second Notice of Delinquent
6 Assessment lien. The original Notice was not rescinded. The HOA recorded a Notice of
7 Default and Election to Sell on February 28, 2012. Perez paid the HOA \$760.00 between
8 March 19 and July 26, 2012. CMG Mortgage assigned its deed of trust to CitiMortgage in
9 May of 2012. CitiMortgage assigned the deed to U.S. Bank in July of 2012. The HOA
10 recorded a Notice of Trustee's Sale on October 31, 2012. Perez paid the HOA \$300.00 on
11 November 13, 2012.

12 In March of 2013, U.S. Bank assigned its deed of trust to Marchai. Neither U.S.
13 Bank nor Marchai recorded the transfer of interest for approximately five months. During
14 this gap, U.S. Bank did not inform Marchai of the HOA's foreclosure proceedings. The
15 HOA mailed a Notice of Trustee's sale to CMG Mortgage, CitiMortgage, and U.S. Bank on
16 July 29, 2013. Marchai finally recorded its interest in the Wolf Rivers property on August
17 12, 2013. Marchai's loan servicer received notice of the trustee's sale on August 27, 2013,
18 the day before the sale was scheduled to take place. The servicer contacted the HOA's
19 trustee conducting the sale, Alessi & Koenig, to ask that the sale be postponed. The HOA
20 declined.

21 Alessi & Koenig conducted a foreclosure sale of the Wolf Rivers property on August
22 28, 2013. SFR purchased the property for \$21,000.00. SFR recorded a trustee's deed upon
23 sale on September 9, 2013 identifying SFR as the grantee and the HOA as the foreclosing
24 beneficiary. The trustee's deed states:

25 Alessi & Koenig, LLC (herein called Trustee), as the duly appointed
26 Trustee under that certain Notice of Delinquent Assessment Lien...
27 does hereby grant, without warranty expressed or implied to: SFR... all
28 its right, title and interest in the property...

1 This conveyance is made pursuant to the powers conferred upon the
2 Trustee by NRS 116 et seq.. All requirements of law regarding the
3 mailing of copies of notices and the posting and publication of the
4 copies of the Notice of Sale have been complied with.

5 At the time of sale, Perez owed the HOA \$14,677.80. As of January 14, 2016, Perez owed
6 Marchai \$489,372.77 based the agreement secured by the deed of trust.

7 **II. Procedural History**

8 On September 30, 2013, Marchai filed a complaint against Perez, SFR, and U.S.
9 Bank. Marchai sought to judicially foreclose on the Wolf Rivers property based on Perez's
10 breach of the agreement secured by the deed of trust. The Court entered defaults against
11 Perez and U.S. Bank in this case. On November 13, 2013, SFR filed an answer,
12 counterclaim, and crossclaim. SFR brought counterclaims and crossclaims for declaratory
13 relief/quiet title and injunctive relief. Specifically, SFR alleged Marchai's interest in the
14 Wolf Rivers property was extinguished by the non-judicial foreclosure of the HOA's super-
15 priority lien established pursuant to NRS Chapter 116.

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

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

On March 22, 2016, this Court issued its Decision and Order denying both SFR and

1 Marchai their respective Motions for Summary Judgment as well as denying SFR's Motion
2 to Strike. This Court found that the technical failings of Marchai's compliance with EDCR
3 2.20(a) did not rise to the level of sanctions and thus denied SFR's Motion to Strike. As
4 discovery was ongoing, this Court also found in its March 22, 2016 Decision and Order that
5 there remained genuine issues of fact for both Motions for Summary Judgment to be
6 denied. The Court resolved constitutionality issues of NRS chapter 116 raised in Marchai's
7 Motion for Summary Judgment involving due process. These sub issues include notice
8 provisions, whether there is state action involved, violations of the Taking Clause, and
9 vagueness.

10 Discovery concluded on August 15, 2017. Upon completion of discovery, the HOA
11 and SFR renewed their Motions for Summary Judgment. The resolution of the issues in the
12 summary judgment motion necessarily results in a decision in favor of Marchai.

13 III. Discussion

14 A. Motions for Summary Judgment

15 Summary judgment is appropriate "when the pleadings and other evidence on file
16 demonstrate that no genuine issue as to any material fact remains and that the moving
17 party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 P.3d 1026,
18 1029 (Nev. 2005) (internal quotation marks and alterations omitted). "If the party moving
19 for summary judgment will bear the burden of persuasion at trial, that party 'must present
20 evidence that would entitle it to a judgment as a matter of law in the absence of contrary
21 evidence.'" Francis v. Wynn Las Vegas, LLC, 262 P.3d 705, 714 (Nev. 2011) (citing Cuzze v.
22 Univ. & Cmty. Coll. Sys. of Nev., 172 P.3d 131, 134 (Nev. 2007)). "When requesting
23 summary judgment, the moving party bears the initial burden of production to
24 demonstrate the absence of a genuine issue of material fact. If the moving party meets its
25 burden, then the nonmoving party bears the burden of production to demonstrate that
26 there is a genuine issue of material fact. Las Vegas Metro. Police Dep't v. Coregis Ins. Co.,
27 256 P.3d 958, 961 (Nev. 2011) (internal citations omitted).
28

1 The HOA and SFR seek summary judgment on each of their claims against Marchai.
2 As previously argued, SFR holds the HOA foreclosure sale extinguished Marchai's interest
3 in the Wolf Rivers property. Marchai argues its interest survived the foreclosure sale and is
4 superior to SFR's interest. In the current motions for summary judgment, parties
5 reintroduce the same issues after the close of discovery along with a few new arguments.
6 Upon the close of discovery, the Court finds no further evidence presented that lends itself
7 to a genuine dispute over material facts. The only issues to be decided are legal issues.

8 These issues include whether the nonjudicial foreclosure sale constituted unfairness
9 when Marchai requested the HOA to halt the sale the night before the sale and whether
10 buyers are required to pay US currency the day of the sale. In addition, whether there is
11 Perez's payments to the HOA satisfy the procedural tender requirements of NRS Chapter
12 116. To determine the answers to these questions, the Court must evaluate NRS Chapter
13 116 and the foreclosure process in this particular case.

14 **1. Previously Addressed Issues**

15 Issues including commercial reasonableness, SFR as a bona fide purchaser,
16 constitutionality of Chapter 116, and whether the Trustee was the grantor in the HOA
17 foreclosure sale were resolved this Court's Decision of Order of March 22, 2016. The Court
18 found that Marchai failed to establish that the HOA sale was commercially unreasonable as
19 a matter of law because absent fraud, unfairness, or oppression, an inadequate price is not
20 dispositive of unreasonableness. Further, the Court found that SFR was not able to
21 establish as a matter of law that it was a bona fide purchaser and that the HOA's years of
22 foreclosure notice proceedings including delinquency notices, defaults, and sale documents
23 would be a matter for a fact finder. Marchai raised constitutionality revolving around NRS
24 Chapter 116 involving due process, takings, and void for vagueness. The Court found that
25 Marchai could not show that requirements under Chapter 116 did not meet the notice
26 requirements that would set off due process issues or the legislative enactment of Chapter
27 116 was a governmental taking or a meant to serve a public purpose. Nor could Marchai
28 show that Chapter 116 meets the high standard for unconstitutionally vagueness. Lastly,

1 the Court found that an inartfully drafted foreclosure deed could not be resolved in favor of
2 Marchai. This Court finds that there is no new law to decide in favor of granting summary
3 judgment on these same arguments and the Court will not reconsider these issues already
4 resolved.

5 **2. A Nonjudicial Foreclosure Sale is Not Unfair if the HOA Proceeds**
6 **with the Sale After the Lender Requests a Halt to the Sale.**

7 Here, the HOA foreclosed upon the Wolf Rivers property, which they ultimately sold
8 at a foreclosure sale after failure of the homeowner to pay dues. Marchai alleges that there
9 are no material disputed issues of fact regarding the foreclosure as the parties agree to the
10 circumstances. Parties agree that notice of the sale was given to U.S. Bank as the recorded
11 holder of the deed of trust and that Marchai did not record their interest until after that
12 notice of sale had been sent out to interested parties. Further, parties agree that there was
13 no firm offer from Marchai to pay the superpriority amount of the loan prior to the sale
14 when they made the request to halt the sale. Marchai now moves the Court to find that the
15 HOA did not comply with NRS Chapter 116.

16 **a. Procedural Requirements of NRS Chapter 116**

17 Nevada Revised Statute Chapter 116 provides the procedural requirements for
18 homeowners' associations seeking to secure a lien for unpaid assessments and fees. "NRS
19 116.3116(2)... splits an HOA lien into two pieces, a superpriority piece and a subpriority
20 piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and
21 maintenance and nuisance-abatement charges, is 'prior to' a first deed of trust." SFR
22 Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014), reh'g denied (Oct. 16,
23 2014). That super-priority portion of the lien was held by the Nevada Supreme Court to be
24 a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon
25 pursuant to Chapter 116's requirements. Id. at 419. Specifically, "[t]he sale of a unit
26 pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the
27 unit's owner without equity or right of redemption." NRS 116.31166(3); see also SFR v. U.S.
28 Bank, 334 P.3d at 412.

1 To initiate foreclosure under Chapter 116, a Nevada homeowner association must
2 first notify the owner of the delinquent assessments. See NRS 116.31162(1)(a). If the owner
3 does not pay within thirty days, the homeowner association must then provide the owner a
4 notice of default and election to sell. See NRS 116.31162(1)(b). Then, if the lien has not
5 been paid off within 90 days, the homeowner association may continue with the foreclosure
6 process. See NRS 116.31162(1)(c). The homeowner association must next mail a notice of
7 sale to all those who were entitled to receive the prior notice of default and election to sell,
8 as well as the holder of a recorded security interest if the security interest holder "has
9 notified the association, before the mailing of the notice of sale of the existence of the
10 security interest." See NRS 116.311635(1)(a)(1), (b)(2). As this Court interprets the
11 "notified-the-association" provision, this additional notice requirement simply means the
12 homeowner association must mail the notice of sale to any holder of a security interest who
13 has recorded its interest prior to the mailing of the notice of sale.

14 Marchai asserts they became aware of the sale late but had made overtures to paying
15 the superpriority lien. Marchai further asserts that after requesting that the HOA halt the
16 sale, the HOA and the Trustee's refusal to halt the sale constituted unfairness to Marchai.
17 The HOA and SFR argues Marchai had constructive notice through the notice served to US
18 Bank and as a result is precluded from asking to halt the sale the night before for lack of
19 notice.

20 Generally, absent a showing of fraud, unfairness, or oppression, a foreclosure sale
21 will stand. The Nevada Supreme Court states, "demonstrating that an association sold a
22 property at its foreclosure sale for an inadequate price is not enough to set aside that sale;
23 there must also be a showing of fraud, unfairness, or oppression. Shadow Wood HOA v.
24 N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016). In the next sentence, the Nevada
25 Supreme Court appears to distinguish a merely inadequate price from a price that is
26 "grossly inadequate as a matter of law" and indicates that gross inadequacy may be
27 sufficient grounds to set aside a sale. Id. The Court finds that some other evidence of
28 fraud, unfairness or oppression is still required to set aside an HOA foreclosure sale,

1 regardless of the price. Shadow Wood cites Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev.
2 1963) which required some showing of fraud "in addition to gross inadequacy of price" for a
3 court to set aside a transaction.

4 Marchai alleges that it did not have notice of the sale. Neither side disputes that
5 Marchai was not served with a notice of the foreclosure sale, but rather its predecessor, U.S.
6 Bank. It is also undisputed that after the transfer from US Bank to Marchai, both U.S. Bank
7 and Marchai waited months before recording their interest. Marchai recorded its interest
8 after the HOA's statutory requirement of thirty days for notice to interested parties under
9 NRS 16.31164. The HOA properly noticed U.S. Bank, the recorded holder of the deed of
10 trust at the time of the notice. Upon learning of the sale, Marchai contacted Alessi to halt
11 the sale. SFR and the HOA argue that there is no ongoing affirmative duty by the movant of
12 a sale to check for new interest parties once the statutory deadline has passed, but Marchai
13 argues that there was a continuing duty.

14 The HOA had no continuing legal duty to notify Marchai under the statute. Nor is
15 there any obligation of the HOA to halt a properly noticed sale when Marchai notified them
16 that they were the current holder in interest. It was Marchai's responsibility to record its
17 interest to protect itself. Failing to record rests solely on Marchai and the repercussions
18 cannot be held against the foreclosing party. Further, there was no firm offer to pay off the
19 superpriority lien.

20 Therefore, this Court finds that although Marchai was not directly notified, its
21 predecessor, U.S. Bank, had actual notice of both existing Notices of Default. The HOA
22 properly noticed the entity on record as the holder of the first deed of trust. Had Marchai
23 promptly recorded its interest in the property, the notice would have been sent to Marchai.
24 This leaves the issues of whether a purchaser at a foreclosure sale was required to present
25 cash at a nonjudicial foreclosure sale, whether Perez's payments intended to and satisfied
26 the HOA's superpriority lien and whether having more than one Notice of Default was
27 consequential.
28

1 **3. A Purchaser is Not Required to Present Cash at a Nonjudicial**
2 **Foreclosure Sale.**

3 Marchai presents that NRS 116.31164 requires that “on the day of the sale. . . the
4 person conducting the sale may sell the unit at public auction to the highest cash bidder.”
5 It is undisputed that SFR provided proof of funds on the day of the sale, then tendered a
6 cashier’s check to Alessi on August 29, 2013, one day after the sale. Marchai argues that
7 this procedurally does not comply with the statute, interpreting the statute to require a
8 payment in U.S. currency at the time of the sale. The Court is not swayed by this argument.
9 The statute specifically requires a cash purchase rather than a credit purchase, but the
10 statute is silent as to timing of payment. A cashier’s check in this context constitutes a cash
11 payment. It is simply infeasible in practice to expect bidders to carry large amounts of U.S.
12 currency, often in the many tens of thousands of dollars to an auction. SFR submitted
13 proof of funds to Alessi at the time of the sale and then tendered a cashier’s check to Alessi
14 for the full price of purchase of the property. Consequently, the sale complied with NRS
15 116.31164. Notwithstanding procedural issues raised under NRS 116.31164, the Court finds
16 that a first notice of default is the operative notice when multiple notices are filed and prior
17 notices are unwithdrawn.

18 **4. A Second Notice of Default Results in a Supplement of the First**
19 **Notice of Default when a First Notice of Default has not been Rescinded.**

20 A superpriority lien consists of the nine months of unpaid homeowner assessments
21 prior to a notice of default. Without satisfaction or withdrawal of the first notice of default
22 a second notice of default serves only as a supplement to the first notice. A homeowner’s
23 association is entitled to one superpriority lien on a single property without the rescission
24 of the prior notice of default. Pursuant to the Nevada Supreme Court’s holding in Property
25 Plus Investments, LLC v. Mortgage Electronic Registration Systems, Inc., et. al., 133 Nev.
26 Adv. Opinion 62 (Sept. 14, 2017), this Court adopts the Nevada federal court’s holding in
27 JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC. JPMorgan held that a second
28 noticed super priority lien must have separate set of unpaid months of homeowner

1 association assessments to be considered a separate superpriority lien. PropertyPlus, citing
2 JPMorgan, also holds that “when a HOA rescinds a superpriority lien on a property, the
3 HOA may subsequently assert a separate superpriority lien on the same property . . .
4 accruing after the rescission of the previous superpriority lien.” Without the satisfaction or
5 withdrawal of the first superpriority lien, the second notice of superpriority lien then acts as
6 a supplement or update of the first notice.

7 Here, there are two unrescinded Notices of Default filed against Perez, one on March
8 29, 2011 and one on February 28, 2012. The 2011 Notice of Default was never withdrawn.
9 Based on the holding in PropertyPlus, the operative notice of default is the 2011 Notice.
10 Therefore, the Court finds that the HOA’s would only be entitled to one superpriority
11 amount on both Notices of Defaults. This leaves only the question as to Perez’s intent as to
12 the application of payments to the HOA.

13 **5. Perez’s Intent Regarding Application of Payments to the HOA**

14 Perez maintained sporadic payments over the period starting from the first Notice of
15 Default to the foreclosure totaling \$2,390.24 Perez would receive a notice of a deficiency
16 and make a payment toward her obligations to the HOA. Despite these payments, she was
17 thousands of dollars behind in her HOA obligations.

18 The super-priority lien brands certain homeowner association liens as “prior to all
19 other liens and encumbrances,” excluding those recorded before the applicable CC&Rs. See
20 NRS 116.3116(2)(a)-(b). Nevada Revised Statutes 116.3116 is silent on who must satisfy the
21 lien and if they must make their intent regarding those payments known before an HOA’s
22 superpriority lien is extinguished. The public policy principle behind NRS Chapter 116 is to
23 ensure that homeowner association dues are paid first.

24 Here, the HOA had two recorded and unrescinded Notices of Default on the Wolf
25 Rivers property and ultimately sold the property at a foreclosure sale. Perez made post
26 Notice of Default payments prior to the sale totaling \$2,390.24. There are no material
27 disputed issues of fact: the parties agree regarding the timing and amounts of payments by
28 the homeowner and to the circumstances surrounding the Notices of Default. The question

1 remaining is the effect of the homeowner paying towards the lien as opposed to the holder
2 of the deed of trust. The HOA and SFR argue that these payments by Perez had no
3 intention of satisfying the superpriority lien, thus the first deed of trust was extinguished
4 upon the foreclosure sale. Marchai asserts the homeowner's payments were intended to
5 satisfy the HOA lien's superpriority amount prior to the HOA foreclosure sale. Marchai
6 argues this tender causes Marchai's deed of trust to survive the HOA foreclosure sale.

7 **a. Tender**

8 The foreclosure process, from the first unrescinded notice of delinquent
9 assessment in 2009 to the actual foreclosure sale spanned a few years. During this period,
10 Perez, paid the HOA \$2,390.24. This is more than the value of nine months of assessment
11 fees. For the nine months preceding the operative 2009 Notice of Default, Perez's
12 assessments totaled \$1,280.00. This would have satisfied the superpriority and left a
13 balance of \$1,110.24. Perez still owed the HOA \$14,677.80 and nothing precluded the HOA
14 from seeking the full amount from the borrower. The question is whether the HOA
15 superpriority lien was satisfied. If satisfied, it allows Marchai's lien to survive the
16 nonjudicial foreclosure sale to SFR. If not, then Marchai's first deed is extinguished by the
17 sale to SFR.

18 As suggested by SFR, the beneficiary of a deed of trust need only "determin[e] the
19 precise superpriority amount in advance of the sale," and then "pay the [nine] months'
20 assessments demanded by the association." SFR, 334 P.3d at 413, 418. Satisfying the
21 superpriority amount of the lien, not the amounts incurred by any particular months,
22 preserves the deed of trust. See Stone Hollow Ave. Trust v. Bank of America, N.A., 382
23 P.3d 911 (Nev. Aug. 11, 2016) (unpublished disposition) (finding tender of \$198 effective to
24 discharge the lien when "\$198 was adequate to pay off the superpriority portion of" the
25 HOA's lien.)

26 Different from SFR, here the Court must determine whether the homeowner's
27 payments to an HOA in this case constitutes tender of the superpriority amount or whether
28 the payments were meant to keep up with current assessment obligations. The Court finds

1 that absent contrary evidence, it is a distinction without a difference. The public policy and
2 stated legislative intent behind Chapter 116 is to ensure payment of homeowner liens, hence
3 the superpriority. Nevada Revised Statutes 116.3116(2) states the HOA lien is prior to first
4 deeds of trust, but does not limit who can satisfy the superpriority portion of the lien. Nor
5 does the statute or case law dictate that payments from a homeowner must first be applied
6 to obligations other than the superpriority.

7 Marchai alleges that it was Perez's intention to apply her payments to the HOA lien's
8 superpriority amounts that were recorded in its two Notices of Default. The HOA and SFR
9 allege that Perez's payments only represent her intention to keep up with her monthly dues
10 and not intended to satisfy the amounts noticed. This Court held in its March 22, 2016
11 Decision and Order that there were genuine issues of material fact regarding what Perez's
12 intention was in the application of her payments. Absent evidence showing that Perez only
13 meant to maintain her monthly assessments, she tendered payment in an amount that
14 would satisfy more than eighteen months' worth of payments.

15 Upon the close of discovery, SFR and the HOA have not presented any evidence that
16 shows Perez did not pay off the superpriority liens. Regardless of whether Perez meant to
17 pay off the superpriority lien or apply to the balance with the payment of oldest balances
18 first, the superpriority lien is satisfied. So whether she had the intention to pay off
19 obligations other than the superpriority first or whether the HOA applied them to
20 obligations other than the superpriority, the amount making up the superpriority was paid
21 off. Thus, regardless of which months a payor may request a payment be applied to, any
22 payment which is at least equal to the amount incurred in the nine months preceding the
23 notice of delinquent assessment lien is sufficient to satisfy the superpriority lien. As there
24 are no undisputed facts at the close of discovery as to the intention of payment or the effect
25 of multiple Notice of Defaults, this Court must deny the HOA and SFR's Motions for
26 Summary Judgment. As a result, this Court finds in favor of Marchai.

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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 October day of ~~September~~, 2017.

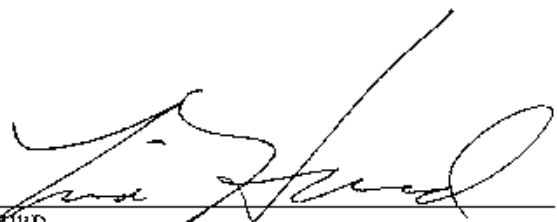

LINDA MARIE BELL
DISTRICT COURT JUDGE

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 HORD
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

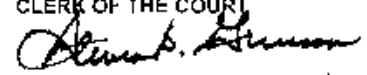
AFFIRMATION

Pursuant to NRS 239B.030
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number 689461 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell Date 10/2/2017
District Court Judge 2017

EXHIBIT 7

EXHIBIT 7



NOAS

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

Case No. A-13-689461-C

Consolidated with: A-16-742327-C

Dept. No. VII

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.

NOTICE OF APPEAL

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.

PLEASE TAKE NOTICE that SFR Investments Pool 1, LLC, by and through its counsel
of record, hereby appeals from the following orders and judgments:

1. Decision and Order entered on October 3, 2017; and

KIM GILBERT EBRON

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2. All other orders made appealable thereby.

DATED this 3rd day of November 2017.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert, Esq.
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
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Las Vegas, Nevada 89139
Phone: (702) 485-3300
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Attorneys for SFR Investments Pool 1, LLC

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9625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3306 FAX (702) 485-3281

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR'S NOTICE OF APPEAL** to the following parties:

David Merrill - david@djmerrillpc.com

Kaleb Anderson - kanderson@lipsonneilson.com

Brenda Correa - bcorrea@lipsonneilson.com

Megan Hummel - mhummel@lipsonneilson.com

Susana Natt - snatt@lipsonneilson.com

Renee Rittenhouse - rrittenhouse@lipsonneilson.com

/s/ Jacqueline A. Gilbert, Esq.
an employee of Kim Gilbert Ebron



1 ASTA
2 DIANA S. EBRON, ESQ.
3 Nevada Bar No. 10580
4 E-mail: diana@kgelegal.com
5 JACQUELINE A. GILBERT, ESQ.
6 Nevada Bar No. 10593
7 E-mail: jackie@kgelegal.com
8 KAREN L. HANKS, ESQ.
9 Nevada Bar No. 9578
10 E-mail: karen@kgelegal.com
11 KIM GILBERT EBRON
12 7625 Dean Martin Drive, Suite 110
13 Las Vegas, Nevada 89139
14 Telephone: (702) 485-3300
15 Facsimile: (702) 485-3301
16 Attorneys for SFR Investments Pool 1, LLC

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 MARCHAI B.T., a Bank Trust,
13 Plaintiff,

13 vs.

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

Dept. No. VII

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

20 Defendants.

CASE APPEAL STATEMENT

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

20 Counterclaimant/Cross-Claimant,

20 vs.

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

26 Counter-Defendant/Cross-Defendants.

27 ---
28

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

SFR Investments Pool 1, LLC.

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Linda Marie Bell

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: SFR Investments Pool 1, LLC (SFR)

Counsel: Jacqueline A. Gilbert, Esq.
Diana Cline Ebron, Esq.
Karen L. Hanks, Esq.
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139

Possible Appellant: Wyeth Ranch Community Association

Trial Counsel: Kaleb D. Anderson, Esq.
Megan H. Hummel, Esq.
Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Respondent: Marchai, B.T. (Marchai)

Trial Counsel: David J. Merrill, Esq.
DAVID J. MERRILL, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada, 89145

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained

1 7. Indicate whether appellant is represented by appointed or retained counsel on
2 appeal:

3 Retained

4 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the
5 date of entry of the district court order granting such leave:

6 N/A

7 9. Indicate the date the proceedings commenced in the district court (e.g., date
8 complaint, indictment, information, or petition was filed):

9 September 1, 2013

10 10. Provide a brief description of the nature of the action and result in the district court,
11 including the type of judgment or order being appealed and the relief granted by the district
12 court:

13 The case started as one for judicial foreclosure filed by Marchai on September 1, 2013 after
14 the Association's foreclosure sale on August 28, 2013 at which SFR was the highest bidder and
15 obtained title to the subject property. Three years later, Marchai filed a second suit related to the
16 same property against some of the same defendants, but adding additional defendants. These
17 actions were consolidated. SFR and the association answered and SFR cross-claimed for quiet
18 title. Following full briefing on motions for summary judgment, the district court found that post
19 notice partial payments by the homeowner in excess of the purported superpriority portion of the
20 association's lien satisfied that portion of the lien and preserved the first deed of trust. The district
21 court found that it was SFR's burden to prove otherwise as to the homeowner's intent as to the
22 payments. Thus, the Court found in favor of Marchai.

23 11. Indicate whether the case has previously been the subject of an appeal to or original
24 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
25 number of the prior proceeding:

26 N/A.

27 12. Indicate whether this appeal involves child custody or visitation:

28 N/A.

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1 13. If this is a civil case, indicate whether this appeal involves the possibility of
2 settlement:

3 SFR is willing to address settlement but is unsure of Marchai's position.
4

5 **KIM GILBERT EBRON**

6
7 /s/ Jacqueline A. Gilbert, Esq.
8 JACQUELINE A. GILBERT, ESQ.
9 Nevada Bar No. 10593
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Attorneys for SFR Investments Pool 1, LLC
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KIM GILBERT EBRON
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LAS VEGAS, NEVADA 89139
(702) 485-3320 FAX (702) 485-1311

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR'S CASE APPEAL STATEMENT** to the following parties:

David Merrill - david@djmerrillpc.com

Kaleb Anderson - kanderson@lipsonneilson.com

Brenda Correa - bcorrea@lipsonneilson.com

Megan Hummel - mhummel@lipsonneilson.com

Susana Nutt - snutt@lipsonneilson.com

Renee Rittenhouse - rittenhouse@lipsonneilson.com

/s/ Jacqueline A. Gilbert, Esq.
an employee of Kim Gilbert Ebron

EXHIBIT 8

EXHIBIT 8

1 5671460 (E.D. Cal. Oct. 17, 2013) ("Parties are not tasked with laying out every jot
2 and tittle of their evidentiary case in response to interrogatories"); *S.E.C. v. Berry*,
3 No. C07-04431 RMW (HRL), 2011 WL 2441706 (N.D. Cal. June 15, 2011)
4 ("Contention interrogatories asking for 'each and every fact,' or application of law to
5 fact, that supports particular allegations in an opposing pleading may be held
6 overly broad and unduly burdensome"); *In re eBay Seller Antitrust Litig.*, No. C 07-
7 1882 JF (RS), 2008 WL 5212170 (N.D. Cal. Dec. 11, 2008) (finding interrogatories
8 that ask for "all facts" to be overbroad and unduly burdensome on their face); *IBP*,
9 *Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 321 (D. Kan. 1998) (finding "each
10 and every fact" interrogatories are overly broad and unduly burdensome and
11 explaining that such interrogatories "too often require a laborious, time-consuming
12 analysis, search and description of incidental, secondary, and perhaps irrelevant
13 and trivial details."). Subject to and without waiving these objections, Marchai
14 states as follows:

15 Please see the answer to Interrogatory No. 11.

16 **INTERROGATORY NO. 13:** If YOU contend the HOA foreclosure did not
17 extinguish the First DEED OF TRUST, please state each and every fact which
18 supports YOUR contention.

19 **ANSWER:** Marchai objects to Interrogatory No. 13 on the ground that an
20 interrogatory asking for the identification of "each and every fact" or "all facts"
21 relating to a topic is overly broad and unduly burdensome. *See e.g., Hanford Exec.*
22 *Mgmt. Emp. Ass'n v. City of Hanford*, No. 1:11-CV-00828-AWI-SAB, 2013 WL
23 5671460 (E.D. Cal. Oct. 17, 2013) ("Parties are not tasked with laying out every jot
24 and tittle of their evidentiary case in response to interrogatories"); *S.E.C. v. Berry*,
25 No. C07-04431 RMW (HRL), 2011 WL 2441706 (N.D. Cal. June 15, 2011)
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1 1882 JF (RS), 2008 WL 5212170 (N.D. Cal. Dec. 11, 2008) (finding interrogatories
2 that ask for “all facts” to be overbroad and unduly burdensome on their face); *IBP,*
3 *Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 321 (D. Kan. 1998) (finding “each
4 and every fact” interrogatories are overly broad and unduly burdensome and
5 explaining that such interrogatories “too often require a laborious, time-consuming
6 analysis, search and description of incidental, secondary, and perhaps irrelevant
7 and trivial details.”). Marchai further objects to Interrogatory No. 13 because it
8 calls, in part, for a legal conclusion as to the arguments Marchai has or will set
9 forth to support its contention that Wyeth Ranch’s foreclosure did not extinguish
10 Marchai’s first deed of trust. Subject to and without waiving these objections,
11 Marchai states as follows:

12 Wyeth Ranch instituted an action to enforce its lien on September 30, 2008
13 when it sent Perez a Notice of Delinquent Assessment Lien. But after Wyeth Ranch
14 instituted an action to enforce the lien, Perez paid Wyeth Ranch \$3,230 in
15 assessments, which Wyeth Ranch applied to Perez’s account. The payment by Perez
16 satisfied the superpriority portion of Wyeth Ranch’s lien. Thus, any foreclosure
17 could not extinguish Marchai’s deed of trust.

18 Further, the plain language of the Trustee’s Deed Upon Sale states that SFR
19 acquired Alessi’s interest in the property. But Alessi had no interest in the property
20 that was prior to Marchai’s deed of trust.

21 Moreover, Wyeth Ranch did not conduct a proper foreclosure. First, despite
22 having two additional mailing addresses for Perez, Alessi mailed the December
23 2011 Notice of Delinquent Assessment lien to only the property address. Second,
24 Alessi failed to mail the notice of default upon CMG Mortgage. And Alessi did not
25 serve any lienholders by certified mail. Third, Alessi failed to serve the notice of sale
26 by first-class mail.

27 Finally, Marchai refers Wyeth Ranch to Marchai, B.T.’s Motion for Summary
28 Judgment (Jan. 14, 2016), and the facts set forth in the motion.

1 **INTERROGATORY NO. 14: If YOU** contend the **HOA's** foreclosure sale at
2 issue was conducted in a commercially unreasonable manner, please state each and
3 every fact which supports **YOUR** contention.

4 **ANSWER:** Marchai objects to Interrogatory No. 14 on the ground that an
5 interrogatory asking for the identification of "each and every fact" or "all facts"
6 relating to a topic is overly broad and unduly burdensome. *See e.g., Hanford Exec.*
7 *Mgmt. Emp. Ass'n v. City of Hanford*, No. 1:11-CV-00828-AWI-SAB, 2013 WL
8 5671460 (E.D. Cal. Oct. 17, 2013) ("Parties are not tasked with laying out every jot
9 and tittle of their evidentiary case in response to interrogatories"); *S.E.C. v. Berry*,
10 No. C07-04431 RMW (HRL), 2011 WL 2441706 (N.D. Cal. June 15, 2011)
11 ("Contention interrogatories asking for 'each and every fact,' or application of law to
12 fact, that supports particular allegations in an opposing pleading may be held
13 overly broad and unduly burdensome"); *In re eBay Seller Antitrust Litig.*, No. C 07-
14 1882 JF (RS), 2008 WL 5212170 (N.D. Cal. Dec. 11, 2008) (finding interrogatories
15 that ask for "all facts" to be overbroad and unduly burdensome on their face); *IBP,*
16 *Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 321 (D. Kan. 1998) (finding "each
17 and every fact" interrogatories are overly broad and unduly burdensome and
18 explaining that such interrogatories "too often require a laborious, time-consuming
19 analysis, search and description of incidental, secondary, and perhaps irrelevant
20 and trivial details."). Subject to and without waiving these objections, Marchai
21 states as follows:

22 According to R. Scott Dugan, Marchai's retained expert, at the time of Wyeth
23 Ranch's foreclosure, the property had a fair market value of \$360,000. But SFR
24 allegedly acquired an interest in the property for a mere \$21,000, a mere 5.8% of the
25 fair market value. Hence the property sold for a grossly inadequate price.

26 In addition, there is evidence of fraud, oppression, or unfairness. As set forth
27 in the answer to Interrogatory No. 13, Perez satisfied the superpriority portion of
28

Wyeth Ranch's lien before the foreclosure. So, Wyeth Ranch had no authority to foreclose upon the superpriority portion of the lien.

INTERROGATORY NO. 15: If YOU contend the HOA or its Agent wrongfully foreclosed on the subject PROPERTY, please state each and every fact which supports YOUR contention.

ANSWER: Marchai objects to Interrogatory No. 15 on the ground that an interrogatory asking for the identification of "each and every fact" or "all facts" relating to a topic is overly broad and unduly burdensome. *See e.g., Hanford Exec. Mgmt. Emp. Ass'n v. City of Hanford*, No. 1:11-CV-00828-AWI-SAB, 2013 WL 5671460 (E.D. Cal. Oct. 17, 2013) ("Parties are not tasked with laying out every jot and tittle of their evidentiary case in response to interrogatories"); *S.E.C. v. Berry*, No. C07-04431 RMW (HRL), 2011 WL 2441706 (N.D. Cal. June 15, 2011) ("Contention interrogatories asking for 'each and every fact,' or application of law to fact, that supports particular allegations in an opposing pleading may be held overly broad and unduly burdensome"); *In re eBay Seller Antitrust Litig.*, No. C 07-1882 JF (RS), 2008 WL 5212170 (N.D. Cal. Dec. 11, 2008) (finding interrogatories that ask for "all facts" to be overbroad and unduly burdensome on their face); *IBP, Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 321 (D. Kan. 1998) (finding "each and every fact" interrogatories are overly broad and unduly burdensome and explaining that such interrogatories "too often require a laborious, time-consuming analysis, search and description of incidental, secondary, and perhaps irrelevant and trivial details."). Subject to and without waiving these objections, Marchai states as follows: Please see the answers to Interrogatory Nos. 13 and 14.

INTERROGATORY NO. 16: Explain the process, policies, and procedures YOU use to evaluate and underwrite LOANS for properties located in a community subject to CC&Rs in Nevada.

ANSWER: Marchai objects to Interrogatory No. 16 on the grounds that it is nonsensical and argumentative in that it wrongly assumes that Marchai evaluates

EXHIBIT 9

EXHIBIT 9

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

SDIS
DAVID J. MERRILL
Nevada Bar No. 6060
DAVID J. MERRILL, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
Facsimile: (702) 993-8841
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.

Case No.: A-13-689461-C

Dept. No. VII

Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND
ACTIONS

**MARCHAI, B.T.'s THIRD SUPPLEMENTAL DISCLOSURE OF
WITNESSES AND DOCUMENTS**

Pursuant to N.R.C.P. 26(e)(1), Marchai, B.T. makes the following
supplemental disclosure of witnesses and documents:

SUPPLEMENTAL DISCLOSURE QUALIFICATIONS

1. The supplemental disclosures are based upon information presently
known to counsel for Marchai, who provides them without prejudice to producing
during core discovery or at trial, information or documents that are: (i)
subsequently discovered; (ii) subsequently determined to be relevant for any

1 purpose; or (iii) subsequently determined to have been omitted from these
2 disclosures.

3 2. Marchai hereby expressly reserves the right to revise and/or
4 supplement the disclosures and the information and documents provided in
5 response to its disclosure obligations.

6 3. Marchai hereby expressly reserves all objections to the use for any
7 purpose of these disclosures or any of the information and documents referenced
8 herein in this case or any other case or proceeding.

9 4. By referring to or producing documents as part of the disclosure
10 process, Marchai makes no representations or concessions regarding the relevancy
11 or appropriateness of any particular document and expressly reserves the right to
12 object, on grounds including overbreadth and burden, to any document request that
13 is overbroad as to time frame or otherwise.

14 5. Marchai states that fact and investigation discovery is ongoing. If, in
15 the course of such investigation or discovery, Marchai learns that additional
16 individuals have knowledge of facts supporting its allegations or rebutting the
17 allegations of any other party, Marchai will advise all other parties of such
18 additional individuals pursuant to N.R.C.P. 26(c)(1).

19 6. These disclosure qualifications shall apply to each disclosure given
20 herein and are incorporated by reference as though fully set forth in each
21 disclosure.

22 **N.R.C.P. 16.1(a)(1) SUPPLEMENTAL DISCLOSURES**

23 **(A) The name and, if known, the address and telephone**
24 **number of each individual likely to have information**
25 **discoverable under Rule 26(b), including for impeachment or**
26 **rebuttal, identifying the subjects of the information;**

27 Marchai states that the following individuals may have information
28 discoverable under Rule 26(b):

1 1. Gene G. Voulo, M.D., Managing Partner, Southfork Equity Group,
2 LLC, 71 Longview Road, Port Washington, New York, 11050, (516) 287-6565. Dr.
3 Voulo has knowledge and information concerning this action including but not
4 limited to Marchai's acquisition of the loan.

5 2. Scott Sawyer, Executive Vice President, Peak Loan Servicing, 5900
6 Canoga Boulevard, Woodland Hills, California, 91367, (818) 206-3187. Mr. Sawyer
7 has knowledge and information concerning this action including but not limited the
8 servicing of Marchai's loan.

9 3. Chaim Freeman, c/o David J. Merrill, P.C., 10161 Park Run Drive,
10 Suite 150, Las Vegas, Nevada 89145, (702) 566-1935. Mr. Freeman is the trustee of
11 Marchai and has knowledge and information concerning this action, including but
12 not limited to the acquisition and servicing of Marchai's loan.

13 **(C) A computation of any category of damages claimed by the**
14 **disclosing party, making available for inspection and copying**
15 **as under Rule 34 the documents or other evidentiary matter,**
16 **not privileged or protected from disclosure, on which such**
 computation is based, including materials bearing on the
 nature and extent of injuries suffered; and

17 Marchai primarily judicial foreclosure and a ruling that Wyeth Ranch
18 Community Association's foreclosure did not extinguish Marchai's deed of trust or,
19 if it did, that the sale was void or voidable. If the Court does not grant judicial
20 foreclosure, declare that Wyeth Ranch's foreclosure did not extinguish Marchai's
21 deed of trust, or set aside the foreclosure sale as void or voidable, Marchai seeks
22 damages in the amount of the fair market value of the property. According to
23 Marchai's expert, the property had a fair market value of \$360,000 at the time of
24 Wyeth Ranch's foreclosure. See Marchai, B.T.'s Initial Expert Disclosure (Apr. 25,
25 2017).

26 **(D) For inspection and copying as under Rule 34 any**
27 **insurance agreement under which any person carrying on an**
28 **insurance business may be liable to satisfy part or all of a**
 judgment which may be entered in the action or to indemnify
 or reimburse for payments made to satisfy the judgment and

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

1 any disclaimer or limitation of coverage or reservation of
2 rights under any such insurance agreement.

3 Not applicable.

4 DATED this 21st day of June 2017.

5 DAVID J. MERRILL, P.C.

6 By: 
7 DAVID J. MERRILL
8 Nevada Bar No. 6060
9 10161 Park Run Drive, Suite 150
10 Las Vegas, Nevada 89145
11 (702) 566-1935
12 Attorneys for Marchai, B.T.

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 160
LAS VEGAS, NEVADA 89145
(702) 566-1935

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June 2017, a copy of the foregoing
Marchai, B.T.'s Third Supplemental Disclosure of Witnesses and Documents was
served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron	diana@kgelegal.com
E-Service for Kim Gilbert Ebron	eservice@hkmlaw.com
Michael L. Sturm	mike@kgelegal.com
Tomas Valerio	staff@kgelegal.com

Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa	bcorrea@lipsonneilson.com
Kaleb Anderson	kanderson@lipsonneilson.com
Megan Hummel	mhummel@lipsonneilson.com
Renee Rittenhouse	rrittenhouse@lipsonneilson.com
Susana Nutt	snutt@lipsonneilson.com


An employee of David J. Merrill, P.C.

APPRAISAL OF REAL PROPERTY



LOCATED AT

7119 Wolf Rivers Avenue
Las Vegas, NV 89131
Wyeth Ranch - Unit 2 Plat Book 112 Page 8 Lot 13 Block A

FOR

David J. Merrill, P.C.
10161 Park Run Drive, Ste 150
Las Vegas, NV 89145

AS OF

August 26, 2013

BY

R. Scott Dugan, SRA
R. Scott Dugan Appraisal Company, Inc.
6810 West Tropicana Avenue, Suite 1
Las Vegas, NV 89147
702-876-2300
appraisals@rsdugan.com

R. Scott Dugan Appraisal Company, Inc.
8930 West Tropicana Avenue, Suite 1
Las Vegas, NV 89147
702-675-2000

April 14, 2017

David J Merrill, P.G.
10161 Park Run Drive, Ste 180
Las Vegas, NV 89145

Re: Property 7119 Wolf Rivers Avenue
Las Vegas, NV 89131
Borrower: N/A
File No.: 7119 Wolf Rivers Ave

Opinion of Value: \$ 550,000
Effective Date: August 28, 2013

As requested, we have prepared an analysis and valuation of the referenced property. The purpose of this assignment was to develop a value opinion based upon the assignment conditions and guidelines stated within the attached report. Our analysis of the subject property was based upon the property (as defined within the report) and the economic, physical, governmental and social forces affecting the subject property as of the effective date of this assignment.

The analysis and the report were developed and prepared within the stated Scope of Work and our Clarification of Scope of Work along with our comprehension of applicable Uniform Standards of Professional Appraisal Practice and specific assignment conditions provided by the client and intended user.

The findings and conclusions are intended for the exclusive use of the stated client and for the specific intended use identified within the report. The reader (or anyone electing to rely upon this report), should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions regarding the subject property.

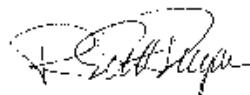
The opinion assumes the date/time of value to be prior to the LHOA lien transfer on the same date and assumes the property to be in average to good condition and professionally marketed under normal terms.

Use and reliance on this report by the client or any third party indicates the client or third party has read the report, comprehends the basis and guidelines employed in the analysis and conclusions stated within and has accepted same as being suitable for their decisions regarding the subject property.

The value opinion reported is as of the stated effective date and is contingent upon the Certification and Limiting Conditions attached. The Assumptions and Limiting Conditions along with the Clarification of Scope of Work provide specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

Thank you for the opportunity to service your appraisal needs.

Sincerely,



R. Scott Dugan, SRA
R. Scott Dugan Appraisal Company, Inc.
License or Certification #: A0000155-CG
State: NV Expires: 05/31/2017
appraisals@rscdugan.com

Client	David J. Merrill, P.C.	File No.	7119 Wolf Rivers Ave.
Property Address	7119 Wolf Rivers Avenue		
City	Las Vegas	County	Clerk
State	NV	Zip Code	89131
Owner	Cristina Perez		

TABLE OF CONTENTS

Cover Page	1
Letter of Transmittal	2
GF Residential	3
Additional Comparables 4-6	6
Explanatory Comments	7
General Area Overview	8
Key Housing Indicators	9
Case Study - Market Conditions	10
Parlin - Las Vegas Market Overview - Market Conditions	11
Location Map	12
Plot Map	13
Building Sketch	14
Subject Photos	15
Comparable Photos 1-3	16
Comparable Photos 4-6	17
Clarification of Scope of Work	18
GF Residential Certifications Addendum	21

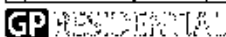
File No.: 7119 Wm'l Rivers Ave

GP RESORTS

RESIDENTIAL APPRAISAL REPORT

File No: 7119 Wolf Rivers Ave

TRANSFER HISTORY	My research <input type="checkbox"/> did not reveal any prior sales or transfers of the subject property in the three years prior to the effective date of this appraisal.																																																																																																																																																																																																				
	Data Source(s): G, VAR, VLS & Clark County Public Records.																																																																																																																																																																																																				
	Is there a Subject Sale? <input type="checkbox"/> Analysis of sale history and/or any current agreement of sale? <input type="checkbox"/> No reported sales or transfers.																																																																																																																																																																																																				
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RESIDENTIAL APPRAISAL REPORT

File No.: 7119 Wolf Fowers Ave

COST APPROACH	COST APPROACH TO VALUE (if developed) <input checked="" type="checkbox"/> The Cost Approach was not developed for this appraisal.		Provide adequate information for replication of the following cost figures and calculations:	
	Support for the choice of site value (journey of comparable and sales or other methods for estimating site value): <u>Not developed</u>			
	ESTIMATES: REPRODUCTION OR REPLACEMENT COST NEW		OPINION OF SITE VALUE	
	Source of cost data		SQUALLING	
	Quality rating from cost source: Effective date of cost data:		Sq. Ft. @ \$	
	Comments on Cost Approach (gross living area calculations, depreciation, etc.):		Sq. Ft. @ \$	
	The Cost Approach is not applicable due to building design and inability to construct a single unit. The subject improvements and site were constructed with some degree of "economy of scale" (multiple units - single developer) as a small tract subdivision. The cost approach is based upon the theory of a buyer being able to build a substitute property as opposed to buying the subject property. In this case, a buyer would not have this option for several reasons: 1) economy of scale and 2) the inability to purchase a small finished building site in the same general location as the subject. These and other conditions render the cost approach unreliable.		Sq. Ft. @ \$	
	Estimated Remaining Economic Life (if required):		Sq. Ft. @ \$	
	INDICATED VALUE BY COST APPROACH		Total estimate of Cost-New	
	INCOME APPROACH	INCOME APPROACH TO VALUE (if developed) <input checked="" type="checkbox"/> The Income Approach was not developed for this appraisal.		Indicated Value by Income Approach
Estimated Monthly Market Rent \$ 2,275 X Gross Rent Multiplier N/A = \$ N/A				
Summary of Income Approach (including support for market rent and GRM): Market data supports monthly rent levels that range from \$2,050 to \$2,450 for similar homes. Given the assumed average to good condition of the subject and other variables, a mid-range rent estimate of \$2,275 is considered reasonable. The income approach was not developed due to lack of GRMs, where larger area properties like the subject are not typically used as rentals.				
PROJECT INFORMATION FOR PUDs (if applicable) <input checked="" type="checkbox"/> The Subject is part of a Planned Unit Development.				
Legal Name of Project: <u>Wyneth Ranch</u>				
Describe common elements and recreational facilities: <u>Gated entry, private streets, perimeter fencing, park, basketball court, walking trail, and enforcement of CC&R's.</u>				
Indicated Value by Sales Comparison Approach \$ 360,000 Cost Approach (if developed) \$ N/A Income Approach (if developed) \$ N/A				
Final Reconciliation: The cost and income approaches were not developed for the reasons stated. The value opinion is based upon sales comparison approach. The opinion considers a 30 to 90 day (each) marketing and exposure period. The potential range of value was from about \$354,000 to \$365,000 with a central tendency of \$360,000. The opinion assumes the date of value to be prior to the MCA lien transfer or the same date and assumes the property to be in average to good condition and professionally marketed under normal terms.				
This appraisal is made <input checked="" type="checkbox"/> "as is," <input type="checkbox"/> subject to completion per plans and specifications or on the basis of a Hypothetical Condition that the improvements have been completed. <input type="checkbox"/> subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed. <input type="checkbox"/> subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair. This is a retrospective value opinion based upon a drive-by inspection and subject to the stated extraordinary assumption(s) elsewhere within this report along with the specific assignment conditions.				
Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type) as defined herein, of the real property that is the subject of this report is: \$ 360,000 as of August 28, 2013, which is the effective date of this appraisal. If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.				
ATTACHMENTS	A true and complete copy of this report contains 22 pages. Foliage exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.			
	Attached Exhibits:			
	<input checked="" type="checkbox"/> Letter of Transmittal <input checked="" type="checkbox"/> Exploration Comments <input checked="" type="checkbox"/> Photos <input type="checkbox"/>			
	<input checked="" type="checkbox"/> Extraordinary Assumptions <input checked="" type="checkbox"/> Market Characteristics <input checked="" type="checkbox"/> Qualification of SAO <input type="checkbox"/>			
	<input checked="" type="checkbox"/> Additional Sales <input checked="" type="checkbox"/> Map, Plat, Sketch Addenda <input checked="" type="checkbox"/> GA-RS Certificates <input type="checkbox"/>			
	Client Contact: <u>David J. Merrill, P.C.</u> Client Name: <u>David J. Merrill, P.C.</u>			
	E-Mail: <u>djmerrill@jmmerrillpc.com</u> Address: <u>10151 Park Run Drive, Site 150, Las Vegas, NV 89145</u>			
	APPRAISER			
	SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)			
	SIGNATURES	Appraiser Name: <u>R. Scott Dugan, CRA</u> Supervisory or Co-Appraiser Name: _____		
Company: <u>R. Scott Dugan Appraisal Company, Inc.</u> Company: _____				
Phone: <u>702-876-2000</u> Fax: <u>702-253-1689</u> Phone: _____ Fax: _____				
E-Mail: <u>rsdugan@rsdugan.com</u> E-Mail: _____				
Date of Report (Signature): <u>April 14, 2017</u> Date of Report (Signature): _____				
License or Certification #: <u>A.0000168 CG</u> State: <u>NV</u> License or Certification #: _____ State: _____				
Expiration Date of License or Certification: <u>05/31/2017</u> Expiration Date of License or Certification: _____				
Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None <input type="checkbox"/> Interior Only <input type="checkbox"/> None				
Date of Inspection: <u>April 06, 2017</u> Date of Inspection: _____				

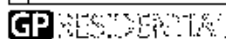
GP RESIDENTIAL

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ADDITIONAL COMPARABLE SALES

File No: 7119 Wolf Rivers Ave

FEATURE	SUBJECT	COMPARABLE SALE #1	COMPARABLE SALE #2	COMPARABLE SALE #3
Address	7119 Wolf Rivers Avenue Las Vegas, NV 89131	7151 Real Quiet Drive Las Vegas, NV 89131	7220 Shallowford Avenue Las Vegas, NV 89131	7094 Spring Beauty Avenue Las Vegas, NV 89131
Proximity to Subject		0.70 miles NW	0.47 miles N	0.22 miles NE
Sale Price		\$ 320,000	\$ 340,000	\$ 325,900
Sale Price/SLA		\$ 100.33 /sq.ft.	\$ 111.66 /sq.ft.	\$ 95.79 /sq.ft.
Date Sold	MLS-Pub Records	MLS-Pub Records / DOM 93	MLS-Pub Records / DOM 22	MLS-Pub Records / DOM 5
Verification Source(s)	Public Records	201301140:3500	201301070:2387	201301040:3738
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Sales or Financing		Traditional	Traditional	Traditional
Concessions		CASH \$0	CASH \$0	CONV \$500
Date of Sale/Time		01/14/2013	01/07/2013	01/04/2013
Rights Appraised	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Location	Wyeth Ranch/Gld	Tanaya Farms/Gld	Sailcreek/Gld	Wyeth Ranch/Gld
Site	22.2' x 55' Radius	13,939 SF Interior	4,610 SF Interior	13,568 SF Interior
Use	Residential	Residential	Residential	Residential
Design (Style)	Ranch/1-Story	Ranch/1-Story	Ranch/1-Story	Ranch/1-Story
Quality of Construction	Stucco	Stucco	Stucco	Stucco
Age	8	8	12	8
Condition	Average-Good	Good	Good	Very Good
Above Grade	Total 3rms 3bths	Total 3rms 3bths	Total 3rms 3bths	Total 3rms 3bths
Room Count	9 4 3	8 3 2.5	8 4 2.5	8 4 3.5
Grass/Living Area	3,000 sq.ft.	3,255 sq.ft.	3,045 sq.ft.	3,306 sq.ft.
Basement & Finished	None	None	None	None
Rooms Below Grade	None	None	None	None
Furnished/Utility	Average	Average	Average	Average
Heating/Cooling	Central	Central	Central	Central
Energy Efficient Items	Standard	Standard	Standard	Standard
Garage/Carport	4 Car Gar Tandem	3 Car Garage	3 Garage, 2nd floor	2 Car Garage
Porch/Patio/Cock	1.5 P:Rear, C/Patio	LS, C/Patio	LS, C/Patio	LS No H C/Patio
Swim Pools/Spa	Pool/Spa	None	Pool/Spa	None
Unusual/Upgrades	Average	Average	Average	Average
Contract Date	N/A	12/14/2012	12/06/2012	11/20/2012
Realtor/ARM	N/A	N/A	\$5,600/130.76	N/A
Net Adjustment (Total)		\$ 35,631	\$ 20,818	\$ 28,544
Adjusted Sale Price of Comparables		\$ 385,631	\$ 360,818	\$ 356,444
Summary of Sales Comparison Approach In review of available data, the appraiser was able to determine that there was no special financing or other considerations.				



Supplemental Addendum

File No 7119 Woll Rivers Ave

Clerk	David J Merrill, P.C.				
Property Address	7119 Woll Rivers Avenue				
City	Las Vegas	County Clerk	State	NV	Zip Code 89131
Owner	Onstale Perez				

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for "extraordinary assumption":

Defined as an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2016-2017 Edition)

This report was completed without an interior inspection of the subject. External sources including, but not limited to, information from a drive-by street inspection, appraiser's files, county records, and or multiple listing service data were relied upon for information used to describe the improvements and or condition of the subject.

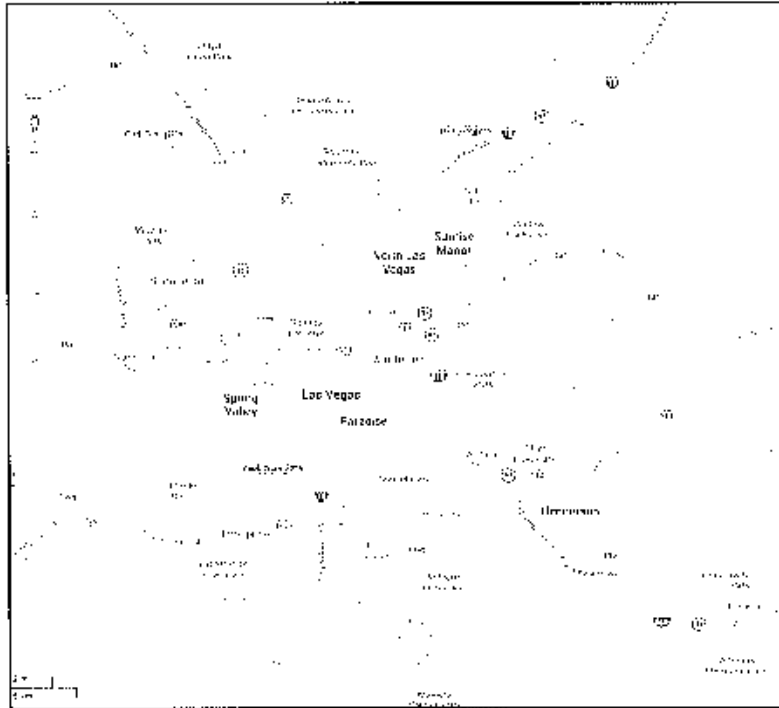
As indicated on page 1 of this report, if the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

Retrospective Value: is generally defined as "A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., "retrospective market value opinion." Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 6th ed. (Chicago: Appraisal Institute, 2015).

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, August 28, 2013, the effective date of this report. The physical exterior inspection of the subject property was performed on April 6, 2017.

General Area Overview

Client:	David J Merrill, P.C.				
Property Address:	7115 Wall Rivers Avenue				
City:	Las Vegas	County:	Clark	State:	NV
Zip:	89131	Ap Code:	89131		
Owner:	Cristina Perez				



General Area Description: The economy revolves around the Las Vegas Strip and Downtown Casino center along with key employment centers such as Nellis AFB, McCarran International Airport, numerous satellite retail, office and industrial districts that employ and service a base of 2-million people. The valley covers over 600+ square miles and includes parts of unincorporated Clark County, the cities of Las Vegas, North Las Vegas and Henderson. The unincorporated county areas within the valley have "Las Vegas" addresses and access to public services, making them transparent local to residents.

The valley is compact and can be crossed from any location in less than 1 hour. Buyer preferences are less dependent on location and more a function of personal choice, neighborhood attributes and housing types. The valley is divided into seven market areas (NW, NE, SW, SE, SF and Henderson), each of which is further defined by political jurisdictions along with any number of master-planned communities a buyer would consider as a neighborhood, with emphasis on lifestyle amenities and name recognition.

Key Factors Influencing Housing Market Trends in the area: People buy or sell based on affordability, investment potential or relocation. From 2004-2007, the market was infuenced by speculation. From 2007 through 2012, the market declined severely, influenced by REOs, short sales and investor activity. The market over-corrected from the peak to the bottom, creating an imbalance between "market value" and "economic value." Investors recognized the "economic imbalance" (the spread between the monthly payment vs. the monthly market rent for the same property), and used "all cash sales" to dominate the market for several years.

While investors remain active in the market, recently we are seeing "end users" (owner occupants) take a greater participation in the market. End users also include second homebuyers and long-term investors that purchase homes for rental and cash flow. Unlike investors that buy and flip homes over short periods, end users are more sensitive to shifts in financing.

As interest rates move up from their historically low levels, pricing (and therefore values) will adjust as the market attempts to sort itself out and find balance. Until normal market level balances are reached (relationship between rents and mortgage payments or economic value reaches sale price), it is likely the market will experience some fluctuation between similar units of the neighborhood level.

Key Housing Indicators

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The key indicators below show the relationships between employment, housing prices, affordability and movement in the market. Effective housing demand is a combination of supply, price and monthly payment.

LAS VEGAS VALLEY MARKET OVERVIEW - June 2013						
	2008	2009	2010	2011	2012	2013-YTD
Job Growth - Annual	12,300	-38,051	-10,384	-8,179	27,009	17,200
SFR Median Sale Price	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$164,000
Interest Rate %	6.03	5.01	4.75	3.88	3.94	4.37
PI with 80% LTV - No MI	\$1,071	\$602	\$565	\$470	\$502	\$652
PI with 95% LTV-with MI	\$1,398	\$794	\$744	\$628	\$671	\$871
3 BR Metro Avg. Apt Rent	\$1,105	\$1,014	\$977	\$964	\$934	\$946
Metro SFR Median Rent	\$1,250	\$1,195	\$1,113	\$1,115	\$1,095	\$1,098
GLVAR MLS SFR Annual Activity - 2013 is YTD through June						
Listings Total Year - YTD	61,038	57,016	56,643	55,174	40,271	20,041
Listings W/O Offer Yr End - YTD		8,405	12,417	8,831	3,688	3,828
Sales	24,924	38,127	34,434	38,153	36,609	16,975
List to Sale Ratio	41%	67%	61%	69%	91%	85%
Med List Price (Annual & YTD)	\$189,500	\$149,900	\$135,000	\$128,500	\$145,000	\$169,000
Med Sale Price (Annual)	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$164,000
Average DOM	68	61	64	72	69	56
Case Shiller Jan 2000 = 100	131.4	104.38	99.2	90.48	102.19	Mar 114.61

Recent Trends: There are many reports circling this Las Vegas MSA (Metropolitan Statistical Area) that simply compare period to period and not "apples to apples." Dynamics affecting this type of data are:

2010: The market was dominated by sales of REOs, "as is" to investors and liquidated at price points significantly below economic value (affordability), often 35%-40% or more below value. Physical condition ranged from average to poor.

2011: There was a shift from a market dominated by REOs to one dominated by short sales. Many short sales were in better condition and unlike 2010, lenders took an active participation in negotiations. Increasing prices closer to economic value.

2012: Short sales remained dominant and investors (due to a lack of REO inventory) shifted to short sales. Legislation made it difficult for lenders to foreclose and REO inventory was limited.

2013: Observers indicate lenders are holding REO inventory (from 40,000 to 60,000 units), in effect, creating a temporary shortage. The effect of this shortage has been to increase demand and current prices. Upward shifts in mortgage rates may have a negative effect on demand from end users and could cause some cancellations in the new and resale housing market.

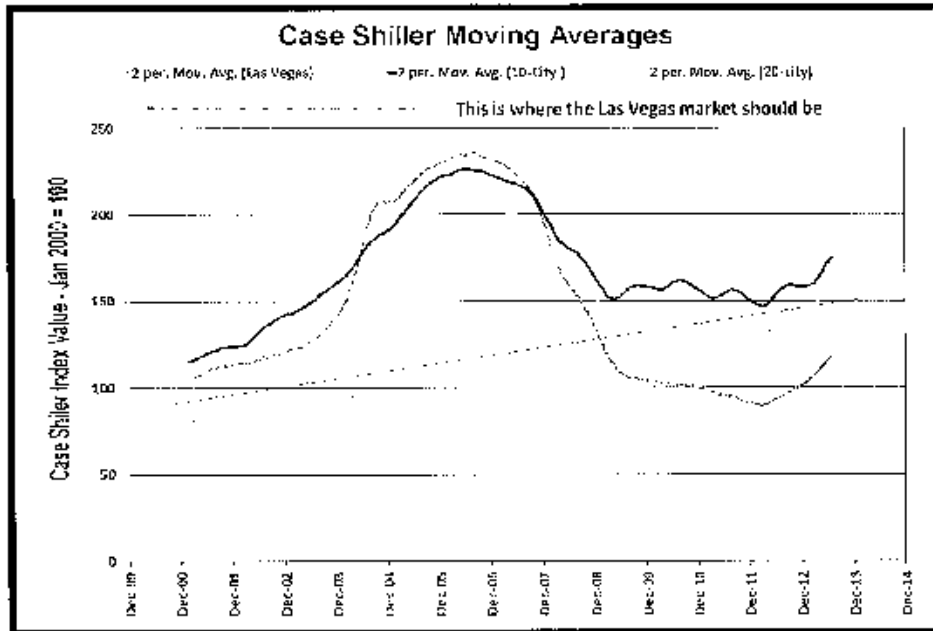
Observations and Conclusions: Statistical analysis and year over year or period-to-period comparison are not reliable as the data reflects multiple sales of the same property (but in different condition), in the same year and or subsequent year and often, a disproportionate mix of highly dissimilar sales (condition). This will give the appearance of "appreciation", when in essence you are comparing "apples to oranges." In years past, or normal years, the sales volume reflects sales of a single property to end users as opposed to sale resale of the same property.

Economic correction of prices requires a significant increase in employment. You cannot have a sustained recovery without improvement in employment. Investors are now buying and renting more units. Rentals are up 20% over 2011 and 34% over 2010. Employment is improving, but lagging behind other areas. The market has corrected to some degree, however, stabilized prices are not a reflection of a "price point market correction," but rather depend on an "economic correction" in the market or the ability of end users (long-term occupants) to pay.

Case Shiller - Market Conditions

Client	David J. Merrill, P.C.		
Property Address	7119 Wolf River Avenue		
City	Las Vegas	County	Clark
State	NV	Zip Code	89131
Owner	Cristela Perez		

The Case Shiller Index compares Las Vegas to the 10 City and 20 City Averages. Historically, Las Vegas was below the 10 and 20 City, however, during 2004-2007, Las Vegas exceeded these averages and the market correction began. By 2009, the Las Vegas market over-corrected as shown below and is now attempting to correct back to market norms.



As shown above, Las Vegas at this time is well below the 10 City and 20 City averages. Effectively, the housing market in Las Vegas remains well below where it should be if the housing market did not spin out of control in the mid 2000's. What we are seeing (current market conditions), is the market's attempt to correct. The dashed line projects where the Las Vegas market should be with the gap shown, indicating significant underpriced housing compared to other markets. Investors have dominated Las Vegas and other housing markets over the past several years because they realized what the rest of the market did not, housing in Las Vegas "economically under-valued". This combination of supply, purchasing power (interest rates) and utility (in many cases the condition of the property), made buying a home far more affordable than renting a home or apartment. An investor could buy an "unacceptable REO" for \$100,000, invest an additional \$25,000 in it for repairs and sell it for \$150,000, all within 90 days and make a \$25,000 profit.

While \$25,000 does not sound like much of a return for the risk, bear in mind that this is \$25,000 over 90 days. Annualized, the \$25,000 becomes \$100,000 or an 80% annual return, which is a far better return than bank rates or anything else. This is why the majority of sales in many markets (including Las Vegas) have been "all cash". With historic low interest rates, over smaller profit margins, and buying into and renting homes vs. buying and flipping homes, makes economic sense in many markets. While single family rentals are not averaging much more than Class A apartments, they are more attractive to renters (yards, features, size, garages, privacy, etc.), and the resale market value for housing is rising.

Measuring and Reporting Market Conditions

Our job is to identify the risk and place it into context of the market. When reviewing the Las Vegas, NV market data, several things are clear. 1) Demand exceeds supply with demand bolstered by investors, 2) Purchasing power is greater than normal due to historically low interest rates, 3) Single family housing provides greater utility than apartments, and 4) future supply is being held off the market.

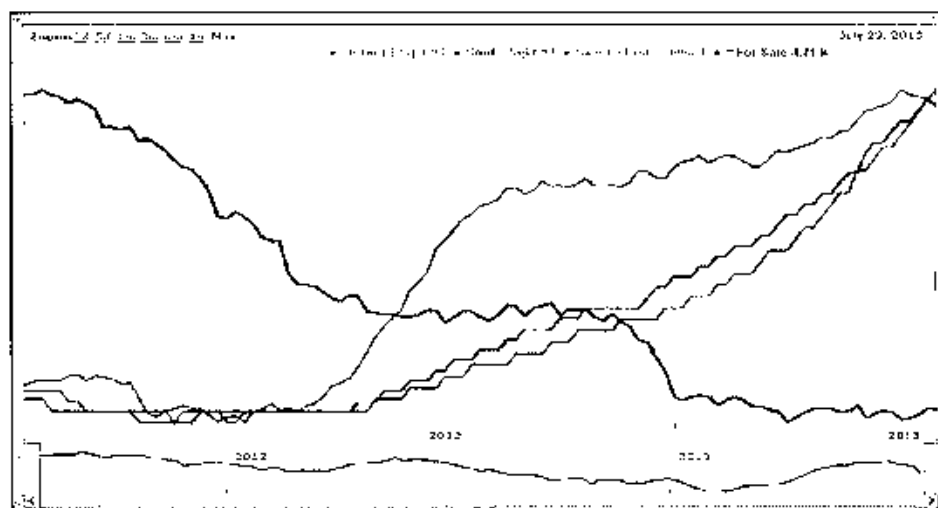
Effectively, it is the perfect storm. This combination of factors acting in the market is creating a housing shortage and driving prices upwards, closing the gap between where we should have been and where we have been over the past few years. This is evident via multiple offers over list prices on many homes and shown in the Case-Shiller Index.

The market is not in balance and therefore, this combination of influences (rates, investors, supply, demand) creates conditions that affect the market value criteria upon which this value opinion is based. The client, intended user or anyone relying upon the value opinion should consider these factors and take appropriate steps to understand and mitigate the risk associated with unknown future market conditions, the speculative activities and influence of investors in the marketplace along with "shadow inventory" (REOs held by lenders). The key factors that influence market value are supply and demand, interest rates and jobs. There is a difference between market value (the most probable price) and investment value (driven by return on equity). Investors are dominant in this market area and have significant effect on the current market trends and "market prices". Value influences could easily shift and market prices (and eventually values) will shift as well.

Redfin - Las Vegas Market Overview - Market Conditions

Client	David J. Merrill, P.C.			
Property Address	7119 Wolf Rivers Avenue			
City	Las Vegas	County	Clark	State NV Zip Code 89131
Owner	Cristale Perez			

The chart below from Redfin contrasts listing and sale activity in the Las Vegas Valley over the past 12 months.



Market Conditions

Market conditions is an adjustment for market changes over time, supply and demand conditions and other factors (short or long-term) affecting the market, including financing affordability, etc. The increase or decrease in property values is the cause, and time is the measurement of the adjustment. During a market correction, there can be short-term spikes in market prices requiring a "market conditions" adjustment.

The Las Vegas housing market correction from 2008-2011, the excessive supply of homes (REO's and short sales) combined with unprecedented low interest rates, combined to create a buyer's market, essentially, conditions whereby buying a house is more affordable than renting one. The interest rates are so low, that an extra 10% increase in price is marginal in terms of additional monthly payment.

For example, if the median price of a home is \$205,000, the monthly payment at 3.5% over 30 years at a loan to value of 80% is only \$718 (PI). This could be a very attractive payment when you consider that an apartment in that same area may be renting for \$1,000. If there is a severe shortage of homes for sale in a neighborhood and the seller increases the asking price from \$200,000 to \$220,000, the payment on that same property only increases from \$716 to \$790 or about 10%. This is still well below the rent for the smaller apartment and generally, well within the buyer's affordability range.

While the under-supply can be real or artificially created (sellers holding onto REO inventory), this is occurring in the market. In many valley market areas, we are seeing multiple offers on listings and homes selling for 10% or more over list price. This was an isolated event, but now is a market trend.

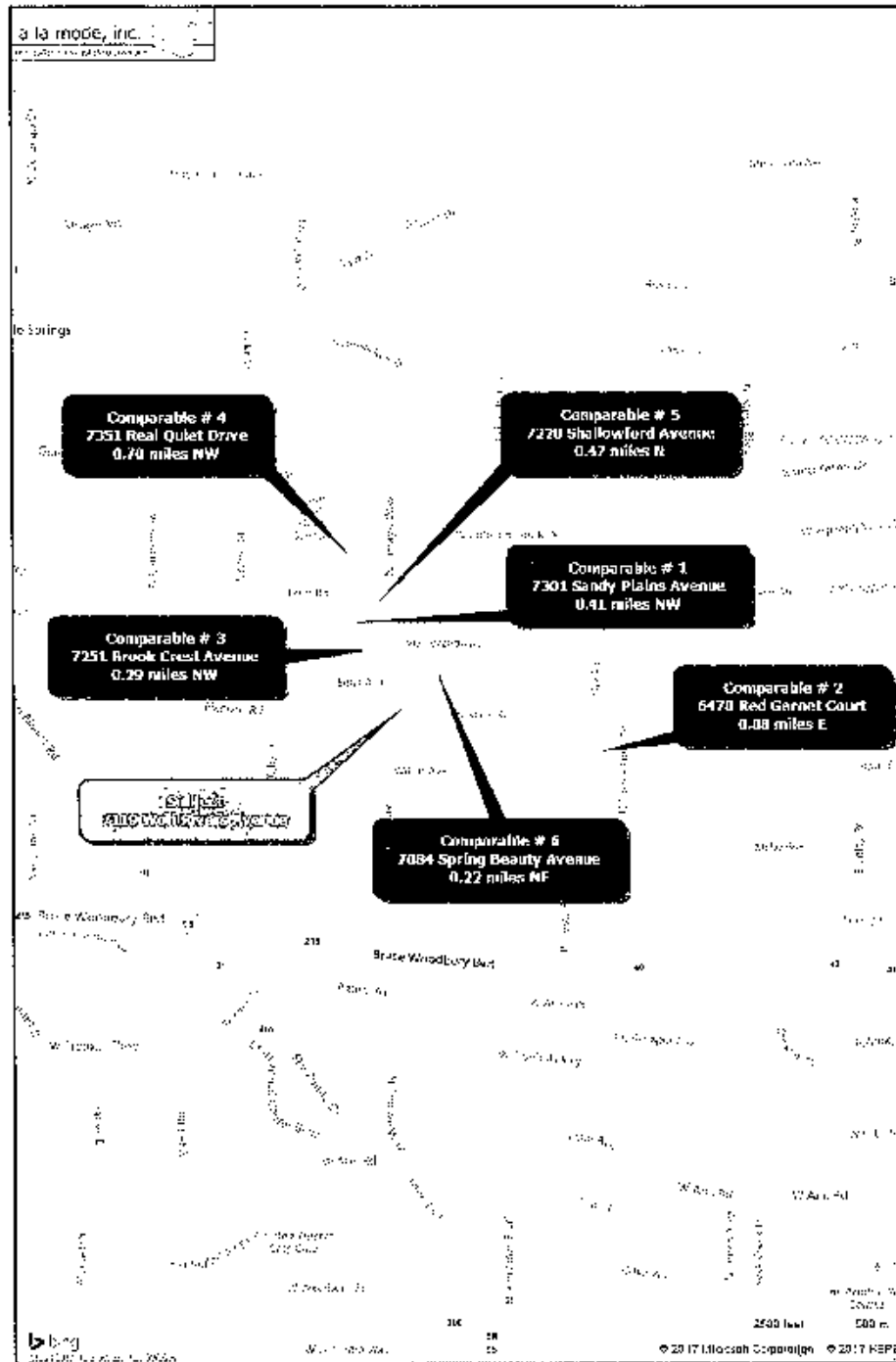
Shown below are declining supply and increasing prices. We cannot project the sustainability of a market shift, only evidence an imbalance in support a market conditions adjustment at this point in time.

Nevada Housing Market Outlook - DBER UNLV

The most recent data suggest that we are in the early stages of a housing market recovery in Nevada. The real estate market has a substantial overhang of residential and commercial property. In the residential market, little of that supply is on the market. The result has been gains in residential real estate prices. With the overhang only likely to be dripped on the market at a slow rate, residential housing prices can be expected to continue rising. Affordable housing remains a positive, as increased population will foster growth in Nevada's economy.

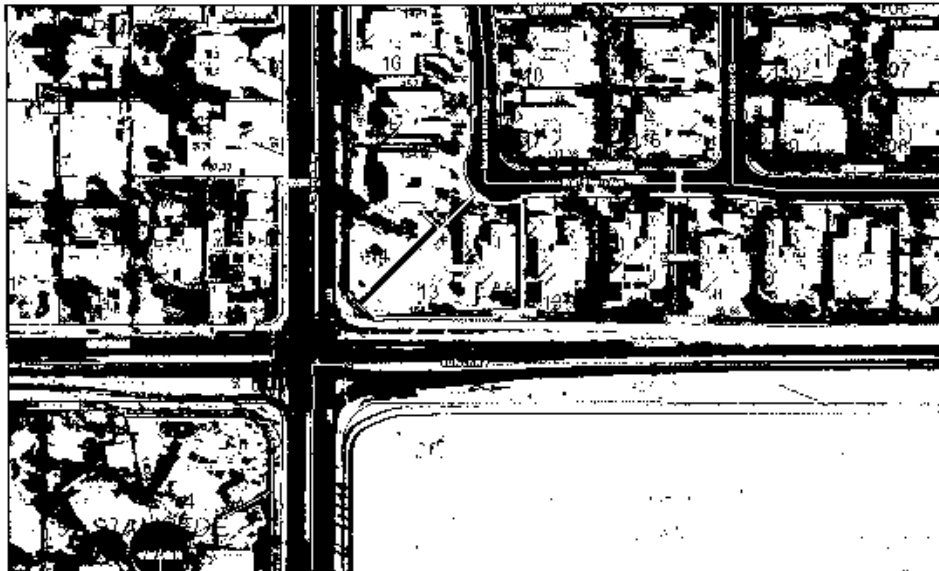
Location Map

Client	David J Merrill, P.C.				
Property Address	7119 Wolf Rivers Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89131
Owner	Concepcion Perez				



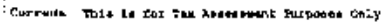
Plat Map

Client	Davis J. Merrill, P.C.		
Property Address	7119 Wolf Rivers Avenue		
City	Las Vegas	County	Clark
State	NV	Zip Code	89131
Owner	Cristina Perez		



APW 125-15-B10

IMPROVEMENTS SKETCH



Scale 1' = 12"

COMMENTS
3 BATHS
STANDARD LAUNDRY SINK
STANDARD REAR PATIO
STANDARD FIREPLACE
STANDARD WINDOUB
STANDARD TILE/CARPET
OPT 4 CAR GARAGE

FIXTURES
 15 FIXTURES
 1 FIXTURE

Net LIVABLE Area	(rounded w/ factors)	3030
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Συνολικά: 111

49th St. 52nd St. 55th St. 58th St. 61st St. 64th St. 67th St. 70th St. 73rd St. 76th St. 79th St. 82nd St. 85th St. 88th St. 91st St. 94th St. 97th St. 100th St.

April 1 2011 is April 1st

Subject Photo Page

Client	David J. Merritt, P.C.				
Property Address	7119 Wolf Rivers Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89131
Court	Cristela Perez				



Subject Front

7119 Wolf Rivers Avenue
 Sales Price
 Gross Living Area 3,000
 Total Rooms 9
 Total Bedrooms 4
 Total Bathrooms 3
 Location Wynton Ranch/VGld
 View Residential
 Site 22,216 SF/Radius
 Quality Stucco
 Age 9



Subject Street



Backs Elkhorn Road

Comparable Photo Page

Client	David J. Merrill, P.C.				
Property Address	7118 Wolf River Avenue				
City	Las Vegas	County	Clerk	State	NV
Owner	Cristela Perez				
				File Code	88131



Comparable 1

7301 Sandy Plains Avenue
 Pct. to Subject 0.41 miles NW
 Sales Price 365,000
 Gross Living Area 3,014
 Total Rooms 9
 Total Bedrooms 4
 Total Bathrooms 3.5
 Location Salt Creek/Gld
 View Residential
 Site 19,602 SF/Interior
 Quality Stucco
 Age 13



Comparable 2

6478 Red Garnet Court
 Pct. to Subject 0.88 miles E
 Sales Price 365,000
 Gross Living Area 3,000
 Total Rooms 7
 Total Bedrooms 3
 Total Bathrooms 3
 Location Fkhorn East/Gld
 View Residential
 Site 18,166 SF/ODS
 Quality Stucco
 Age 8



Comparable 3

7251 Brook Crest Avenue
 Pct. to Subject 0.23 miles NW
 Sales Price 315,000
 Gross Living Area 3,045
 Total Rooms 8
 Total Bedrooms 4
 Total Bathrooms 2.5
 Location Salt Creek/Gld
 View Residential
 Site 15,246 SF/Interior
 Quality Stucco
 Age 12

Comparable Photo Page

Client	David J Merrill, D.C.				
Property Address	7112 Wolf River Avenue				
City	Las Vegas	County	Clark	State	NV
Zip Code	89131				
Owner	Cristina Perez				



Comparable 4

7351 Real Quiet Drive
 Prox. to Subject: 0.70 miles NW
 Sales Price: 330,000
 Gross Living Area: 3,289
 Total Rooms: 8
 Total Bedrooms: 3
 Total Bathrooms: 2.5
 Location: Tenaya Farms/Gld
 View: Residential
 Site: 13,939 SF Interior
 Quality: Stucco
 Age: 9



Comparable 5

7220 Shallowford Avenue
 Prox. to Subject: 0.47 miles N
 Sales Price: 340,000
 Gross Living Area: 3,045
 Total Rooms: 8
 Total Bedrooms: 4
 Total Bathrooms: 2.5
 Location: Salicreek/Gld
 View: Residential
 Site: 14,810 SF Interior
 Quality: Stucco
 Age: 12



Comparable 6

7084 Spring Beauty Avenue
 Prox. to Subject: 0.22 miles NE
 Sales Price: 329,900
 Gross Living Area: 3,306
 Total Rooms: 9
 Total Bedrooms: 4
 Total Bathrooms: 3.5
 Location: Wyeth Ranch/Gld
 View: Residential
 Site: 13,068 SF Interior
 Quality: Stucco
 Age: 8

Clarification of Scope of Work

File No. 7119 Well Rivers Ave

Client	David J Merritt, P.C.				
Property Address	7119 Well Rivers Avenue				
City	Las Vegas	County	Clark	State	NV
Zip Code	89131				
Owner	Crystale Perez				

CLARIFICATION OF SCOPE OF WORK

(Rev. 02/08/2017)

The following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and/or did not do in order to develop the value opinion.

Limitations of the Assignment: The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an "imperfect market" and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume "knowledgeable buyers and sellers" or "no special motivations," when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a "benchmark" in time, provided at the request of the client and/or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose.

This report was prepared to the intended user's requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

SCOPE OF WORK (SOW): Is "the type and extent of research and analysis in an assignment." This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this "clarification of scope of work" (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

Complete Visual Inspection Includes: A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and/or observation of mechanical and electrical systems. Photograph interior/exterior, view etc. observe and photograph each comparable from the street.

Complete Visual Inspection Does/Did NOT Include: Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

No Interior Inspection: Some assignment conditions preclude inspection of the interior and/or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the "non-inspection" and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

Inspect The Neighborhood: Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. "Neighborhood" boundaries are not exact and are defined by the influence of physical, social, economic and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once

Clarification of Scope of Work

File No. 7119 Wolf Rivers Ave.

Client	David J Merrill, P.C.			1630 E. 71st Street, Suite 200			
Property Address	7119 Wolf Rivers Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89151
Dated	October 2009						

distinct boundaries become less defined. Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.

Repairs or Deterioration: Deficiency and livability are subjective terms. The value considers repair items that (in his/her opinion), affect safety, adequacy, and marketability of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

Construction Defects: Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and/or prior issues. The definition of value assumes "informed buyer" and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer's knowledge of prior or current defect related issues (if any).

Satisfactory Completion: The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

Cost Approach: Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and/or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the "replacement cost estimate." If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for "valuation purposes." Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of "market value" used within this report is not consistent with the definition of "insurable value."

Income Approach: Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

Gross Living Area (GLA): The Greater Las Vegas Association of Realtors® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the "as measured" GLA by the appraiser and the "as reported" GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be "market recognized" and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

Extent of Data Research-Comparable Data: The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and unaltered, unless physical access was unavailable. In some cases MLS photographs may be used to illustrate property conditions, views, etc.

Public and Private Data: The appraiser has access to public records and data available on the internet: the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

Adverse Factors: Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.

Easements: Major power transmission and distribution lines, railroad and other services related easements including utility easements, limited common areas and conditions that grant others the right to access the subject property and/or travel

Clarification of Scope of Work

File No. 7115 Well Rivers Ave

Classification of Scope of Work				ref no. 7115 well rivers ave	
Client	David J Merrill, P.C.				
Property Address	7115 Wolf Rivers Avenue				
City	Las Vegas	County	Clark	State	NV
Owner	Cristela Perez	Zip Code	89131		

adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right-of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in corroborative data, no adjustment was made, only the presence stated.

Valuation Methodology: The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosures, short-sales and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

The Value Opinion: The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

Specific Reporting Guidelines: Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and/or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and/or observations stated within.

Use of Electronic Appraisal Delivery Services: If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

Assumptions, Limiting Conditions & Scope of Work

File No.: 7119 Wolf Rivers Ave

Property Address: 7119 Wolf Rivers Avenue City: Las Vegas State: NV Zip Code: 89131
 Client: David J. Merrill, P.C. Address: 10181 Park Run Drive, Ste 120, Las Vegas, NV 89145
 Appraiser: R. Scott Dugan, SRA Address: 8830 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

— The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.

— If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantee, express or implied, regarding this determination.

— The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

— If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.

— The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantee or warranty, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

— The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

— The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.

— If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.

— An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.

— The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.

— An appraisal of real property is not a "home inspection" and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Important - Please Read - The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

INTENDED USER/USER:

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.

SCOPE OF WORK:

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data that is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

Certifications

File No: 7119 Wolf Rivers Ave

Property Address: 7119 Wolf Rivers Avenue	City: Las Vegas	State: NV	Zip Code: 89131
Client: David J. Merrill, P.C.	Address: 10161 Park Run Drive, Ste 150, Las Vegas, NV 89145		
Appraiser: R. Scott Dugan, SRA	Address: 8950 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147		

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

Supplemental Certification: In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.

Supplemental Certification: The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program for Designated members of the Appraisal Institute.

Definition of Market Value: ☒ Market Value ☐ Other Value

Source of Definition: FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D

As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under a set of conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property and unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.

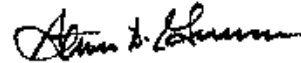
Client Contact: David J. Merrill, P.C.	Client Name: David J. Merrill, P.C.
E-Mail: davidj@merrillpc.com	Address: 10161 Park Run Drive, Ste 150, Las Vegas, NV 89145
APPRAISER	SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)
Appraiser Name: R. Scott Dugan, SRA	Supervisory or Co-Appraiser Name:
Company: R. Scott Dugan Appraisal Company, Inc.	Company:
Phone: 702-678-2000	Phone:
Fax: 702-253-1000	Fax:
E-Mail: appraisal@rscottdugan.com	E-Mail:
Date Report Signed: April 14, 2017	Date Report Signed:
License or Certification #: A 5000166-00	License or Certification #:
Designation: SRA	Designation:
Expiration Date of License or Certification: 05/31/2017	Expiration Date of License or Certification:
Inspection of Subject: <input checked="" type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None	Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input type="checkbox"/> None
Date of Inspection: April 06, 2017	Date of Inspection:

GP RESIDENTIAL

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Form SPRES240 — "WITOTAL" appraisal software by a to mode, Inc. — 1-800-4LAMCODE

EXHIBIT 10

EXHIBIT 10



CLERK OF THE COURT

COMP

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Nevada Bar No. 10916
Bradley Bace, Esq.
Nevada Bar No. 12684
ALESSI & KOENIG, LLC
9500 W. Flamingo, Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033
Fax: (702) 222-4043
huong@alesnikoenig.com
brad@alesnikoenig.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada
limited liability company,

Plaintiff,

vs.

CRISTELA PEREZ, an individual, MARCIAI
B.T., a domestic business trust; APACHE
ELECTRIC OF NEVADA LLC, a domestic
limited liability company; U.S. BANK,
NATIONAL ASSOCIATION N.D., an
unknown entity; U.S. BANK NATIONAL
ASSOCIATION, AS TRUSTEE FOR
STANWICH MORTGAGE LOAN TRUST,
SERIES 2012-6, an unknown entity; DOES
INDIVIDUALS I-X, inclusive; and ROE
CORPORATIONS XI-XXX inclusive,

Defendants.

Case No. A - 13 - 690586 - C

Dept. No. VI

Hearing date:

Hearing time:

COMPLAINT IN INTERPLEADER

Arbitration Exemption Claimed:

1) Declaratory Relief

COMPLAINT IN INTERPLEADER

COMES NOW, ALESSI & KOENIG, LLC, by and through their attorneys of record,

Huong Lam, Esq. and Bradley Bace, Esq. of ALESSI & KOENIG, LLC, and alleges the

1 following Causes of Action against defendants CRISTELA PEREZ, an individual, MARCHAI
2 B.T., a domestic business trust; APACHE ELECTRIC OF NEVADA LLC, a domestic limited
3 liability company; U.S. BANK, NATIONAL ASSOCIATION N.D., an unknown entity, U.S.
4 BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH MORTGAGE LOAN
5 TRUST, SERIES 2012-6, an unknown entity as follows:

6
7 **THE PARTIES AND JURISDICTION**

- 8 1. At all times relevant herein, Plaintiff ALESSI & KOENIG, LLC (hereinafter "A&K")
9 was a domestic limited liability company authorized to conduct business in the State
10 of Nevada.
11 2. At all times relevant herein, CRISTELA PEREZ (hereinafter "PEREZ") an
12 individual, was a resident of the County of Clark, State of Nevada.
13 3. At all times relevant herein MARCHAI B.T., (hereinafter "MARCHAI") was a
14 domestic business trust authorized to doing business in the State of Nevada.
15 4. At all times relevant herein APACHE ELECTRIC OF NEVADA LLC, (hereinafter
16 "APACHE") was a domestic limited liability company authorized to doing business
17 in the State of Nevada.
18 5. At all times relevant herein U.S. BANK, NATIONAL ASSOCIATION N.D
19 (hereinafter "U.S. BANK") was an unknown entity doing business in the State of
20 Nevada.
21 6. At all times relevant herein U.S. BANK NATIONAL ASSOCIATION, AS
22 TRUSTEE FOR STANWICH MORTGAGE LOAN TRUST, SERIES 2012-6
23 (hereinafter "U.S. B.N") was an unknown entity doing business in the State of
24 Nevada.
25
26
27
28

- 1
2 7. The names given to the Defendants sued herein as Doe Individuals I through X and
3 Roe Corporations XI through XX, inclusive, are fictitious names. Other parties
4 unknown to Plaintiff may have caused Plaintiff to incur damages as pled herein or
5 may have an interest in the Property. Plaintiff prays that if and when the true names
6 of any said defendants, or any of them, and the nature of their alleged actions and/or
7 interests are ascertained, that they may be inserted herein by proper amendment.
8 Plaintiff has no knowledge of the addresses or places of residence of any fictitious
9 defendants.
10
11 8. Jurisdiction and venue are proper in this Court because this action concerns real
12 property located in the County of Clark, State of Nevada, and the facts, acts, events
13 and circumstances herein mentioned, alleged and described occurred in the County of
14 Clark, State of Nevada.
15

16 **THE UNDERLYING FORECLOSURE SALE**
17

- 18 9. Plaintiff hereby repeats, realleges, and incorporates by reference each and every
19 preceding paragraph and allegation as if fully stated herein.
20
21 10. On or about August 30, 2005 a Declaration of Covenants, Conditions, and
22 Restrictions ("CC&Rs") WYETH RANCH COMMUNITY ASSOCIATION ("Wyeth
23 Ranch Community Association") was recorded in the public records with the Clark
24 County Recorder at Book No. 20021004 and Instrument No. 01353
25
26 11. Section 7.7 of the CC&Rs provides, in pertinent part:

27 ///

28 ///

1 Common Expense Assessments shall be collected on a monthly or quarterly basis or
2 such other basis as may be selected by the Board of Directors. Special Assessments
3 may be collected as specified by the Board of Directors. The Board of Directors shall
4 have the right to adopt rules and regulations setting forth procedures for the purpose
5 of making Assessments and for the billing and collection of the Assessments,
6 provided that the procedures are not inconsistent with the provisions of this
7 Declaration. The failure of the Association to send a bill to a Member shall not relieve
8 any Member of his liability for any Assessment or charge under this Declaration, but
9 the Assessment Lien therefor shall not be foreclosed as set forth in Section 7.10
10 below until the Member has been given not less than thirty (30) days written notice
11 prior to such foreclosure that the Assessment or any installation thereof is or will be
12 due and of the amount owing. Such notice may be given at any time prior to or after
13 delinquency of such payment. The Association shall be under no duty to refund any
14 payments received by it even though the ownership of a Unit changes during an
15 Assessment Period, but successor Units' Owners of Units shall be given credit for
16 prepayments, or a prorated basis, made by prior Units Owners.

17 See attached Exhibit "1."

- 18 12. On or about July 21, 2004 became PEREZ the title owner of certain real property
19 commonly known as 7119 Wolf Rivers Avenue, Las Vegas, NV 89131 APN 125-15-
20 811-013 and legally described as:

21 PARCEL I:

22 Lot Thirteen (13) in Block "A" of Wyeth Ranch Unit 2, on file in Book 112 of Plats,
23 Page 8, in the office of the County Recorder of Clark County, Nevada.

24 PARCEL II:

25 A non-exclusive easement for ingress, egress, use and enjoyment of the Common
26 Lots as shown on the above map, and as set forth in the Declaration of Covenants,
27 Conditions, and Restrictions recorded October, 4, 2002 in Book 20021004 as
28 Document No. 01353, and as the same may be amended from time to time.

(the "Property").

See attached Exhibit "2."

13. Pursuant to NRS Chapter 116, PEREZ is governed by the requirements and
obligations set forth in the CC&Rs and related governing documents.

14. The CC&Rs require homeowners within the community to pay regular assessments and comply with the requirements and obligations set forth in the CC&Rs and related governing documents.
15. Defendant PEREZ failed to pay the regular assessments and further failed to comply with other requirements set forth in the CC&Rs and other related governing documents.
16. Nevada Revised Statute ("NRS") 116.3116 *et. seq.* specifically authorizes a homeowner's association to conduct a foreclosure sale of any lot that has become delinquent on its assessment payments.
17. As a result of PEREZ's failure to comply with NRS 116 and Wyeth Ranch Community Association's governing documents, Plaintiff A&K was retained to begin the foreclosure process pursuant to NRS 116.3116 *et. seq.*
18. Pursuant to the aforementioned statutory and CC&Rs provisions, Plaintiff A&K, on behalf of Wyeth Ranch Community Association, foreclosed on the Property via auction on August 28, 2013. The final bid price was for \$21,000.00.
See attached Exhibit "3"
19. The total amount due and owing to Wyeth Ranch Community Association at the time of the foreclosure sale was \$14,677.80 including foreclosure fees and costs.
20. The total amount due and owing to A&K for its fees and costs to bring this interpleader action is \$2,500.00
21. The excess proceeds is \$3,822.20.
22. Upon information and belief, Defendant PEREZ, an individual, has a claim to the excess proceeds.

1 23. Upon information and belief, Defendant MARCHAI, a domestic business trust, has a
2 claim to the excess proceeds.

3 24. Upon information and belief, Defendant APACHE, a domestic limited liability
4 company, has a claim to the excess proceeds.

5 25. Upon information and belief, Defendant U.S. BANK, an unknown entity, has a claim
6 to the excess proceeds.

7 26. Upon information and belief, Defendant U.S. B.N, an unknown entity, has a claim to
8 the excess proceeds.

9
10 N.R.S. 116.31164 (c) provides a distribution priority for the proceeds (not just the
11 *excess proceeds*) from any HOA foreclosure sale. This statute states that the proceeds
12 of an HOA foreclosure sale shall be distributed pursuant to the following order:

- 13
14 (1) The reasonable expenses of sale;
- 15 (2) The reasonable expenses of securing possession before sale, holding,
16 maintaining, and preparing the unit for sale, including payment of taxes
17 and other governmental charges, premiums on hazard and liability
18 insurance, and, to the extent provided for by the declaration, reasonable
19 attorney's fees and other legal expenses incurred by the association;
- 20
21 (3) Satisfaction of the association's lien;
- 22 (4) Satisfaction in the order of priority of any subordinate claim of record; and
- 23 (5) Remittance of any excess to the unit's owner.
- 24

25 ///

26 ///

- 1 27. That Plaintiff A&K will deposit excess proceeds with this court in the sum of
2 \$3,822.20 representing the total proceeds at sale (\$21,000.00) minus the amount due
3 of Wyeth Ranch Community Association (\$14,677.80) and the fees and costs of this
4 interpleader action (\$2,500.00).
- 5 28. Given the Defendants' competing claims for the proceeds, Plaintiff cannot determine
6 which of the Defendants in Interpleader are entitled to the proceeds.
- 7 29. As set forth above, Plaintiff has distributed funds from the HOA foreclosure sale
8 under subsections (1), (2), and (3).
- 9 30. In order to distribute any funds pursuant to N.R.S. subsections (4) and (5), it must be
10 determined which parties have a "subordinate claim of record" and what the
11 respective priority of these subordinate claims is as to the subject property.
- 12 31. Plaintiff has been unable to make this determination and has thus brought the instant
13 interpleader action.
- 14
15
16
17

18 PRAYER FOR RELIEF

19 Wherefore, Plaintiff prays for judgment against Defendants in Interpleader and each
20 of them as follows:

- 21 1. That Defendants in Interpleader and each of them be required to interplead and
22 litigate among themselves their claims to the proceeds described;
- 23 2. That the Court determine and enter an order setting forth the proper recipients of
24 the proceeds;
- 25 3. That Plaintiff be dismissed from this action with prejudice following payment of
26 the excess proceeds into the registry of the Court; and
27
28

1 4. For such other and further relief as the Court deems just and equitable under the
2 circumstances.

3 DATED this 23rd day of October 2013 ALESSI & KOENIG, LLC

4
5
6 /s/ Bradley Bace
7 Huong Lam, Esq.
8 Nevada Bar No. 10916
9 Bradley Bace, Esq.
10 Nevada Bar No. 12684
11 ALESSI & KOENIG, LLC
12 9500 W. Flamingo, Suite #205
13 Las Vegas, Nevada 89147
14 Phone: (702) 222-4033
15 Fax: (702) 222-4043
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EXHIBIT 11

EXHIBIT 11

IN THE SUPREME COURT OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A
LIMITED LIABILITY COMPANY,
Appellant,
vs.
MARCHAI B.T., A BANK TRUST,
Respondent.

No. 74416

FILED

MAR 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

This is an appeal from a district court summary judgment in a judicial foreclosure action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez; Linda Marie Bell, Judges. Reviewing the summary judgment de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we vacate and remand.¹

Appellant first argues that the district court erred in finding that the 2008 notice of delinquent assessment, rather than the 2011 notice of delinquent assessment, was the operative notice for calculating the amount of the NRS Chapter 116 superpriority default. Appellant does not claim that the HOA rescinded the first notice or that the lien was otherwise satisfied, but instead argues that the HOA was not required to record any rescission.² We conclude that the district court did not err in finding the

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

²We note that the district court did not state that the HOA was required to record a rescission of the first notice of delinquent assessment but, rather, stated that the HOA had not withdrawn/rescinded the notice or otherwise stated it was satisfied.

2008 notice to be the operative notice. We have previously held that the HOA must provide a notice of delinquent assessment before it can take any action to begin an NRS Chapter 116 foreclosure, and that the superpriority amount equals nine months of assessments incurred before the notice of delinquent assessment. See NRS 116.3116(2) (2009) (describing the superpriority component of an HOA's lien as "the assessments for common expenses . . . which would have become due . . . during the 9 months immediately preceding institution of an action to enforce the lien"); *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 133 Nev. 21, 25-26, 388 P.3d 226, 231 (2017) (recognizing that under the pre-2015 version of NRS 116.3116, serving a notice of delinquent assessments constitutes institution of an action to enforce the lien). We have also implicitly recognized that an HOA cannot enforce two superpriority liens on the same property at the same time. See *Prop. Plus Invs., LLC v. Mortg. Elec. Registration Sys., Inc.*, 133 Nev. 462, 466, 401 P.3d 728, 731 (2017) (holding that "NRS 116.3116 does not limit an HOA to one lien enforcement action or one superpriority lien per property forever" (emphasis added)); see also *JPMorgan Chase Bank, N.A. v. SFR Invs. Pool 1, LLC*, 200 F. Supp. 3d 1141, 1167-68 (D. Nev. 2016) (recognizing that an HOA can assert a second superpriority lien after a previous superpriority lien has been satisfied). Accordingly, the district court properly found that the superpriority portion of the HOA's lien in this case was comprised of the nine months of assessments incurred before the 2008 notice of delinquent assessment, as that is the notice that instituted the action to enforce the lien in this case.

Turning to the arguments regarding tender, in *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev., Adv. Op. 8 (Mar. 5, 2020), this court held that payments made by a homeowner can cure the default on the

superpriority portion of an HOA lien such that the HOA's foreclosure sale would not extinguish the first deed of trust on the subject property. Whether a homeowner's payments actually cure a superpriority default, however, depends 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. See *id.* slip op. at 7-9 (explaining that "[i]f neither the debtor nor the creditor makes a specific application of the payment, then it falls to the [district] court to determine how to apply the payment").

In this case, the district court correctly determined that the homeowner's payments could cure the default on the superpriority portion of the HOA's lien. However, the district court erred in concluding that the homeowner's payments cured the superpriority default without analyzing the intent of homeowner and HOA and, if appropriate, the equities as discussed in *9352 Cranesbill*. While we recognize that the district court did not have the benefit of the *9352 Cranesbill* opinion when entering its decision in this matter, we still must vacate the grant of summary judgment and remand this matter to the district court for further proceedings in line with that opinion.³

³Because appellant's purported status as a bona fide purchaser for value may be irrelevant on remand, we decline to address this issue further at this time. See *9352 Cranesbill Tr.*, 136 Nev., slip op. at 10 (declining to address bona-fide-purchaser status when issues regarding tender remained); *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 612, 427 P.3d 113, 121 (2018) (providing that a party's status as a bona fide purchaser "is irrelevant when a defect in the foreclosure proceeding renders the sale void," such as a valid tender). And, because we have already concluded that the district court improperly granted summary judgment, we need not address appellant's argument that the district court erred in granting summary judgment sua sponte.

Based on the foregoing, we

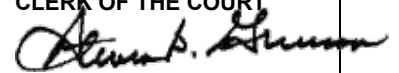
ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.

Pickering C.J.
Pickering

Gibbons J.
Gibbons

Silver J.
Silver

cc: Hon. Linda Marie Bell, Chief Judge
Hon. Elizabeth Goff Gonzalez, District Judge
Janet Trost, Settlement Judge
Kim Gilbert Ebron
David J. Merrill, P.C.
Eighth District Court Clerk



OPPM

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Attorney for Marchai, B.T.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND AC-
TIONS

**Marchai, B.T.'s Opposition to Defendant Wyeth Ranch Community As-
sociation's Motion for Reconsideration or Clarification Under NRCP 60,
Alternatively Motion in Limine**

Date of Hearing: January 8, 2021

Time of Hearing: Chambers

Introduction

Marchai, B.T.'s position is consistent: its deed of trust survived Wyeth Ranch Commu-
nity Association's foreclosure because the homeowner satisfied the superpriority portion of Wy-
eth Ranch's lien. Hence, SFR Investments Pool 1, LLC took subject to Marchai's deed of trust.
This is precisely the issue on which this Court granted summary judgment for Marchai.

But the Nevada Supreme Court reversed for this Court to determine how Wyeth Ranch
applied Perez's partial payments. Over Wyeth Ranch's objections, Marchai took the deposition

1 of Wyeth Ranch's 30(b)(6) witness in September 2020. The witness, Yvette Saucedo, who spent
2 20 minutes reviewing the file and 40 minutes speaking to her attorney, testified that Wyeth
3 Ranch first applied payments to the current quarter's association dues and any remainder to the
4 oldest association dues. But *no document* supports her testimony. Instead, when asked how she
5 knew Wyeth Ranch applied payments in the manner she suggested, she said, "I just know that."

6 But Saucedo's testimony directly conflicts with Wyeth Ranch's documents. A report ran
7 in 2008 reflects that consistent with the common law, Wyeth Ranch applied payments first to the
8 *oldest* association dues.

9 Saucedo's testimony painted Wyeth Ranch into a corner. On the one hand, Wyeth Ranch
10 is trying to help SFR, but that testimony harms Wyeth Ranch. Following the foreclosure, Wyeth
11 Ranch received payment of its entire assessment lien (\$10,679.12). By law, Wyeth Ranch could
12 only have received the whole outstanding amount of its assessment lien *if* Perez's payments satis-
13 fied the lien's superpriority portion. Otherwise, Wyeth Ranch would have obtained only the
14 lien's superpriority part and paid the remainder to Marchai.

15 Although Marchai is confident this Court will conclude that Perez paid the superpriority
16 portion of the lien, if, after the trial, this Court disagrees, then Wyeth Ranch must pay the excess
17 proceeds from the foreclosure.

18 Wyeth Ranch claims that Marchai pleaded no such claim. This is not true. Marchai as-
19 serted a bad faith claim under NRS § 116.1113 and argued explicitly as a basis for Wyeth Ranch's
20 bad faith that Perez paid the lien's superpriority portion and asked for damages.

21 Wyeth Ranch also claims that Marchai did not disclose the grounds of its bad faith claim
22 in its answers to interrogatories. But Wyeth Ranch did not propound an interrogatory asking the
23 grounds for Marchai's bad faith claim.

24 Further, Wyeth Ranch asserts that Marchai did not disclose a computation of damages.
25 Again, this is not true. Marchai revealed damages and provided a calculation. Wyeth Ranch may
26 dispute that amount, but that does not mean Marchai did not disclose damages.

27 Wyeth Ranch asserted each of these argument in its briefing on the motion for summary
28 judgment. But the Court denied Wyeth Ranch's motion. Despite previously hearing (and

1 rejecting) these arguments at the summary judgment hearing, Wyeth Ranch submitted a compet-
2 ing order on summary judgment that supported the arguments. This Court declined to enter Wy-
3 eth Ranch's order and entered Marchai's order. Now, Wyeth Ranch has moved for reconsidera-
4 tion, clarification, or in limine based upon the same arguments this Court rejected. But Wyeth
5 Ranch's arguments fail. Hence, Marchai asks this Court to deny the motion.

6 **Statement of Facts and Procedural History**

7 In January 2008, Cristela Perez, a property owner in the Wyeth Ranch community, be-
8 came delinquent in her quarterly assessments. (*See* Marchai B.T.'s Statement of Undisputed and
9 Disputed Facts in Supp. of its Opp'n to Wyeth Ranch Cmty. Ass'ns Mot. for Summ. J. Nos. 17-
10 18.) In April 2008, Wyeth Ranch charged Perez with another quarterly assessment. (SOF No.
11 19.) But on April 16, 2008, Perez submitted a payment. (SOF No. 20.) According to Wyeth
12 Ranch's documents, it applied this payment *first* to the *oldest association dues* (January 2008) and
13 the remainder to the next oldest association dues (April 2008). (SOF No. 127.)

14 Between April 2008 and November 2012, Perez paid Wyeth Ranch \$3,390.00, \$2,381.75
15 of which Wyeth Ranch applied to Perez's assessment account. (*See* SOF Nos. 35-100.)

16 In 2013, Wyeth Ranch foreclosed on its lien. (SOF No. 115.) SFR Investments Pool 1,
17 LLC submitted the winning bid of \$21,000. (SOF No. 116.) At the time of the foreclosure, the
18 assessment ledger shows that Perez owed Wyeth Ranch \$10,679.12, which included assessments,
19 late fees, and interest. (SOF No. 117.) Wyeth Ranch received payment in full (\$10,679.12) of all
20 amounts owed on its assessment ledger. (SOF No. 118.)

21 In 2013, Marchai filed a complaint for judicial foreclosure. (Compl. for Judicial
22 Foreclosure of Deed of Trust (Sept. 30, 2013).) In 2016, this Court entered a Decision and Order
23 on competing motions for summary judgment filed by SFR and Marchai. (Decision & Order
24 (Mar. 22, 2016).) This Court concluded that genuine issues of material fact precluded it from rul-
25 ing that Perez satisfied the superpriority portion of Wyeth Ranch's lien through the \$3,390 in
26 payments Perez made after Wyeth Ranch instituted an action to enforce the lien. (*See id.* at 21:6-
27 19.)
28

1 In 2016, Marchai filed another complaint that alleged claims against Wyeth Ranch for
2 wrongful foreclosure, bad faith, and intentional interference with contract. (*See* Compl. Aug. 25,
3 2016.) One basis for the bad faith claim is that Perez satisfied the superpriority portion of Wyeth
4 Ranch's lien. (*Id.* ¶¶ 69(e), 79.) And Marchai sought damages for Wyeth Ranch's bad faith. (*Id.* ¶
5 81.) This Court consolidated both cases. (*See* Order Lifting Stay and Consolidating Cases at 2:3–5
6 (Dec. 13, 2016).)

7 Despite previously deciding that genuine issues of material fact precluded summary judg-
8 ment, in 2017, SFR again moved for summary judgment. (*See* SFR Invs. Pool 1, LLC's Mot. for
9 Summ. J. (July 21, 2017).) And so did Wyeth Ranch. (*See* Def. Wyeth Ranch Cmty. Ass'n's Mot.
10 for Summ. J. (July 21, 2017).) But this time, this Court not only denied SFR and Wyeth Ranch's
11 motions for summary judgment, but it also entered summary judgment for Marchai. (*See* Deci-
12 sion & Order at 14:2–5 (Oct. 3, 2017).) This Court concluded that Perez's payments satisfied the
13 superpriority portion of Wyeth Ranch's lien. (*Id.* at 13:15–26.) SFR (but not Wyeth Ranch) ap-
14 pealed this Court's decision. (*See* Notice of Appeal (Nov. 3, 2017).)

15 The Nevada Supreme Court vacated the judgment and remanded based upon its decision
16 in *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 459 P.3d 227 (2020), to deter-
17 mine whether Perez's payments satisfied the lien's superpriority portion. (*See* Order Vacating J.
18 & Remanding.)

19 The court in *Cranesbill* left the district courts to determine both legal and factual issues.
20 The court concluded that the district court must first determine whether the association treated
21 the lien's superpriority and subpriority portions as separate accounts or one running account.
22 *9352 Cranesbill Trust*, 136 Nev. at 81, 459 P.3d at 231–32. After making that determination, the
23 district court must decide whether the parties had an agreement directing the application of pay-
24 ments, whether the debtor specifically directed the application of payments to certain obligations
25 at the time of payment, how the creditor applied the payments, and potentially, the district court
26 must weigh the equities concerning applying payments. *Id.* at 80–81, 459 P.3d at 231. The Nevada
27 Supreme Court concluded these issues raised genuine issues of material fact for which summary
28 judgment is not proper. *Id.* at 81, 459 P.3d at 282.

1 After remand, Marchai moved for an order reopening discovery to take the N.R.C.P.
2 30(b)(6) deposition of Wyeth Ranch concerning the application of payments. (*See* Marchai's
3 Mot. to Reopen Disc. on an Order Shortening Time (Aug. 13, 2020).) Wyeth Ranch opposed the
4 motion. (*See* Def. Wyeth Ranch Cmty. Ass'ns Resp. to Mot. to Reopen Disc., & Alternative
5 Countermot. for a Briefing Schedule (Aug. 17, 2020).) The Court granted Marchai's motion.
6 (*See* Order Granting Marchai's Mot. to Reopen Disc. on an Order Shortening Time & Den. the
7 Alternative Countermot. for a Briefing Schedule (Aug. 21, 2020).)

8 Marchai deposed Wyeth Ranch's 30(b)(6) witness, Yvette Saucedo, on September 18,
9 2020. (*See* SOF Nos. 12, 122–26.) Saucedo is the Accounting Director for Complete Association
10 Management Company, Wyeth Ranch's community manager. (*Id.*) Although Wyeth Ranch's
11 documents reflect that it applied payments first to the oldest association dues and then to the
12 next oldest association dues, Saucedo testified that Wyeth Ranch applied payments first to the
13 current quarter's association dues and any remainder to the oldest association dues. (*See id.*) But
14 Saucedo could not identify a single document that supported her testimony. (*See* SOF No. 126.)
15 Instead, when asked how Saucedo knew how Wyeth Ranch applied the payment in the manner
16 she suggested, she testified, "I just know that." (*See id.*)

17 Although the Nevada Supreme Court concluded that genuine issues of material fact pre-
18 cluded summary judgment, after Saucedo's deposition Wyeth Ranch again moved for summary
19 judgment. (*See* Def. Wyeth Ranch Cmty. Ass'ns Mot. for Summ. J. (Sept. 25, 2020).) Marchai
20 opposed Wyeth Ranch's motion. (*See* Marcha, B.T.'s Opp'n to Def. Wyeth Ranch Cmty. Ass'ns
21 Mot. for Summ. J. (Oct. 19, 2020).) In the opposition, Marchai argued that genuine issues of ma-
22 terial fact preclude summary judgment, but that Marchai was confident this Court would con-
23 clude that Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien and, thus,
24 the foreclosure did not affect Marchai's deed of trust. (*See id.*) But, based upon Saucedo's recent
25 testimony, Marchai noted that "if this Court decides that Perez did not satisfy the lien's super-
26 priority portion, then Wyeth Ranch's receipt of excess funds above its superpriority lien is bad
27 faith." (*Id.* at 17:3–5.)
28

1 In its reply, Wyeth Ranch argued, as it does here, that Marchai attempted to plead a new
2 claim and assert new, previously undisclosed damages. (*See* Def. Wyeth Ranch Cmty. Ass’ns Re-
3 ply in Supp. of its Mot. for Summ. J. (Nov. 2, 2020).) Yet, just four days later, Wyeth Ranch ap-
4 proved a Joint Pre-Trial Memorandum, which describes Marchai’s bad faith claim in part as:
5 “Also, if the Court concludes that Perez did not satisfy the lien’s superpriority part, then Wyeth
6 Ranch did not act in good faith when it accepted the proceeds of the foreclosure to which it was
7 not entitled.” (*See* J. Pre-Trial Memo. at 2:20–22.) Wyeth Ranch did not object to this descrip-
8 tion. (*See id.*)

9 At the hearing, Marchai argued that it had pleaded its bad faith claim and disclosed dam-
10 ages. (*See* Tr. of Proceedings at 7:1–19 (Nov. 10, 2020).) This Court denied the motion for sum-
11 mary judgment. (*See* Order Den. Def. Wyeth Ranch Cmty. Ass’ns Mot. for Summ J. (Nov. 24,
12 2020).)

13 During the calendar call, which occurred on the same day as the hearing on the motion for
14 summary judgment, Wyeth Ranch asked to clarify the Court’s summary judgment ruling. (*See*
15 Tr. of Proceedings at 12:20–22.) Wyeth Ranch asked if the Court was allowing Marchai “to bring
16 in this new claim regarding the application of proceeds?” (*Id.*) This Court responded, “I am not,
17 but it appears the application of proceeds may have been part of the good faith and fair dealing
18 claim but we will, of course, litigate that at the trial.” (*Id.* at 13:23–14:1.)

19 After the summary judgment hearing, Marchai submitted a proposed order to Wyeth
20 Ranch’s counsel. (*See* email from Merrill to Ochoa and Hanks (Nov. 18, 2020 at 11:24 AM), at-
21 tached as Ex. 1 to the Mot.) Although this Court rejected the arguments Wyeth Ranch raised in
22 its reply, Wyeth Ranch demanded additional language to the order that contradicted this Court’s
23 decision. (*See* email from Ochoa to Merrill (Nov. 18, 2020 at 12:52 PM), attached as Ex. 1 to the
24 Mot.) Marchai refused to add the requested language. (*See* email from Merrill to Ochoa (Nov. 18,
25 2020 at 12:56 PM), attached to the Mot. as Ex. 1.) Ultimately, Marchai and Wyeth Ranch submit-
26 ted competing orders. (*See* email from Ochoa to Merrill (Nov. 18, 2020 at 5:23 PM), attached to
27 the Mot. as Ex. 1.) This Court rejected Wyeth Ranch’s order and entered Marchai’s order. (*See*
28 Order Den. Def. Wyeth Ranch Cmty. Ass’ns Mot. for Summ. J. (Nov. 24, 2020).)

1 But Wyeth Ranch wants another bite at the apple and believes (based upon the same argu-
2 ments asserted in its reply, at the hearing, and in its proposed order) this Court will change its
3 mind. Wyeth Ranch now seeks reconsideration, clarification, or a motion in limine based upon
4 the same arguments this Court heard and rejected. (*See* Def. Wyeth Ranch Cmty. Ass'ns Mot.
5 for Reconsid. or Clarification under NRCP 60, Alternatively Mot. in Lim. (Dec. 4, 2020).) But
6 the Court correctly denied summary judgment, rightly rejected Wyeth Ranch's arguments, and
7 correctly entered Marchai's proposed order. Hence, Marchai asks this Court, once again, to re-
8 ject Wyeth Ranch's arguments and deny the motion.

9
10 **Argument**

11 **A. If this Court concludes that Wyeth Ranch's foreclosure extinguished Marchai's deed of trust,**
12 **Marchai plead a bad faith claim, which includes a claim for Wyeth Ranch's failure to distrib-**
13 **ute funds following the foreclosure properly.**

14 Wyeth Ranch argues that Marchai attempted to plead a new claim and new damages
15 through its opposition to the motion for summary judgment, and this Court should preclude any
16 attempt to assert this alleged "new claim." (Mot. at 8:6-25.) Wyeth Ranch's argument lacks
17 merit.

18 Marchai's position is consistent: Wyeth Ranch's foreclosure did *not* extinguish Marchai's
19 deed of trust because Perez satisfied the superpriority portion of Wyeth Ranch's lien before the
20 foreclosure. If this Court agrees, then Marchai's deed of trust survives, and Marchai will not pre-
21 vail on its claims against Wyeth Ranch. If this Court disagrees, then Marchai has pleaded claims
22 against Wyeth Ranch, including a bad faith claim under NRS § 116.1113. The Nevada Supreme
23 Court has ruled that an association's receipt of excess funds above its superpriority lien is bad
24 faith. *See Bank of Am., N.A. v. Thomas Jessup, LLC Series VII*, 462 P.3d 255 (Nev. 2020) (Un-
25 published) (reversing a judgment against the first deed of trust holder's claim under NRS §
26 116.1113 and concluding that if the association foreclosed on a superpriority lien, the first deed of
27 trust holder is entitled to excess proceeds from the foreclosure); *Bank of Am., N.A. v. Las Vegas*
28 *Rental & Repair, LLC Series 57*, 451 P.3d 547 (Nev. 2019) (Unpublished) (same).

1 Yet, Wyeth Ranch claims that Marchai pleaded wrongful foreclosure, not bad faith. (*See*
2 Mot. at 9:7–20.) Again, Wyeth Ranch is wrong.

3 The Nevada Rules of Civil Procedure require a complaint to contain a “short and plain
4 statement of the claim showing that the pleader is entitled to relief” and “a demand for the relief
5 sought.” N.R.C.P. 8(a)(2)–(3). Because Nevada is a notice-pleading jurisdiction, this Court must
6 liberally construe the pleadings “to allow issues that are fairly noticed to the adverse party.” *Nev.*
7 *State Bank v. Jamison Fam. P’ship*, 106 Nev. 792, 801 P.2d 1377 (1990). “‘Notice pleading’ re-
8 quires plaintiffs to set forth facts which support a legal theory, but does not require the legal the-
9 ory relied upon to be correctly identified.” *Liston v. Las Vegas Metro. Police Dep’t*, 111 Nev. 1575,
10 1578, 908 P.2d 720, 723 (1995) (footnote omitted) (citing *Swartz v. Adams*, 93 Nev. 240, 245, 563
11 P.2d 74, 77 (1977).) “A plaintiff who fails to use the precise legalese in describing his grievance
12 but who sets forth the facts which support his complaint thus satisfies the requisites of notice
13 pleading.” *Id.*

14 Here, Marchai pleaded a bad faith claim as its fourth claim for relief. (*See* Compl. at
15 11:12–19 (Aug. 25, 2016).) That claim relies on the allegations of paragraph 69(e), which alleges
16 that “Perez paid more than nine months of association dues following Wyeth Ranch’s institution
17 of an action to enforce its lien.” (*Id.* at 10:15–16.) And Marchai requested “any and all damages
18 flowing from” the foreclosure. (*Id.* ¶ 81.) Also, the complaint alleges that SFR paid \$21,000 at
19 the foreclosure sale. (*See* Compl. ¶ 42.) Hence, Wyeth Ranch had fair notice that how it applied
20 payments (either before or after the foreclosure) was at issue. *See Liston*, 111 Nev. at 1578–79, 908
21 P.2d at 723 (reversing the district court’s order to exclude testimony of a constructive discharge
22 when the plaintiff pleaded facts to support a constructive discharge claim even though he did not
23 use the terms “constructive discharge.”).

24 Further, Wyeth Ranch’s contention that Marchai’s bad faith claim is a wrongful foreclo-
25 sure claim is wrong and irrelevant. (*See* Mot. at 11:13–12:16.) Marchai pleaded a wrongful foreclo-
26 sure claim. If it intended its bad faith claim to serve as wrongful foreclosure, it would not have
27 pleaded it. Nevertheless, it is the facts that support the legal theory, not the theory identified that
28 controls. *See Liston*, 111 Nev. at 1578, 908 P.2d at 723. And because Marchai pleaded facts to

1 support a bad faith claim (regardless of what the pleading calls it), Wyeth Ranch had notice of
2 Marchai's bad faith claim. *See id.*

3 Finally, Wyeth Ranch acknowledged the basis of Marchai's bad faith claim when it en-
4 tered into the Joint Pre-Trial Memorandum, which states: "if the Court concludes that Perez did
5 not satisfy the lien's superpriority part, then Wyeth Ranch did not act in good faith when it ac-
6 cepted the proceeds of the foreclosure to which it was not entitled." (*See* J. Pre-Trial Memo. at
7 2:20-22.) Wyeth Ranch asserted no objection or reservation to this description of Marchai's bad
8 faith claim. (*See id.*)

9 **B. Wyeth Ranch did not propound interrogatories asking for the basis of Marchai's bad faith**
10 **claim.**

11 Wyeth Ranch further argues that it had no notice of Marchai's bad faith claim because it
12 did not refer to the basis of its claim in its answers to interrogatories. (*See* Mot. at 12:17-28.) Spe-
13 cifically, Wyeth Ranch claims that Marchai had an obligation to describe its bad faith claim in its
14 answers to Interrogatory Nos. 13 through 15. (*Id.*) But Interrogatory No. 13 sought facts about
15 Marchai's claim that Wyeth Ranch's foreclosure did not extinguish Marchai's deed of trust. (*See*
16 Ex. 8 to the Mot. at 9:16-18.) Interrogatory No. 14 requested facts about the commercial reasona-
17 bleness of the foreclosure. (*See id.* at 11:1-3.) And Interrogatory No. 15 asked for particulars about
18 wrongful foreclosure, not Marchai's bad faith claim. (*See id.* at 12:3-5.) Hence, Wyeth Ranch's
19 argument that Marchai did not disclose the basis of its claim in answers to interrogatories lacks
20 merit.

21 **C. Marchai properly disclosed a computation of damages in its initial disclosures that includes its**
22 **bad faith claim, but even if it didn't, the error is harmless, or failing to disclose was substan-**
23 **tially justified.**

24 Wyeth Ranch also argues that Marchai did not disclose its damages for its bad faith claim
25 under N.R.C.P. 16.1. (*See* Mot. at 13:1-15.) Again, Wyeth Ranch's argument lacks merit.

26 In its third supplemental disclosures under N.R.C.P. 16.1, Marchai included a statement
27 of damages, which notes that Marchai primarily seeks a ruling that its deed of trust survived Wy-
28 eth Ranch's foreclosure. (*See* Ex. 9 to the Mot. at 3:17-19.) But if the Court rules otherwise, Mar-
chai "seeks damages" and calculated those damages as the fair market value of the property. (*Id.*)

1 at 3:19–24.) Wyeth Ranch may argue that Marchai is not entitled to damages in the amount of the
2 property’s fair market value, but that differs from saying that Marchai did not disclose a compu-
3 tation of damages.

4 Also, if the information to compute damages is in possession of another party, the rule
5 does not expect a calculation. *See* Fed. R. Civ. P. 26, Advisory Committee Note, 146 F.R.D. 401,
6 631–32 (1993). Here, Wyeth Ranch, not Marchai, had the information about its calculation of the
7 lien’s alleged superpriority and subpriority portions. And Marchai did not discover how Wyeth
8 Ranch made this calculation until Saucedo’s deposition in September 2020.

9 But even if Marchai should have disclosed a more precise computation of its damages, it
10 was substantially justified in not doing the disclosure, and the error is harmless. Rule 26(e) re-
11 quires parties to supplement initial disclosures only when “the additional or corrective infor-
12 mation has not otherwise been made known to the other parties during the discovery process or
13 in writing.” N.R.C.P. 26(e)(1). And Rule 37 provides that a party may use information not dis-
14 closed when failing to disclose was “substantially justified or is harmless.” N.R.C.P. 37(c)(1).

15 If this Court concludes that Perez’s payments satisfied the superpriority portion of Wyeth
16 Ranch’s lien, then Marchai has no damages on its bad faith claim. But if this Court concludes
17 otherwise, the calculation of damages will depend upon how this Court applies Perez’s payments,
18 which is the principal issue for trial remanded by the Nevada Supreme Court. Unlike future med-
19 ical expenses in *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 396 P.3d 783 (2017)—the case
20 on which Wyeth Ranch relies—after this Court determines how to apply Perez’s payments, the
21 remaining calculation (if necessary) is simple math, not reasonably subject to dispute. Wyeth
22 Ranch has the evidence upon which this Court will determine whether Perez satisfied the super-
23 priority portion of the lien. And Marchai did not discover how Wyeth Ranch claims it applied Pe-
24 rez’s payments until its deposition in September 2020. Further, Marchai supplied a potential cal-
25 culation in writing in opposition to the motion for summary judgment (just weeks after Wyeth
26 Ranch’s deposition), which complies with its disclosure obligation. *See* N.R.C.P. 26(e)(1). Wyeth
27 Ranch has not disputed that calculation or contended (nor could it) that it needs additional dis-
28 covery to determine the precise contours of Marchai’s potential alleged damages. Wyeth Ranch

1 does not even dispute that if the Court concludes Perez's payments did not satisfy the lien's su-
2 perpriority portion, it improperly received excess funds. Hence, this Court should deny the mo-
3 tion. *See Capanna v. Orth*, 134 Nev. 888, 894–95, 432 P.3d 726, 733–34 (2018) (concluding that
4 the district court did not abuse its discretion when it allowed testimony about an undisclosed
5 computation of future medical expenses because the error was harmless).

6 **D. Although Marchai does not believe it needs to amend its pleading or supplement its discov-**
7 **ery, if the Court believes otherwise, Marchai asks this Court for leave to do so because Wy-**
8 **eth Ranch will suffer no prejudice.**

9 Wyeth Ranch argues this Court should not allow an amendment to Marchai's pleading
10 because it is "bad faith." (*See* Mot. at 14:14–16.) Wyeth Ranch claims that Marchai has known
11 how Wyeth Ranch applied payments to Perez's assessment account for seven years. (*See id.* at
12 14:12–17.) This is obviously untrue. Otherwise, the Nevada Supreme Court would not have re-
13 manded this case back to this Court for determining how Wyeth Ranch applied payments to Pe-
14 rez's account.

15 After the Nevada Supreme Court remanded this case for determining how Wyeth Ranch
16 applied payments to Perez's assessment account, Marchai diligently moved to reopen discovery
17 to take Wyeth Ranch's deposition. Until the deposition in September 2020, Marchai did not
18 know that Wyeth Ranch's witness would contradict its documentary evidence and testify that
19 Wyeth Ranch applied Perez's payments other than first to the superpriority portion of its lien.
20 (*See* Mot. at 14:12–15:28.) Hence, if this Court believes that Marchai must amend its pleading or
21 its discovery responses, Marchai requests the opportunity to do so. It has good cause for not
22 amending before the September 2020 deposition, and Wyeth Ranch will suffer no prejudice by an
23 amendment. *See Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 286–87, 357 P.3d 966, 971 (Ct. App.
24 2015) (recognizing that good cause exists to amend after the filing deadline if the "deadline can-
25 not reasonably be met despite the diligence of the party seeking the amendment.")


26 Conclusion

27 Wyeth Ranch made a strategic blunder. It thought it could testify that it applied Perez's
28 payments first to the current association dues and any remainder to the oldest association dues

1 with no consequences. But if Wyeth Ranch's position is correct (which it isn't), it subjects
2 Wyeth Ranch to a previously pleaded claim of bad faith for receiving excess funds from its
3 foreclosure. Wyeth Ranch's motion for reconsideration, clarification, or in limine is its most
4 recent attempt to undo its testimony. But this Court has rejected Wyeth Ranch's efforts. And it
5 should do so again by denying the motion.

6 Dated this 21st day of December 2020.

7 David J. Merrill, P.C.

8
9 By: 
10 David J. Merrill
11 Nevada Bar No. 6060
12 10161 Park Run Drive, Suite 150
13 Las Vegas, Nevada 89145
14 (702) 566-1935
15 Attorney for Marchai, B.T.
16
17
18
19
20
21
22
23
24
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27
28

Certificate of Service

I certify that on the 21st day of December 2020, I served a copy of Marchai, B.T.'s Opposition to Defendant Wyeth Ranch Community Association's Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

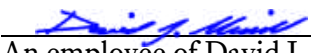
Diana Cline Ebron
E-Service for Kim Gilbert Ebron
Michael L. Sturm
Tomas Valerio

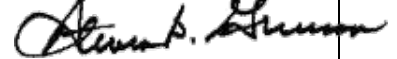
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eservice@kgelegal.com
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An employee of David J. Merrill, P.C.



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7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 Email: david@djmerrillpc.com
10 Attorney for Marchai, B.T.

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

Case No.: A-13-689461-C

Dept. No. XI

12 Plaintiff,

Consolidated with: A-16-742327-C

13 v.

14 CRISTELA PEREZ, an individual; *et al.*

15 Defendants.


16 AND ALL RELATED CLAIMS AND AC-
17 TIONS

18 **Order Denying Defendant Wyeth Ranch Community Asso-**
19 **ciation's Motion for Reconsideration or Clarification Under**
20 **NRCP 60, Alternatively Motion in Limine**

21 Defendant Wyeth Ranch Community Association's Motion for Reconsideration or Clari-
22 fication Under NRCP 60, Alternatively Motion in Limine came before this Court, in chambers,
23 on the 8th day of January 2021. The Court, having considered the motion, Marchai's opposition,
24 Wyeth Ranch's reply, and good cause appearing therefor:

25 **It is hereby ordered** that the motion is **denied**. Marchai may raise the identified bad
26 faith claim at trial because: (1) Marchai's complaint fairly noticed the issue to Wyeth Ranch; (2)
27 Wyeth Ranch's interrogatory seeking the basis for Marchai's wrongful foreclosure claim did not
28

encompass a request for information on Marchai's bad faith claim; and (3) Marchai adequately disclosed a computation of damages under N.R.C.P. 16.1.

 January 20, 2021
Elizabeth Gonzalez, District Court Judge

Submitted by:

David J. Merrill, P.C.

By: /s/ David J. Merrill
David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935
Attorney for Marchai, B.T.

Approved as to form:

Kim Gilbert Ebron

Lipson Neilson, P.C.

By: /s/ Karen L. Hanks
Karen L. Hanks
Nevada Bar No. 9578
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(702) 485-3300
Attorneys for SFR Investments Pool 1, LLC

By: /s/ David T. Ochoa
David T. Ochoa
Nevada Bar No. 10414
9900 Covington Cross Drive,
Suite 120
Las Vegas, Nevada 89144
(702) 382-1500
Attorneys for Wyeth Ranch Community Association



David Merrill <david@djmerrillpc.com>

RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order denying Wyeth Ranch's motion for reconsideration

1 message

Karen Hanks <karen@kgelegal.com>

Tue, Jan 19, 2021 at 11:27 AM

To: David Merrill <david@djmerrillpc.com>, David Ochoa <dochoa@lipsonneilson.com>

You may insert my e-signature.

KAREN L. HANKS, ESQ.

KIM GILBERT EBRON

7625 Dean Martin Dr., Suite 110

Las Vegas, NV 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

Our office is currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. KGE is committed to serving our clients and will continue to operate during this period, but all of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. Please copy Diana and Jackie on emails at diana@kgelegal.com and jackie@kgelegal.com.

Sent from [Mail](#) for Windows 10

From: David Merrill**Sent:** Tuesday, January 19, 2021 11:06 AM**To:** David Ochoa**Cc:** Karen Hanks**Subject:** Re: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order denying Wyeth Ranch's motion for reconsideration

Thank you, David.

Karen?

On Tue, Jan 19, 2021 at 10:37 AM David Ochoa <DOchoa@lipsonneilson.com> wrote:

David,

You may e-sign on my behalf.

David



David Ochoa, Esq.

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

702-382-1500

702-382-1512 (fax)

E-Mail: dochoa@lipsonneilson.com

Website: www.lipsonneilson.com

OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO *****

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From: David Merrill <david@djmerillpc.com>

Sent: Tuesday, January 19, 2021 10:30 AM

To: David Ochoa <DOchoa@lipsonneilson.com>; Karen L. Hanks <karen@kgelegal.com>

Subject: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order denying Wyeth Ranch's motion for reconsideration

David and Karen,

I have attached for your review and approval a draft of the order denying Wyeth Ranch's motion for reconsideration. Please review and advise if you have any comments or with approval to submit to the Court with your electronic signature. I must submit the order to the Court by **Thursday, January 21, 2021**. If I don't hear from you by noon on Thursday, I will submit it to the Court without your signature. Thank you.

--

David J. Merrill

David J. Merrill, P.C.

[10161 Park Run Drive, Suite 150](#)

[Las Vegas, Nevada 89145](#)

Office: (702) 566-1935

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--

David J. Merrill

David J. Merrill, P.C.

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Fax: (702) 993-8841

20040721-0003731

Fee: \$25.00
07/21/2004 13:47:29 T20040064542
Req: LAWYERS TITLE OF NEVADA
Frances Deane
Clark County Recorder Pgs: 13

Assessor's Parcel Number:
125-15-811-013
After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

Prepared By:
JOHN SHOLTZ
Recording Requested By:
T. BONHAM

COUNTRYWIDE HOME LOANS, INC.

2275 CORPORATE CENTER #200
HENDERSON
NV 89074

[Space Above This Line For Recording Data]

04011017JG

0005555256007004

[Escrow/Closing #]

[Doc ID #]

DEED OF TRUST

(Line of Credit)

MIN 1000157-0003937863-9

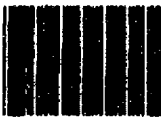
THIS DEED OF TRUST, dated JULY 15, 2004, is between
CRISTELA PEREZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE
PROPERTY

residing at
7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139

• MERS HELOC - Deed of Trust
1E019-NV (02/04)(d)

Page 1 of 7

Initials: *cp*



* 23991 *



* 055552560000001E019 *

WY000432

13-001

198

the person or persons signing as "Grantor(s)" below and hereinafter referred to as "we," "our," or "us" and CTC FORECLOSURE SERVICES CORP.

as trustee and hereinafter referred to as the "Trustee," with an address at
400 COUNTRYWIDE WAY, MSNSV-88 SIMI VALLEY, CA 93065 ,

for the benefit of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") a Delaware corporation, with an address of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. MERS is the "Beneficiary" under this Deed of Trust and is acting solely as nominee for COUNTRYWIDE HOME LOANS, INC.

("Lender" or "you") and its successors and assigns, with an address of
4500 Park Granada, Calabasas, CA 91302-1613

PREMISES: In consideration of the loan hereinafter described, we hereby mortgage, grant and convey to the Trustee the premises located at:

7119 WOLF RIVERS AVE, LAS VEGAS

Street, Municipality

CLARK

Nevada 89131-0139 (the "Premises").

County

ZIP

and further described as:

PARCEL I: LOT THIRTEEN (13) IN BLOCK "A" OF WYETH RANCH -
UNIT 2, 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, AND AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

The Premises includes all buildings and other improvements now or in the future on the Premises and all rights and interests which derive from our ownership, use or possession of the Premises and all appurtenances thereto.

WE UNDERSTAND and agree that MERS is a separate corporation acting solely as nominee for Lender and Lender's successors and assigns, and holds only legal title to the interests granted by us in this Deed of Trust, 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 or canceling this Deed of Trust.

LOAN: This Deed of Trust will secure your loan to us in the principal amount of \$ 68,631.00 or so much thereof as may be advanced and readvanced from time to time to CRISTELA PEREZ

the Borrower(s) under the Home Equity Credit Line Agreement And Disclosure Statement (the "Note") dated JULY 15, 2004, plus interest and costs, late charges and all other charges related to the loan, all of which sums are repayable according to the Note. This Deed of Trust will also secure the performance of all of the promises and agreements made by us and each Borrower and Co-Signer in the Note, all of our promises and agreements in this Deed of Trust, any extensions, renewals, amendments, supplements and other modifications of the Note, and any amounts advanced by you under the terms of the section of this Deed of Trust entitled "Our Authority To You." Loans under the Note may be made, repaid and remade from time to time in accordance with the terms of the Note and subject to the Credit Limit set forth in the Note.

OWNERSHIP: We are the sole owner(s) of the Premises. We have the legal right to mortgage, grant and convey the Premises to the Trustee.

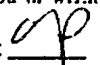
OUR IMPORTANT OBLIGATIONS:

(a) **TAXES** We will pay all real estate taxes, assessments, water charges and sewer rents relating to the Premises when they become due. We will not claim any credit on, or make deduction from, the loan under the Note because we pay these taxes and charges. We will provide you with proof of payment upon request.

(b) **MAINTENANCE:** We will maintain the building(s) on the Premises in good condition. We will not make major changes in the building(s) except for normal repairs. We will not tear down any of the building(s) on the Premises without first getting your consent. We will not use the Premises illegally.

If this Deed of Trust is on a unit in a condominium or a planned unit development, we shall perform all of our obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development and constituent documents.

(c) **INSURANCE:** We will keep the building(s) on the Premises insured at all times against loss by fire, flood and any other hazards you may specify. We may choose the insurance company, but our choice is subject to your reasonable approval. The policies must be for at least the amounts and the time periods that you specify. We will deliver to you upon your request the policies or other proof of the insurance. The policies must name you as "mortgagee" and "loss-payee" so that you will receive payment on all insurance claims, to the extent of your interest under this Deed of Trust, before we do. The insurance policies must also provide that you be given not less than 10 days prior written notice of any cancellation or reduction in coverage, for any reason. Upon request, we shall deliver the policies, certificates or other evidence of insurance to you. In the event of loss or damage to the Premises, we will immediately notify you in writing

Initials: 

• MERS HELOC - Deed of Trust
1E019-NV (02/04)

and file a proof of loss with the insurer. You may file a proof of loss on our behalf if we fail or refuse to do so. You may also sign our name to any check, draft or other order for the payment of insurance proceeds in the event of loss or damage to the Premises. If you receive payment of a claim, you will have the right to choose to use the money either to repair the Premises or to reduce the amount owing on the Note.

(d) **CONDEMNATION:** We assign to you the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Premises, or part thereof, or for conveyance in lieu of condemnation, all of which shall be paid to you, subject to the terms of any Prior Deed of Trust.

(e) **SECURITY INTEREST:** We will join with you in signing and filing documents and, at our expense, in doing whatever you believe is necessary to perfect and continue the perfection of your lien and security interest in the Premises. It is agreed that the Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Note secured hereby.

(f) **OUR AUTHORITY TO YOU:** If we fail to perform our obligations under this Deed of Trust, you may, if you choose, perform our obligations and pay such costs and expenses. You will add the amounts you advance to the sums owing on the Note, on which you will charge interest at the interest rate set forth in the Note. If, for example, we fail to honor our promises to maintain insurance in effect, or to pay filing fees, taxes or the costs necessary to keep the Premises in good condition and repair or to perform any of our other agreements with you, you may, if you choose, advance any sums to satisfy any of our agreements with you and charge us interest on such advances at the interest rate set forth in the Note. This Deed of Trust secures all such advances. Your payments on our behalf will not cure our failure to perform our promises in this Deed of Trust. Any replacement insurance that you obtain to cover loss or damages to the Premises may be limited to the amount owing on the Note plus the amount of any Prior Deeds of Trust.

(g) **PRIOR DEED OF TRUST:** If the provisions of this paragraph are completed, this Deed of Trust is subject and subordinate to a prior deed of trust dated **July 15, 2004** and given by us for the benefit of **Countrywide Home Loans**

as beneficiary, in the original amount of \$ ~~4499~~ **366,000.00** (the "Prior Deed of Trust"). We shall not increase, amend or modify the Prior Deed of Trust without your prior written consent and shall upon receipt of any written notice from the holder of the Prior Deed of Trust promptly deliver a copy of such notice to you. We shall pay and perform all of our obligations under the Prior Deed of Trust as and when required under the Prior Deed of Trust.

(h) **HAZARDOUS SUBSTANCES:** We shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Premises. We shall not do, nor allow anyone else to do, anything affecting the Premises that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Premises of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Premises. As used in this paragraph, "Hazardous Substances" are those substances defined as toxic or hazardous substances 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. As used in this paragraph, "Environmental Law" means federal laws and laws of the jurisdiction where the Premises are located that relate to health, safety or environmental

(i) **SALE OF PREMISES:** We will not sell, transfer ownership of, mortgage or otherwise dispose of our interest in the Premises, in whole or in part, or permit any other lien or claim against the Premises without your prior written consent.

(k) **INSPECTION:** We will permit you to inspect the Premises at any reasonable time.

NO LOSS OF RIGHTS: The Note and this Deed of Trust may be negotiated or assigned by you without releasing us or the Premises. You may add or release any person or property obligated under the Note and this Deed of Trust without losing your rights in the Premises.

DEFAULT; ACCELERATION: Except as may be prohibited by applicable law, and subject to any advance notice and cure period if required by applicable law, if any event or condition of default as described in the Note occurs, you may declare all amounts secured by this Deed of Trust immediately due and payable and the Trustee may foreclose upon this Deed of Trust or sell the Premises at a public sale. This means that you or the Trustee may arrange for the Premises to be sold, as provided by law, in order to pay off what we owe on the Note and under this Deed of Trust. If the money you receive from the sale is not enough to pay off what we owe you, we will still owe you the difference which you may seek to collect from us in accordance with applicable law. In addition, you or the Trustee may, in accordance with applicable law, (i) enter on and take possession of the Premises; (ii) collect the rental payments, including over-due rental payments, directly from tenants; (iii) manage the Premises; and (iv) sign, cancel and change leases. We agree that the interest rate set forth in the Note will continue before and after a default, entry of a judgment and foreclosure or public sale. In addition, you shall be entitled to collect all reasonable fees and costs actually incurred by you in proceeding to foreclosure or to public sale, including, but not limited to, trustee's fees, reasonable attorneys fees and costs of documentary evidence, abstracts and title reports.

ABSOLUTE ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER: We hereby unconditionally assign to you the rents of the Premises. Nevertheless, you will allow us to use the rents, if any, until such time as any event or condition of default as described in Paragraph 12.A of the Note occurs. You or a receiver appointed by the courts shall be entitled to enter upon, take possession of and manage the Premises and collect the rents of the Premises including those past due.

WAIVERS: To the extent permitted by applicable law, we waive and release any error or defects in proceedings to enforce this Deed of Trust and hereby waive the benefit of any present or future laws providing for stay of execution, extension of time, exemption from attachment, levy and sale and homestead exemption.

BINDING EFFECT: Each of us shall be fully responsible for all of the promises and agreements in this Deed of Trust. Until the Note has been paid in full and your obligation to make further advances under the Note has been terminated, the provisions of this Deed of Trust will be binding on us, our legal representatives, our heirs and all future owners of the Premises. This Deed of Trust is for your benefit and for the benefit of anyone to whom you may assign it. Upon payment in full of all amounts owing to you under the Note and this Deed of Trust, and provided any obligation to make further advances under the Note has terminated, this Deed of Trust and your rights in the Premises shall end.

NOTICE: Except for any notice required under applicable law to be given in another manner, (a) any notice to us provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by regular first class mail addressed to us at the last address appearing in your records or at such other address as we may designate by notice to you as provided herein, and (b) any notice to you shall be given by certified mail, return receipt requested, to your address at

For MERS:

P.O. Box 2026, Flint, MI 48051-2026

For Lender:

COUNTRYWIDE HOME LOANS, INC.

4500 Park Granada, Calabasas, CA 91302-1613

or to such other address as you may designate by notice to us. Any notice provided for in this Deed of Trust shall be deemed to have been given to us or you when given in the manner designated herein.

RELEASE: Upon payment of all sums secured by this Deed of Trust and provided your obligation to make further advances under the Note has terminated, the Trustee shall discharge this Deed of Trust without charge to us, except that we shall pay any fees for recording of a satisfaction of this Deed of Trust.

GENERAL: You or the Trustee can waive or delay enforcing any of your rights under this Deed of Trust without losing them. Any waiver by you of any provisions of this Deed of Trust will not be a waiver of that or any other provision on any other occasion.

TRUSTEE: Trustee accepts the trusts herein created when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee, by its acceptance hereof, agrees to perform and fulfill the trusts herein created, and shall be liable only for its negligence or misconduct. The Trustee waives any statutory fee and agrees to accept reasonable compensation from Grantor for any services rendered by it in accordance with the terms of this Deed of Trust. Upon receipt by Trustee of instructions from Beneficiary at any time or from time to time, Trustee shall (a) give any notice or direction or exercise any right, remedy or power hereunder or in respect of the Premises as shall be specified in such instructions, and (b) approve as satisfactory all matters required by the terms hereof to be satisfactory to Trustee or Beneficiary. Trustee may, but need not, take any of such actions in the absence of such instructions. Trustee may resign at any time upon giving of not less than 30 days' prior notice to Beneficiary, but will continue to act as trustee until its successor shall have been chosen and qualified. In the event of the death, removal, resignation, or refusal or inability to act of Trustee, Beneficiary shall have the irrevocable power, with or without cause, without notice of any kind, without specifying any reason therefor, and without applying to any court, to select and appoint a successor trustee by filing a deed or other instrument of appointment for record in each office in which this Deed of Trust is recorded, and upon such recordation the successor trustee shall become vested with the same powers, rights, duties and authority of the Trustee with the same effect as if originally made Trustee hereunder. Such successor shall not be required to give bond for the faithful performance of its duties unless required by Beneficiary.

Initials: 

THIS DEED OF TRUST has been signed by each of us under seal on the date first above written.

WITNESS:

N/A
I

Cristela Perez (SEAL)
Grantor: CRISTELA PEREZ

Grantor: (SEAL)

Grantor: (SEAL)

Grantor: (SEAL)

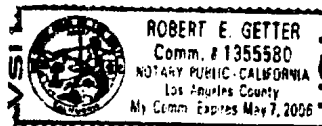
~~CALIFORNIA (K.E.G.)~~
STATE OF ~~NEVADA~~
COUNTY OF LOS ANGELES

This instrument was acknowledged before me on 16, JULY, 2004 by
CRISTELA PEREZ

Robert E. Getter
ROBERT E. GETTER, NOTARY PUBLIC

Mail Tax Statements To:
CRISTELA PEREZ

17450 BUREANK BLVD #104
ENCINO, CA 91316



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

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PLANNED UNIT DEVELOPMENT RIDER

PARCEL ID #:
125-15-811-013
Prepared By:
JOHN SHOLTZ

04011017JG

0005555256007004

[Escrow/Closing #]

Doc ID #

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

Page 1 of 4

Initials *cp*

7R (0008) 01
CONV/VA

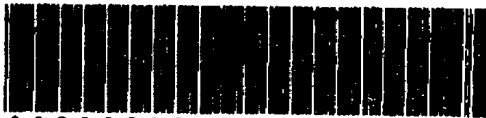
CHL (09/01)(d)

VMP MORTGAGE FORMS - (800)521-7291

Form 3150 1/01



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WY000439

13-008

205

DOC ID #: 0005555256007004

THIS PLANNED UNIT DEVELOPMENT RIDER is made this FIFTEENTH day of JULY, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to COUNTRYWIDE HOME LOANS, INC.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

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

WYETH RANCH - UNIT 2

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

Initials: 

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

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

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

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

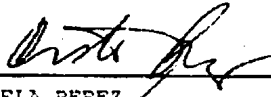
D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby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

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

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

DOC ID #: 0005555256007004

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



CRISTELA PEREZ (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

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

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SECOND HOME RIDER

PARCEL ID #:
125-15-811-013
Prepared By:
JOHN SHOLTZ

04011017JG

0005555256007004

[Escrow/Closing #]

[Doc ID #]

MULTISTATE SECND HOME RIDER - Single Family - Freddie Mac UNIFORM INSTRUMENT

Page 1 of 2

Initials: *cf*

 365R (0011)
CONV/VA

CHL (11/00)(d) VMP MORTGAGE FORMS - (800)521-7291

Form 3990 1/01



* 23991 *



* 0555256000001365R *

WY000443

13-012

209

DOC ID #: 0035555256007004

THIS SECOND HOME RIDER is made this FIFTEENTH day of JULY, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower" whether there are one or more persons undersigned) to secure Borrower's Note to COUNTRYWIDE HOME LOANS, INC. (the "Lender") of the same date and covering the Property described in the Security Instrument (the "Property"), which is located at:

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

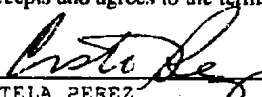
[Property Address]

In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree that Sections 6 and 8 of the Security Instrument are deleted and are replaced by the following:

6. Occupancy. Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, and shall not subject the Property to any timesharing or other shared ownership arrangement or to any rental pool or agreement that requires Borrower either to rent the Property or give a management firm or any other person any control over the occupancy or use of the Property.

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 second home.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Second Home Rider.



CRISTELA PEREZ (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower



20040721-0003730

Fee \$40.00
07/21/2004 13 47 29 T2004C0364542
Req: LAWYERS TITLE OF NEVADA
Frances Deane
Clark County Recorder Pgs: 27

Assessor's Parcel Number:
125-15-811-013
After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

12

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
JOHN SHOLTZ
Recording Requested By:
T. BONHAM

27

COUNTRYWIDE HOME LOANS, INC.

2275 CORPORATE CENTER #200
HENDERSON
NV 89074

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04011017JG
[Escrow/Closing #]

000555255207004
[Doc ID #]

DEED OF TRUST

MIN 1000157-0003937862-1

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 JULY 15, 2004 together with all Riders to this document.

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

Page 1 of 16

2-6A(NV) (0307) CHL (07/03)(d)

VMP Mortgage Solutions - (800)521-7291

Initials:

Form 3029 1/01



* 2 3 9 9 1 *



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WY000445

14-001

211

(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
COUNTRYWIDE HOME LOANS, INC.

Lender is a
CORPORATION

organized and existing under the laws of NEW YORK
4500 Park Granada
Calabasas, CA 91302-1613

Lender's address is

(D) "Trustee" is
CTC FORECLOSURE SERVICES CORP.

400 COUNTRYWIDE WAY, MSNSV-88 SIMI VALLEY, CA 93065 ,

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JULY 15, 2004
The Note states that Borrower owes Lender
THREE HUNDRED SIXTY SIX THOUSAND and 00/100

Dollars (U.S. \$ 366,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than AUGUST 01, 2034

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

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

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

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

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

Initials: *CP*

(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 of

[Type of Recording Jurisdiction]

CLARK

[Name of Recording Jurisdiction]

PARCEL I: LOT THIRTEEN (13) IN BLOCK "A" OF WYETH RANCH - UNIT 2, 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, AND AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

which currently has the address of

7119 WOLF RIVERS AVE, LAS VEGAS

[Street/City]

Nevada 89131-0139 ("Property Address"):

[Zip Code]

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

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

Initials: 

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

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

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

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

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

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

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

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

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Form 3029 1/01

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

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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

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paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

Initials: CP
Form 3029 1/01

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

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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.

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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.

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

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

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees,

✓ Initials: CP
Form 3029 1/01

property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

✓ Initials: *CP*
Form 3029 1/01

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

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

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

✓ Initials: *SP*
Form 3029 1/01

DOC ID #: 0005555255207004

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:

N/A

L



CRISTELA PEREZ (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower



-5A(NV) (0307)

CHL (07/03)

Page 15 of 16

Form 3029 1/01

WY000459

14-015

225

CALIFORNIA (R.E.G.)
STATE OF ~~NEVADA~~
COUNTY OF ~~CLATSOP~~ LOS ANGELES

This instrument was acknowledged before me on 16, JULY, 2024 by
CRISTELA PEREZ



Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065

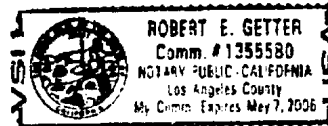


EXHIBIT "A"

PARCEL I:

Lot Thirteen (13) in Block "A" of WYETH RANCH - UNIT 2, 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, and as the same may be amended from time to time.

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

[Space Above This Line For Recording Data]

PLANNED UNIT DEVELOPMENT RIDER

PARCEL ID #:
125-15-811-013
Prepared By:
JOHN SHOLTZ

04011017JG

0005555255207004

[Escrow/Closing #]

[Doc ID #]

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

Page 1 of 4

Initials: *sp*

VMP 7R (0008).01
CONV/VA

CHL (09/01)(d) VMP MORTGAGE FORMS - (800)521-7291

Form 3150 1/01



WY000462

14-018

228

DOC ID #: 0005555255207004

THIS PLANNED UNIT DEVELOPMENT RIDER is made this FIFTEENTH day of JULY, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to COUNTRYWIDE HOME LOANS, INC. (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

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

[Property Address]

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

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

WYETH RANCH - UNIT 2

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

Initials: 

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

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

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

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

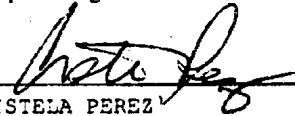
D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby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

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

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

DOC ID #: 0005555255207004

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



CRISTELA PEREZ (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
Borrower

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

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SECOND HOME RIDER

PARCEL ID #:
125-15-811-C13
Prepared By:
JOHN SHOLTZ

040110173G

0005555255207004

[Escrow/Closing #]

[Doc ID #]

MULTISTATE SECOND HOME RIDER - Single Family - Freddie Mac UNIFORM INSTRUMENT

Page 1 of 2

Initials. *JS*

365R (0011) CHL (11/00)(d) VMP MORTGAGE FORMS - (800)521-7291
CONVVA

Form 3890 1/01



* 23991 *



* 055652552000001385R *

WY000466

14-022

232

DOC ID #: 0005555255207004

THIS SECOND HOME RIDER is made this FIFTEENTH day of JULY, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower" whether there are one or more persons undersigned) to secure Borrower's Note to COUNTRYWIDE HOME LOANS, INC. (the "Lender") of the same date and covering the Property described in the Security Instrument (the "Property"), which is located at:

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

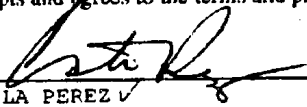
[Property Address]

In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree that Sections 6 and 8 of the Security Instrument are deleted and are replaced by the following:

6. Occupancy. Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, and shall not subject the Property to any timesharing or other shared ownership arrangement or to any rental pool or agreement that requires Borrower either to rent the Property or give a management firm or any other person any control over the occupancy or use of the Property.

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 second home.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Second Home Rider.

 (Seal)
CRISTELA PEREZ ✓ -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

Assessor's Parcel Number:
125-15-811-013
After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
JOHN SHOLTZ
Recording Requested By:

[Space Above This Line For Recording Data]

FIXED/ADJUSTABLE RATE RIDER
(LIBOR One-Year Index (As Published In *The Wall Street Journal*) - Rate Caps)

04011017JG 0005555255207004
[Escrow/Closing #] [Doc ID #]

CONV

• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family
INTEREST ONLY
1U796-XX (06/03)(d)

Page 1 of 4

Initials: *CP*



* 2 3 9 9 1 *



* 0 5 5 5 2 5 5 2 0 0 0 0 1 U 7 9 6 *

WY000468

14-024

234

THIS FIXED/ADJUSTABLE RATE RIDER is made this FIFTEENTH day of JULY, 2004, 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 COUNTRYWIDE HOME LOANS, INC.

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

7119 WOLF RIVERS AVE
LAS VEGAS, NV 89131-0139
(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 5.875%. 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 AUGUST, 2007, 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 & ONE-QUARTER 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.

CONV

• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family
INTEREST ONLY

1U796-XX (06/03)

Page 2 of 4

✓ Initials: 

WY000469

14-025

235

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 7.875 % or less than 3.875 %. 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 11.875 %.

(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.

CONV

• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family
INTEREST ONLY
1U796-XX (06/03)

Page 3 of 4

✓ Initials: 

WY000470

14-026


236

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

CONV
 • MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family
 INTEREST ONLY
 1U796-XX (06/03)



20040721-0003728

Fee \$17.00 RPRT \$2,335.90
07/21/2004 13:47:29 12004006542
Re: LAWYERS TITLE OF NEVADA
Frances Deane
Clark County Recorder Pgs 4

Assessor's Parcel Number: 125-15-811-013
Escrow Number: 04011017GR

Affix R. P. T. T. \$2,315.40

Recording Requested by:
Lawyers Title of Nevada, Inc.
Please mail tax statements to:
After Recording, mail to:
Cristela Perez
7119 Wolf Rivers Avenue
Las Vegas, NV 89131

The area to the right is provided for the recorder's office

GRANT, BARGAIN, SALE DEED

For a valuable consideration, receipt of which is hereby acknowledged, PN II, Inc. a Nevada Corporation d/b/a Pulte Homes of Nevada do(es) hereby Grant, Bargain, Sell and Convey to

CRISTELA PEREZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY

the following described real property situate in the City of Las Vegas
County of Clark State of Nevada

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART
HEREOF FOR THE COMPLETE LEGAL DESCRIPTION

SUBJECT TO:

1. Taxes for the fiscal year 20 04-2005.
2. Rights of way, reservations, restrictions, easements and conditions of record.

Together with all tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues profits thereof.

Dated this 19th day of July, 2004.

PNH, Inc. a Nevada Corporation d/b/a Pulte Homes of Nevada

Roberta Leonard
Roberta Leonard Lawful Agent

STATE OF NEVADA

COUNTY OF CLARK

On July 19, 2004 personally appeared
before me, a Notary Public, Roberta Leonard Lawful Agent
personally known (or proved) to me to be the person
whose name is subscribed to the above instrument who
acknowledged that she executed the instrument.

D. Bergman
(NOTARY PUBLIC)

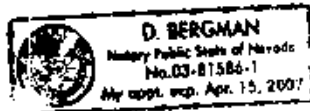


EXHIBIT "A"

PARCEL 1

Lot Thirteen (13) in Block "A" of WYDE RANCH UNIT 2, as file in Book 112 of
Plats, Page 8, in the Office of the County Recorder of Clark County, Nevada.

PARCEL 11:

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, 2001 in Book 10021004
as Document No. 01353, and as the same may be amended from time to time.

**STATE OF NEVADA
DECLARATION OF VALUE FORM 40**
1. Assessor Parcel Number(s)a) 125-15-811-013

b)

c)

d)

2. Type of Property:a) ☐ Vacant Landc) ☐ Condominiume) ☐ Apartment Buildingg) ☐ Agriculturali) ☐ Otherb) ☒ Single Family Residenced) ☐ 2-4 Plexf) ☐ Commercial/Industrialh) ☐ Mobile Home**FOR RECORDER'S OPTIONAL USE ONLY**

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. Total Value/Sales Price of Property

\$457,540.00

Deed in Lieu of Foreclosure Only (value of property)

\$0.00

Transfer Tax Value:

\$457,540.00

Real Property Transfer Tax Due

\$23,154.00 ✓

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

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

Signature: Roberta Leonard

Capacity: Roberta Leonard, Lawful Agent for PN II, Inc.

Signature: Benjamin

Capacity: agent

SELLER (GRANTOR) INFORMATION**(REQUIRED)**Print Name: PN II Inc., a Nevada CorpAddress: 1635 Village Center Cir, #250City: Las VegasState: NVZip: 89134**BUYER (GRANTEE) INFORMATION****(REQUIRED)**Print Name: Cristela PerezAddress: 7719 Wolf RiverCity: Las VegasState: NV Zip: 89131**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**Print Name: Lawyers Title of Nevada, Inc.Escrow #: CRAddress: 1645 Village Center Cir, #291Escrow #: Jane Gray/ Maria RampaCity: Las VegasState: NVZip: 89134

AN ADDITIONAL RECORDING FEE OF \$1.00 WILL APPLY FOR EACH DECLARATION OF VALUE FORM PRESENTED TO CLARK COUNTY, EFFECTIVE JUNE 1, 2004.

3728

Perez (R)
2.3295889

Loan No.: 32501493

InterestFirstSM 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
[Date]

LAS VEGAS
[City]

NEVADA
[State]

LF MQCB
7119 WOLF 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

MULTISTATE InterestFirst ADJUSTABLE RATE NOTE—ONE-YEAR LIBOR INDEX—Single Family—Fannie Mae Uniform Instrument

Form 3530 11/01
(page 1 of 5)

usc3530



32501493



NOTE

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242

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 gave 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

MULTISTATE InterestFirst ADJUSTABLE RATE NOTE—ONE-YEAR LIBOR INDEX—Single Family—Fannie Mae Uniform Instrument

Form 3530 11/01
(page 3 of 3)

MBT0004

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:

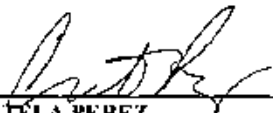
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales 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

Pay to the order of:

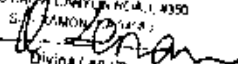
[Sign Original Only]

Without Recourse
CMG MORTGAGE, INC.

By: _____

Name and Title: _____

PAY TO THE ORDER OF
WITHOUT RECOURSE
CITIMORTGAGE, INC.

CMG MORTGAGE, INC.
A CALIFORNIA CORPORATION
3160 LINDEN CANYON RD., SUITE 100
SAN ANTONIO, TEXAS 78217

Divina Llanito
ASSISTANT SECRETARY

MULTISTATE InterestFirst ADJUSTABLE RATE NOTE—ONE-YEAR LIBOR INDEX—Single Family—Fannie Mae Uniform Instrument

Form 3530 11/01
(page 5 of 5)

MBT0006

19-005

246

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 WOOL RIVERS AVENUE, LAS VEGAS, NEVADA 89131
MOL 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;

MB-2117 1/95
(5/1, 7/1, 10/1 ARM)
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Page 1 of 2



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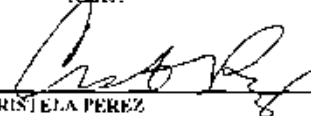
RIDER

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 Notchholder 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

MBT0009

19-008

249

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

MBT0010

Certificate of Service

I certify that I filed the Respondent's Appendix (Volume 1) electronically with the Nevada Supreme Court on the 18th day of April 2022. Each of the registered users of the Court's electronic filing system shall receive notice.

Dated this 18th day of April 2022.

David J. Merrill, P.C.

By: /s/ David J. Merrill
David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935
Attorney for Marchai, B.T.