Case No. 83214

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A NEVADA LIMITED LIABILITY COMPANY, Appellant, vs. JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, A NATIONAL ASSOCIATION, Respondent.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JESSICA PETERSEN, District Judge
District Court Case No. A-13-692304-C

APPELLANT APPENDIX VOLUME 6

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2002) ("Windfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not serve the public interest and do more than legally enrich speculators."). Additionally, as a practical matter, to apply *SFR* retroactively would allow a nominal amount due for HOA fees to extinguish a lien worth hundreds of thousands of dollars. *See Premier One Holdings, Inc. v. BAC Home Loans Servicing, LP*, Case No. 2:13-cv-00895-JCM-GWF, 2013 U.S. Dist. LEXIS 112590, at *10 (D. Nev. 9, 2013) (noting that it "would be completely absurd" to allow $3,197.47 in HOA fees to extinguish a deed of trust securing a $305,992 loan).

D. <u>The Nominal Purchase Price of 3% of the Property's Fair Market Value Is Grossly Inadequate.</u>

SFR's grossly inadequate purchase price of only $3,700 invalidates the HOA Foreclosure Sale under the Restatement (Third) of Property: Mortgages ("Restatement"). In its most recent interpretation of NRS Chapter 116, the Nevada Supreme Court stated that "courts retain the power to grant equitable relief from a defective foreclosure sale," and recognized that if the price paid at a foreclosure sale is so "obviously inadequate" then a foreclosure sale may be set aside for gross inadequacy of price alone. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.,* 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1113 (2016) (quoting the Restatement (Third) of Property: Mortgages § 8.3 cmt. b (1997)).[13]

Section 8.3 of the Restatement provides:

> (a) A foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with applicable law does not render the foreclosure defective **<u>unless the price is grossly inadequate.</u>**

[13] The Nevada Supreme Court also looked to the Restatement (Third) of Property: Mortgages for guidance in the *SFR* decision itself and has consistently done so in other recent decisions. *See SFR*, 334 P.3d at 412; *see also, Montierth v. Deutsche Bank (In re Montierth)*, 131 Nev. Adv. Rep. 55, 354 P.3d 648, 651 (2015) (adopting Restatement rule); *United States Bank Nat'l Ass'n v. Palmilla Dev. Co.*, 131 Nev. Adv. Rep. 9, 343 P.3d 603, 605-06 (2015) (citing Restatement); *First Fin. Bank, N.A. v. Lane*, 130 Nev. Adv. Rep. 96, 339 P.3d 1289, 1290-91 (2014) (citing Restatement); *Recontrust Co., N.A. v. Zhang*, 130 Nev. Adv. Rep. 1, 317 P.3d 814, 817-18 (2014) (citing Restatement); *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. Adv. Rep. 61, 290 P.3d 249, 253 n.6 (2012) (citing Restatement); *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. Adv. Rep. 48, 286 P.3d 249, 257-60 (2012) (adopting § 5.4 of Restatement); *Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 126 Nev. Adv. Rep. 41, 245 P.3d 535, 539-41 (2010) (citing Restatement); *Houston v. Bank of Am.*, 119 Nev. 485, 490, 78 P.3d 71, 74 (2003) (adopting § 7.6 of Restatement).

(Emphasis added). The commentary to § 8.3, which is quoted in *Shadow Wood,* states that a sale price is "grossly inadequate" if it is less than 20% of the property's fair market value. *Id.* at § 8.3 cmt. B. Thus, the Restatement allows a court to void a foreclosure sale based on **price alone** and suggests that refusing to invalidate a sale price well below the 20% standard would be an abuse of discretion. *See also In re Krohn*, 52 P.3d 774, 779 (Ariz. 2002)("[w]indfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not serve the public interest and do no more than legally enrich speculators.").

In this case, SFR's attempt to purchase property with a fair market value of $123,000 for a mere $3,700 – *i.e.*, **only 3%** of its fair market value – unquestionably constitutes a grossly inadequate price. *See* Ex. 23; *See also* Ex. 3. The sale price is also grossly inadequate when viewed in light of a $117,609 tax valuation the Clark County Assessor performed just one month prior to the HOA Foreclosure Sale, *see* Ex. 25, Clark County Assessor's Real Property Report, which would amount to a sale for 3.15% of the Property's fair market value. N.R.S. § 375.010(2) (stating that "'estimated fair market value' . . . may be derived from the assessor's taxable value.")

As the Restatement instructs, it would be an abuse of discretion for this Court to refuse to invalidate the sale given this grossly inadequate purchase price. *See* Restatement § 8.3 cmt. b.

E. SFR's Grossly Inadequate Purchase Price Was Accompanied by Unfairness in the Sale.

Even were the Court to require improprieties beyond an inadequate price, *see Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963), the HOA Foreclosure Sale was marred by additional improprieties that amount to unfairness. As an initial matter, the HOA Notices violated the State Foreclosure Statute by containing debt amounts that were incorrect in that they included late fees and assessments that pre-dated Borrowers' bankruptcy, *see* Exs. 19 & 20, and that were subject to the Bankruptcy Court's discharge. 11 U.S.C. § 523(a)(3)(A); 11 U.S.C. § 727(b); *In re Breezely*, 994 F.2d 1433, 1435 (9th Cir. 1992).

Not only do these incorrect amounts in violation of the State Foreclosure Statute constitute improprieties on their own, they also likely drove the sale price down by dissuading

more investors from bidding on the Property at the foreclosure sale than just the 2 that actually did.

Another impropriety is that the HOA purported to foreclose on a lien created pursuant to its CC&Rs, which expressly provided that an HOA lien "shall be subordinate to the lien of any first Mortgage upon any Lot." The misleading references to the CC&Rs in the HOA's notices not only failed to provide Chase with any notice that the HOA Foreclosure Sale was, as SFR claims, an attempt to extinguish the Deed of Trust; they also signaled to prospective purchasers that they would be purchasing the Property subject to a protected deed of trust (in this case, securing an obligation of $240,000), which potentially also chilled bidding.

Finally, the plain language of the HOA Foreclosure Deed states that SFR purchased only the HOA's lien interest in the Property. The HOA Foreclosure Deed adheres to the CC&Rs by recognizing the HOA Foreclosure Sale would not extinguish the Deed of Trust, providing further support that SFR believed it was purchasing only the HOA's lien interest in the Property.

The undisputed facts demonstrate at least five irregularities in the sale that may explain why the Property sold for 3% of its value. Thus, even under the outdated *Golden* decision, Chase is entitled to summary judgment.

F. <u>SFR Holds Only a Lien Interest in the Property, Not Title to the Property.</u>

SFR's position also fails as a matter of law because, again, the plain language of the HOA Foreclosure Deed conveys only the HOA's interest in the Property—a mere lien.

As a matter of basic property law, a deed's granting clause determines the interest conveyed. *Griffith v. Cloud*, 764 P.2d 163, 165 (Okla. 1988); *see also* 23 Am. Jur 2d *Deeds* § 237. A conveyance cannot transfer an interest greater than the interest provided for in the granting clause. *Griffith*, 764 P.2d at 165. Thus, under NRS 116.31164, a foreclosure deed must grant all title of the <u>unit's owner</u> to a sale purchaser in order to vest in the purchaser "the title of the unit's owner without equity or right of redemption." NRS 116.31164(3).

As discussed above, the HOA Foreclosure Deed grants SFR only the <u>HOA's</u> interest in the Property, rather than the unit owner's. Since the HOA's only interest in the Property was its lien, SFR received, at most, this lien, *Griffith*, 764 P.2d at 165, and thus SFR does not have title

to the Property at all.

G. <u>The State Foreclosure Statute Is Unconstitutional.</u>

A party may challenge the constitutionality of a statute in two ways: based on the statute's application to the specific facts of a case (*i.e.*, an as-applied challenge) or based on the statute's intrinsic terms, which violated a constitutional right from the day of the law's enactment (*i.e.*, a facial challenge). *See Ezell v. City of Chicago*, 651 F.3d 684, 698-99 (7th Cir. 2011); *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 193 (6th Cir. 1997).

Chase presents a facial challenge to the State Foreclosure Statute – a pure legal issue that is ripe for determination at the summary judgment stage. *See* N.R.C.P. 56(c). The Due Process clause of the United States Constitution requires that "at a minimum, [the] deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950)

Here, the Nevada Legislature gave, by statute, homeowners associations the right to non-judicially foreclose. *See* NRS 116.3116 *et seq.* Thus, this <u>statutorily-created</u> foreclosure mechanism must comply with due process before it can extinguish a deed of trust that, but for the state's enactment of the statute, would enjoy priority status. *See J.D. Constr., Inc. v. IBEX Int'l Grp., LLC*, 126 Nev. Adv. Rep. 36, 240 P.3d 1033, 1040 (2010).

The State Foreclosure Statute does not include any express or mandatory notice provision requiring notice to a lender or other lienholder. It is not enough that the State Foreclosure Statute required notice to the homeowner. *See Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799-800 (1983) ("Notice to the property owner, who is not in privity with his creditor and who has failed to take steps necessary to preserve his own property interest, also cannot be expected to lead to actual notice to the mortgagee."). While the State Foreclosure Statute does address notice requirements in four separate provisions, none of those four provisions mandates actual notice to the lender. *See NRS 116.31162; NRS 116.31163; NRS 116.31165; 116.31168.* I nstead, each requires the lender to "opt-in" and affirmatively request notice, which is inadequate. *See Small*

Engine Shop, Inc. v. Cascio, 878 F.2d 883, 890-93 (5th Cir. 1989) (holding an opt-in notice requirement under Louisiana law violated federal due process).

Further, recent amendments to the State Foreclosure Statute confirms that it contained an unconstitutional opt-in provision. "[W]hen the [Nevada] Legislature substantially amends a statute, it is ordinarily presumed that the Legislature intended to change the law." *Pub. Emps. Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 156-57, 179 P.3d 542, 554 (2008). Here, the Nevada Legislature passed two bills, A.B. 141 and S.B. 306, to amend the notice provisions contained in NRS Chapter 116, thereby confirming that the State Foreclosure Statute required a deed of trust beneficiary to opt in before it was assured of receiving notice. *See* S.B. 306, 78th Leg., 2015 Nev. Stat. 266; A.B. 141, 78th Leg., 2015 Nev. Stat. 304.

Most significantly, S.B. 306 amends NRS 116.31163 to categorically require an association to mail its notice of default to any holder of a recorded security interest. The second bill, A.B. 141, focuses solely on notice. It amends NRS 116.31163(2), which governs the mailing of an association's notice of default. Therefore, the amended statute requires an association to mail its notice of default to any holder of a recorded security interest, regardless of whether the holder of the interest has opted in for such notice.[14]

Accordingly, on its face, the State Foreclosure Statute violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution, as well as the Due Process Clause of the Nevada Constitution.

H. SFR Was Unjustly Enriched.

Alternatively, if the Court were to quiet title in favor of SFR, then the Court must grant Chase's claim for unjust enrichment. "The doctrine of unjust enrichment or recovery in quasi contract applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another [or should pay for]." *Leasepartners Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 756, 942 P.2d 182, 187 (1997). Here, Chase paid for property insurance and

[14] *See, e.g., Hrg. on S.B. 306 before the S. Comm. on Jud.*, 2015 Leg., 78th Sess., at 6 (Nev. 2015), *available at* www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/829.pdf

property taxes for the Property from September 2013 through September 2014 in the amount of $3,772.78. *See* Ex 24. Chase advanced these funds because it thought that the Deed of Trust was a lien against the Property and it wanted to protect its collateral. SFR has benefited unjustly from these payments and should disgorge the benefit. Accordingly, Chase requests judgment on the unjust enrichment claim against SFR in the amount of $3,772.78.

IV. CONCLUSION

For the reasons set forth above, Chase respectfully requests that the Court: 1) Grant Chase's motion for summary judgment and declare that the Property remains subject to Chase's Deed of Trust, 2) Invalidate the HOA Foreclosure Sale, 3) Quiet title in favor of Chase or 4) In the alternative, grant judgment in Chase's favor in the amount of $3,772.78 for the unjust enrichment claim.

Dated: July 26, 2016

By: ___/s/ Holly Priest_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of July, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of **JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment** was served to the following parties in the manner set forth below:

KIM GILBERT EBRON Howard C. Kim, Esq. Diana S. Cline, Esq. Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139 *Attorneys for SFR Investments Pool 1, LLC*	

[ ] Hand Delivery

[ ] U.S. Mail, Postage Pre-Paid

[XX] Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter

/s/ Mary Kay Carlton
An employee of BALLARD SPAHR LLP

TAB 17

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DISTRICT COURT
CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10, ROE BUSINESS ENTITIES 1 through 10, inclusive,

Defendants.

CASE NO. A-13-692304-C

DEPT NO. XXIV

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

Counter-Claimant,

vs.

JP MORGAN CHASE BANK National Association, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1-10 and ROE BUSINESS ENTITIES 1 through 10, inclusive,

Counter-Defendant/Cross Defendants.

PLAINTIFF JPMORGAN CHASE BANK, N.A.'S OPPOSITION TO SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

Time of hearing: 9:00 a.m.
Date of hearing: August 9, 2016

Plaintiff JPMorgan Chase Bank, N.A. ("Chase") opposes Defendant SFR Investments Pool 1, LLC's Motion for Summary Judgment. This opposition is made based on the following points and authorities, the attached exhibits, the documents on file in this case, and any argument that the Court may hear.

I. INTRODUCTION

In this case, the Court must determine whether Defendant SFR Investments Pool 1, LLC ("SFR") purchased free and clear title to 3263 Morning Springs Drive, Henderson, Nevada 89074 (the "Property"). SFR has moved for summary judgment on its quiet title claim, contending that, because it purchased the Property from a 2013 foreclosure sale held on behalf of the Pebble Canyon Homeowners Association (the "Association"), SFR necessarily took title without remaining subject to a Deed of Trust recorded against the Property. Chase is the servicer for the Deed of Trust, which is owned by Federal Home Loan Mortgage Corporation ("Freddie Mac").[1]

SFR's motion fails for numerous reasons. First, SFR fails to marshal the necessary admissible evidence to show that it is entitled to judgment in its favor as a matter of law. *See* N.R.C.P. 56. This alone warrants the denial of its motion. Second, the Housing and Economic Recovery Act of 2008 ("HERA") precluded the foreclosure sale from extinguishing the Deed of Trust because property interests of Freddie Mac are protected while Freddie Mac is under the conservatorship of the Federal Housing Finance Agency ("FHFA" or the "Conservator"). Third, *SFR Investments Pool 1, LLC v. U.S. Bank* does not apply retroactively. Fourth, the Court should void the sale due to the gross inadequacy of price paid by SFR, in addition to the other irregularities in the sale. Fifth, SFR is not a bona fide purchaser, as it knew the Property was at risk of litigation at the time of purchase and had constructive notice that the sale would not extinguish the Deed of Trust. Sixth, Chase maintains the right to redeem the lien because the Association conveyed only its lien interest to SFR. Seventh, the pre-October 2015 version of NRS

[1] The relationship between Chase, as the servicer of the Loan, and Freddie Mac, as owner of the Loan, is governed by the Freddie Mac Single Family Seller/Servicer Guide (the "Guide"), a central governing document for Freddie Mac's relationship with servicers nationwide. *See* Ex. 7, Freddie Mac Decl. ¶ ; Ex. 9, Guide at 1101.2(a).

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116.3116 *et seq.* (the "State Foreclosure Statute") is unconstitutional. Finally, the voluntary payment doctrine does not preclude Chase's unjust enrichment claim.

In light of these reasons, SFR's Motion for Summary Judgment should be denied.

II. STATEMENT OF DISPUTED FACTS

A. Standard of Review

Summary judgment should be granted only if there is "no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." N.R.C.P. 56(c). The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). In addition, the Court must view the evidence, and any reasonable inferences drawn from it, *in the light most favorable to the nonmoving party*. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (emphasis added).

B. SFR's Motion Relies on Inadmissible Evidence

SFR asks the Court to accept various factual allegations central to its motion that are based on a declaration of SFR's attorney, Jacqueline Gilbert (the "Gilbert Declaration," attached as Exhibit A to SFR's Motion for Summary Judgment ("SFR's Motion")), a declaration of SFR's manager, Christopher Hardin (the "Hardin Declaration," attached as Exhibit B to SFR's Motion), and documents attached to both declarations. This "evidence" is largely inadmissible and may not be considered by the Court.

Affidavits supporting a motion for summary judgment "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." N.R.C.P 56(e). Rule 56(e) further requires that all sworn or certified copies of papers referred to in the affidavit be attached and served with the motion. This "rule is mandatory, and a district court's reliance upon an affidavit which does not comply with the rule may constitute reversible error." *Havas v. Hughes Estate*, 98 Nev. 172, 173, 643 P.2d 1220, 1221 (1982).

The declarations SFR provides to support SFR's Motion fail to meet the requirements of N.R.C.P 56(e). Gilbert and Hardin each attempt to testify about matters of which they have no

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personal knowledge—a requirement for admissible witness testimony. *See* NRS 50.025 ("A witness may not testify to a matter unless . . . [e]vidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter").

C. Chase Disputes SFR's Proffered Facts

Aside from being inadmissible, many of SFR's submitted facts are in dispute, for the reasons set forth in the following table[2]:

SFR's "Undisputed" Fact	Chase's Response[3]
"Nevada adopted Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2)."	The referenced Act and statute speak for themselves.
"Association perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions & Restrictions ("CC&Rs) as Instrument No. 01962 in Book 911108."	SFR has not provided a complete copy of the CC&Rs. *See* N.R.C.P 56(e). Accordingly, SFR has failed to carry its burden of providing admissible evidence for this "fact."
"Grant, Bargain, Sale Deed recorded in Official Records of the Clark County Recorder as Instrument No. 200606120003525 reflecting ownership of the Property by Robert M. Hawkins and Christine V. Hawkins ('the Hawkinses')."	The referenced document speaks for itself.
"First Deed of Trust in favor of GreenPoint Mortgage Funding, Inc. recorded as Instrument No. 200606120003526. The lender prepared, and the Hawkinses signed, a Planned Unit Development Rider as part of the First Deed of Trust, recognizing the need to pay assessments to the Association and the ability of the lender to pay the assessments should the Hawkinses default. The First Deed of Trust also included language that allowed the lender to escrow funds for '(a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property.'"	Disputed. SFR mischaracterizes the Planned Unit Development Rider ("PUD Rider"). Under the PUD Rider, a lender is not *required* to pay assessments in the event of a default. Further, the PUD Rider attached to the First Deed of Trust does not identify the Association. Lastly, Chase was not the lender that prepared the PUD Rider. The originating lender was GreenPoint Mortgage Funding, Inc.
"The Hawkinses became delinquent on the First Deed of Trust payments."	Undisputed.

[2] To the extent that SFR's "undisputed facts" refer to dates, Chase does not concede any date that is not reflected and supported by recorded documents.

[3] Each response set forth incorporates Chase's objections to admissibility set forth in the preceding section.

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SFR's "Undisputed" Fact	Chase's Response[3]
"The Bank recorded a Notice of Default and Election to Sell Under Deed of Trust."	Undisputed.
"Assignment of Deed of Trust transferring beneficial interest in First Deed of Trust to JPMorgan Chase Bank, recorded as Instrument No. 20091027000618."	Undisputed.
"Substitution of Trustee substituting MERS to California Reconveyance Company, recorded as Instrument No. 20091027000619."	Disputed. The referenced document substitutes California Reconveyance Company for Marin Conveyancing Corp.
"Association recorded Notice of Delinquent Assessment Lien ('NODA') as Instrument No. 20120803000297 2. The NODA was thereafter mailed to the Hawkinses.'"	The referenced document speaks for itself. The mailing of the referenced document is immaterial.
"After more than 30 days elapsed from the date of mailing of the NODA, Association recorded a Notice of Default and Election to Sell Under Homeowners Association Lien ('Notice of Default') as Instrument No. 20120920000144 6. The Notice of Default was thereafter mailed to numerous parties, including, in pertinent part, the Hawkinses and the Bank (including its agents). Bank admits to receiving the Notice of Default."	The referenced document speaks for itself. The mailing and receipt of the referenced document are immaterial.
"After more than 90 days elapsed from the date of the mailing of the Notice of Default, Association mailed a Notice of Foreclosure Sale ('Notice of Sale') to numerous parties, including, in pertinent part, the Hawkinses and the Bank (including its agents). Bank admits to receiving the Notice of Sale."	The referenced document speaks for itself. The receipt of the referenced document is immaterial.
"The Notice of Sale was posted on the Property in a conspicuous place. The Notice of Sale was thereafter posted at three public places within Clark County for 20 consecutive days. The Notice of Sale was published in the Nevada Legal News for three consecutive weeks."	Immaterial. Further, none of the documents SFR cites in support of these allegations indicate that the referenced document was posted for 20 consecutive days.
"Association recorded the Notice of Sale."	The referenced document does not contain

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SFR's "Undisputed" Fact	Chase's Response[3]
	recording information.
"The Bank recorded a Substitution of Trustee."	Undisputed.
"Association foreclosure sale took place and SFR placed winning bid of $3,700.00."	The Foreclosure Deed cited by SFR speaks for itself.
"There were multiple bidders in attendance at the sale."	Disputed. SFR's statement that "there were multiple bidders in attendance at the sale" mischaracterizes paragraph 15 of the Hardin Declaration. Hardin stated that he has "never attended a sale where there was only one qualified bidder in attendance." Here, only 2 investors bid on the Property.
"No one acting on behalf of the Bank attended the sale."	Immaterial.
"Association foreclosure deed vesting title in SFR recorded as Instrument No. 20130306000 1648. As recited in the Association Foreclosure Deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, the elapsing of 90 days, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale."	Disputed. The "Foreclosure Deed" recorded on March 6, 2013 as Clark County Recorded Instrument No. 20130306000 1648 states as follows: Nevada Association Services, Inc. as agent for Pebble Canyon HOA does hereby grant and convey, but without warranty express or implied to: SFR Investments Pool 1, LLC…..all **its** right, title and interest in and to that certain property… Ex. 18 (emphasis added). The interest NAS had as agent for the Association was merely a lien interest, not a title interest.
"As recited in the Association Foreclosure Deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, the elapsing of 90 days, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale."	Disputed. While the "Foreclosure Deed" speaks for itself, Chase disputes the legal conclusion that the sale "complied with all requirements of law" and the implication that the document references recording of the Notice of Sale. Chase further disputes any attempt to infer or conclude from this document that the Association mailed Chase a Notice of Delinquent Assessment.
"SFR has no reason to doubt the recitals in the Foreclosure Deed. If there were any issues with delinquency or noticing, none of these were communicated to SFR."	Immaterial. SFR's doubts and subjective beliefs are not facts relevant to this case. To the extent the Court could construe these doubts and subjective beliefs as a material fact, Chase disputes it. SFR concedes that it knew the Property posed a litigation risk, yet it bought the Property anyway. As set forth below, SFR had

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SFR's "Undisputed" Fact	Chase's Response[3]
	inquiry notice to confirm the circumstances of the sale but chose to be willfully ignorant when it purchased the property. *See* Ex. 28.
"Further, neither SFR, nor its agent, have any relationship with the Association besides owning property within the community. Similarly, neither SFR, nor its agent, have any relationship with NAS, the Association's agent, beyond attending auctions, bidding, and occasionally purchasing properties at publically-held auctions conducted by NAS."	As noted above, to the extent that Hardin's assertions regarding SFR's relationship with the Association and NAS are based on what was relayed by other members of SFR, these statements are hearsay.
"The Bank never contacted NAS or the Association prior to the sale.	Immaterial and disputed. While Chase's contact with NAS prior to the sale is irrelevant for purposes of the present motion, the cites in support of this allegation do not support the broad statement that "[t]he Bank never contacted NAS or the Association prior to the sale."
"The Bank never paid or tried to pay any portion of the Association's lien."	Undisputed.
"No release of the superpriority portion of the Association's lien was recorded against the Property."	Disputed. The Hardin Declaration cited to in support of this factual allegation lacks foundation, as Hardin has no personal knowledge of the acts of third parties such as the Association and the Association trustee. Specifically, Hardin lacks knowledge as to whether the lien was in fact released. Further, he has no personal knowledge of whether there was a "super-priority" portion included in the lien. To the extent that Hardin relies on information provided by the Association, this assertion contains hearsay.
"No lis pendens was recorded against the Property."	Immaterial and disputed. The Hardin Declaration cited to in support of this factual allegation lacks foundation, as Hardin has no personal knowledge of the acts of the Clark County Recorder. Finally, to the extent that Hardin relies on website information, this assertion contains hearsay.
"A second Assignment of Deed of Trust transferring beneficial interest in First Deed of Trust to JPMorgan Chase Bank, recorded as Instrument No. 201308230002507."	Undisputed, although the referenced document is titled "Corporate Assignment of Deed of Trust."

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SFR's "Undisputed" Fact	Chase's Response[3]
"The Bank filed its Complaint for Declaratory Relief and Quiet Title."	Immaterial.
"SFR filed its Answer, Counterclaim and Cross-Claim for Quiet Title and Injunctive Relief."	Immaterial.
"SFR filed its Amended Answer, Counterclaim and Cross-Claim for Quiet Title and Injunctive Relief."	Immaterial.
"SFR recorded its Notice of Lis Pendens against the Property."	Immaterial.
"The Hawkinses were dismissed from the action without prejudice."	Immaterial.
"Nevada Supreme Court issues SFR Investments Pool 1, LLC v. U.S. Bank, N.A., opinion holding that a properly held association foreclosure sale pursuant to NRS 116.31162-116.31168 extinguishes a first deed of trust."	While the referenced opinion speaks for itself, Chase disputes any implication that the opinion applies retroactively to the foreclosure sale in this case.
"The Bank recorded a Request for Notice as Instrument No. 201505110000016."	Immaterial, although the Instrument No. for the referenced document is 201505110000016.
"The Bank filed its Amended Complaint including a cause of action for unjust enrichment."	Immaterial.
"SFR filed its Answer to Amended Complaint."	Immaterial.
"SFR has been paying the homeowner's association assessments since it acquired the Property."	Immaterial.

III. SFR IS NOT ENTITLED TO SUMMARY JUDGMENT[4]

A. SFR Fails to Provide Evidence of Necessary Facts

As the counterclaimant with the burdens of proof and persuasion on its quiet title claim,

[4] The Nevada Legislature amended NRS 116.3116 *et seq.* during the 2015 legislative session. Several of the amended provisions have gone into effect as of October 1, 2015. Since the association foreclosure at issue in this case predates the effective dates of these amendments, this Opposition addresses the former version of the statute unless otherwise stated.

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SFR "must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence" to satisfy its initial burden of production for summary judgment. *Cuzze*, 123 Nev. at 602, 172 P.3d at 134. SFR fails to do so. Its entire quiet title claim is premised on the conclusion that the Association foreclosed on a super-priority lien. SFR's Motion at NRS 116.3116(2) provides a homeowners association with a super-priority lien only in situations involving charges incurred to remove or abate a public nuisance or delinquent assessments "which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien." *Id.* Missing from SFR's Motion is any evidence to suggest—much less establish as a matter of law—that the Association had a super-priority lien under NRS 116.3116 in the first place. See N.R.C.P. 56(c). This glaring evidentiary omission alone requires that the Court deny SFR's Motion.

However, even were the Court to overlook this defect in SFR's position, its summary judgment motion still should be denied for the reasons discussed below.

B. The Federal Foreclosure Bar Defeats SFR's Claim to an Interest in the Property Free and Clear of the Deed of Trust

SFR's claim for an interest in the property free and clear of the Deed of Trust is precluded by federal statute. In July 2008, Congress passed HERA, Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which established the FHFA to regulate Freddie Mac, Federal National Mortgage Association ("Fannie Mae"), and the Federal Home Loan Banks. In September 2008, FHFA placed Freddie Mac and Fannie Mae (together, "the Enterprises") into conservatorships "for the purpose of reorganizing, rehabilitating, or winding up [their] affairs." 12 U.S.C. § 4617(a)(2). HERA includes a broad statutory "exemption" captioned "Property protection" that provides that when the Enterprises are under the conservatorship of FHFA, none of their property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) ("Federal Foreclosure Bar").

The State Foreclosure Statute conflicts directly with the Federal Foreclosure Bar, which expressly precludes the involuntary extinguishment of Freddie Mac's property interest. Here, the Conservator did not consent to any HOA sale that extinguished Freddie Mac's interest in the

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Property. Under the Supremacy Clause, the State Foreclosure Statute must yield, and the HOA Sale did not extinguish Freddie Mac's interest.

In eleven cases presenting the same legal issue, courts in the U.S. District Court of Nevada have recently resolved dispositive motions in favor of FHFA, Freddie Mac, and Fannie Mae.[5] One of these cases granted summary judgment against SFR, the same defendant that appears in this case. *FHFA v. SFR*, 2016 WL 2350121. Moreover, Nevada state courts have granted Fannie Mae, Freddie Mac, and their servicers' summary judgment in six cases concerning related issues.[6]

1. The Federal Foreclosure Bar Preempts Contrary State Law

A federal statute expressly preempts contrary law when it "explicitly manifests Congress's intent to displace state law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). This is the case here: the text of HERA declares that "[n]o property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3). The Federal Foreclosure Bar automatically bars any nonconsensual limitation or extinguishment through foreclosure of any interest in property held by Freddie Mac while in conservatorship. All of these

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[5] *See Skylights v. Byron*, 112 F. Supp. 3d 1145 (D. Nev. 2015); *Elmer v. Freddie Mac,* No. 2:14-cv-01999-GMN-NJK, 2015 WL 4393051 (D. Nev. July 14, 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No. 2:14-cv-02128-GMN-NJK, 2015 WL 4276169 (D. Nev. July 14, 2015); *Williston Inv. Grp., LLC v. JP Morgan Chase Bank, N.A.*, No. 2:14-cv-02038-GMN-PAL, 2015 WL 4276144 (D. Nev. July 14, 2015); *My Glob. Vill., LLC v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015); *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-02123-JCM, 2015 WL 4581220 (D. Nev. July 28, 2015); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-CV0-2046-JAD-PAL, 2015 WL 5723647 (D. Nev. Sept. 28, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *Berezovsky v. Moniz*, No. 2:15-cv-01186-GMN-GWF, 2015 WL 8780198 (D. Nev. Dec. 15, 2015); Order, *Opportunity Homes, LLC v. Freddie Mac*, No. 2:15-cv-008993-APG-GWF (D. Nev. Mar. 11, 2016), ECF No. 39; *FHFA v. SFR Invs. Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2, 2016). The latter ten cases adopted the court's reasoning in *Skylights*.

[6] *See Saticoy Bay LLC Series 9641 Christine View vs. Fannie Mae*, No. A-13-690924-C (Nev. Dist. Ct. Dec. 8, 2015); *5312 La Quinta Hills LLC, vs. BAC Home Loans Serv'g LP*, No. A-13-693427-C (Nev. Dist. Ct. Jan. 6, 2016); *NV West Servicing LLC v. Bank of America, N.A.*, No. A-14-705996-C (Nev. Dist. Ct. Jan. 25, 2016); *Fort Apache Homes, Inc. vs. JPMorgan Chase Bank, N.A.*, No. A-13-691166-C (Nev. Dist. Ct. Feb. 5, 2016); *RLP-Buckwood Court, LLC, v. GMAC Mortg., LLC*, No. A-13-686438-C, (Nev. Dist. Ct. May 24, 2016); *A&I LLC Series 3 v. Lowry*, No. A-13-691529-C (Nev. Dist. Ct. May 31, 2016). Chase does not cite these cases as precedential authority and are mindful of Nevada Sup. Ct. R. 123. However, these cases are offered as persuasive authority to demonstrate the manner in which the Nevada courts may rule in future, published cases.

"adverse actions . . . could otherwise be imposed on FHFA's property under state law. Accordingly, Congress's creation of these protections clearly manifests its intent to displace state law." *Skylights*, 112 F. Supp. 3d at 1153. Therefore, the Federal Foreclosure Bar preempts the State Foreclosure Statute to the extent that the state statute otherwise would permit any such nonconsensual limitation or extinguishment.

The Federal Foreclosure Bar also preempts the State Foreclosure Statute because "state law is naturally preempted to the extent of any conflict with a federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). "[U]nder the Supremacy Clause . . . any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108 (1992) (internal quotations and citations omitted). In short, "state law that conflicts with federal law is without effect." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992).

Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect the nationwide operations of the Enterprises while in conservatorship from actions, such as the HOA Sale, that otherwise would deprive them of their interests in property. In so doing, Congress ensured that the Enterprises would not be subject to an array of conflicting state laws, such as those relied upon by SFR, which could undermine the Conservator's efforts to restore and assure the safety and soundness of the Enterprises' business operations. Accordingly, the Federal Foreclosure Bar preempts any state law that would authorize the HOA Sale to effect the nonconsensual extinguishment of Freddie Mac's interest in the Property and thereby permit SFR to claim an interest free and clear of the Deed of Trust.

2. The Federal Foreclosure Bar Protected Freddie Mac's Property Interest

To successfully invoke the Federal Foreclosure Bar's preemptive protection, Chase needs to establish two things: First, that Freddie Mac owned the Loan at the time of the HOA Sale, and second, that ownership of the Loan was a property interest covered by the Federal Foreclosure Bar's protection. Chase satisfies both here. Furthermore, while it is not Chase's burden to establish this fact, it is undisputed that FHFA has not consented to the extinguishment of Freddie

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Mac's property interest in this case.

i. Freddie Mac Had a Protected Property Interest at the Time of the HOA Sale

In September 27, 2006, Freddie Mac purchased the Loan, and thereby acquired ownership of both the promissory note and the Deed of Trust. Freddie Mac never sold the Loan to another entity. Ex. 7 ¶ 5d. At the time of the HOA Sale, Chase acted as Freddie Mac's authorized loan servicer and beneficiary of record of the Deed of Trust for the Loan. As Freddie Mac's servicer of the Loan, Chase was in a contractual relationship with Freddie Mac requiring Chase, upon Freddie Mac's request, to assign all of its interest to Freddie Mac. Under Nevada law, Freddie Mac owned the Deed of Trust and thereby maintained a property interest in the underlying collateral at the time of the HOA Sale in March 2013.

Freddie Mac's acquisition and continued ownership of the Loan at the time of the HOA Sale are amply supported by the business records data derived from the MIDAS system, a database that Freddie Mac uses in its everyday business to track millions of loans that it acquires and owns nationwide. It is also supported by Chase's business records, also derived from a database Chase uses to track the loans that it services. Under the applicable rules of evidence, business records are, by their nature, admissible to prove the truth of their contents when introduced by a qualified witness, as they are here. *See* NRS 51.135; Fed. R. Evid. 803 (advisory committee's note to 1972 proposed rules) (noting that business records have "unusual reliability" and include electronic database records).

a. Freddie Mac Owned the Note and Deed of Trust Under Nevada Law

(1) Nevada Adopts the Restatement Approach that Acknowledges the Loan Owner-Servicer Relationship

Pursuant to Nevada law, when Freddie Mac purchased the Loan, Freddie Mac thereby acquired ownership of the note and Deed of Trust. In *Edelstein v. Bank of New York Mellon*, the Nevada Supreme Court adopted the Restatement approach to the transfer of mortgages. 286 P.3d 249, 257-58 (Nev. 2012) (citing Restatement (Third) of Prop.: Mortgages § 5.4(a) (1997) ("Restatement")). Recently, the Nevada Supreme Court reaffirmed that it adopted the entirety of the Restatement approach. *In re Montierth*, 354 P.3d 648, 650-51 (Nev. 2015). Under the

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Restatement approach adopted in *Edelstein* and *Montierth*, ownership of the Deed of Trust was transferred to Freddie Mac along with the promissory note when Freddie Mac purchased the Loan.

The Restatement describes the typical arrangement between investors in mortgages, such as Freddie Mac, and their servicers:

> Institutional purchasers of loans in the secondary mortgage market often designate a third party, not the originating mortgagee, to collect payments on and otherwise "service" the loan for the investor. In such cases the promissory note is typically transferred to the purchaser, but an assignment of the mortgage from the originating mortgagee *to the servicer* may be executed and recorded. This assignment is convenient because it facilitates actions that the servicer might take, such as releasing the mortgage, at the instruction of the purchaser. The servicer may or may not execute a further unrecorded assignment of the mortgage to the purchaser.

Restatement § 5.4 cmt. c (emphasis added). The Restatement then emphasizes that this arrangement preserves the investor's ownership interest:

> *It is clear in this situation that the owner of both the note and mortgage is the investor and not the servicer.* This follows from the express agreement to this effect that exists among the parties involved. The same result would be reached if the note and mortgage were originally transferred to the institutional purchaser, who thereafter designated another party as servicer and executed and recorded a mortgage assignment to that party for convenience while retaining the promissory note.

Id. (emphasis added). Thus, the Restatement acknowledges that the assignment of a deed of trust to a servicer does not alter the fact that the purchaser of the loan remains the owner of the note and deed of trust. *See Berezovsky*, 2015 WL 8780198, at *3 (citing Restatement to hold that Freddie Mac had a protected property interest while its servicer was beneficiary of the deed of trust); *FHFA v. SFR*, 2016 WL 2350121, at *6 (similar). The Restatement approach is a recognition of the realities of the mortgage industry: Freddie Mac and Fannie Mae can more efficiently support the national secondary mortgage market if they can contract with servicers to manage loans without relinquishing ownership of deeds of trust.

Montierth clarified that the above provisions of the Restatement were incorporated into Nevada law, although they were not mentioned in *Edelstein*: "Because it was not pertinent to [the Nevada Supreme Court's] analysis in *Edelstein*, [the court] did not include the exceptions provided in the Restatement." *Montierth*, 354 P.3d at 651. Accordingly, *Montierth* held that a foreclosure could proceed when the noteholder was not the beneficiary named in the recorded

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deed of trust, so long as the named beneficiary had authority to foreclose on the noteholder's behalf. *Id.* at 650-51. *Montierth* also stated unequivocally that in those circumstances a note owner remains "a secured creditor" under Nevada law, meaning that it retains a property interest in the collateral. *Id.*

The facts of *Montierth* help clarify the application of the Restatement approach. The borrowers in *Montierth* had executed a promissory note in favor of the lender, who later transferred the note to Deutsche Bank. *Id.* at 649. The borrowers had also executed a deed of trust in favor of MERS "solely as nominee for Lender and Lender's successors and assigns." *Id.* After the borrowers declared bankruptcy, they argued that Deutsche Bank was not a secured creditor because "it did not have a unified note and deed of trust." *Id.* at 650. The Nevada Supreme Court rejected that argument, explaining that "foreclosure is not impossible if there is either a principal-agent relationship between the note holder and the mortgage holder, or the mortgage holder 'otherwise has authority to foreclose in the [note holder]'s behalf.' We agree with the Restatement's reasoning." *Id.* at 651 (citing Restatement § 5.4 cmts. c, e). The court concluded that "in the present case, MERS would be authorized to foreclose on behalf of Deutsche Bank at Deutsche Bank's direction because MERS is its agent, and reunification of the instruments would not be required." *Id.* Thus, Deutsche Bank, as holder of the promissory note, was a secured creditor, even though MERS was beneficiary of record of the deed of trust. *Id.*

Therefore, *Montierth* explains that where the record beneficiary of the deed of trust has contractual authority to foreclose on the note owner's behalf, the note owner maintains a property interest in the collateral. *See id.*; *Edelstein*, 286 P.3d at 254. *Montierth* thus makes clear that any "split" of the note and deed of trust is legally irrelevant in the context of a relationship such as that between a note owner and servicer. In "agree[ing] with the Restatement's reasoning," and specifically citing to Section 5.4, comment c of the Restatement, the Nevada Supreme Court was adopting the principle that an investor acquires a property interest in the deed of trust when it purchases the note when it has an agent or contractual relationship with the beneficiary of record of the deed of trust. *See Montierth*, 354 P.3d at 651; Restatement § 5.4 cmt. c. In such a circumstance, the purchaser of the note, like Freddie Mac here, is a secured lender with a "fully-

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secured, first priority deed" that can be enforced. *See Montierth*, 354 P.3d at 651; *see also Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, at *1, 3 & n.9 (Nev. Dec. 20, 2011) (noting that Freddie Mac's status as owner of note was not inconsistent with other entities being the assignee of the deed of trust and holder of the note).

(2) Nevada Adopts the Uniform Commercial Code, Which Is Consistent with the Restatement Approach

The Restatement approach is consistent with Nevada's version of the Uniform Commercial Code Article 9, which applies to transfers of real property interests and likewise provides that Freddie Mac's acquisition of the promissory note gave it a secured interest in the Property. Specifically, Nevada Revised Statute § 104.9203(7) provides that "[t]he attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security, mortgage or other lien." *See also* NRS § 104.9102(1)(ttt)(4) (defining "secured party" under UCC Art. 9 to include "[a] person to which . . . promissory notes have been sold"); Report of the Permanent Editorial Board for the UCC, Application of the UCC to Selected Issues Relating to Mortgage Notes at 14 (Nov. 14, 2011) ("Article 9 of the UCC provides that a transferee of a mortgage note whose property right in the note has attached also automatically has an attached property right in the mortgage that secures the note.").

Similarly, the Restatement approach is consistent with Nevada's adoption of UCC Article 3, which provides that "[a] person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument." Nev. Rev. Stat. § 104.3301 (Nevada's adoption of UCC § 3-301). A "person entitled to enforce the instrument" may be a "holder of the instrument" or even a "nonholder in possession of the instrument who has the rights of the holder." *Id.* Accordingly, "the status of holder merely pertains to one who may enforce the debt and is a separate concept from that of ownership." *Thomas*, 2011 WL 6743044, at *3 n.9 (quoting Nev. Rev. Stat. § 104.3301(2) and citing UCC § 3-203 cmt. 1). That is because "[o]wnership rights in instruments may be determined by principles of the law of property . . . which do not depend upon whether the instrument was transferred." UCC § 3-203 cmt. 1. For that reason, a transfer of a

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note "vests in the transferee any right of the transferor to enforce the instrument," but has no bearing on ownership. Nev. Rev. Stat. § 104.3203.

In fact, the Nevada Supreme Court has applied this principle in a similar case, where Freddie Mac claimed to be the owner of a note while BAC claimed to be the holder of the note and the beneficiary of record of the associated deed of trust. The court held there was nothing inconsistent with those two positions under Nevada law. *See Thomas*, 2011 WL 6743044, at *1, 3 & n.9. Here, too, there is nothing inconsistent with Freddie Mac being the owner of the note and the Deed of Trust, while Chase, its servicer, was beneficiary of record of the Deed of Trust.

b. The Guide Confirms that Freddie Mac Retains Ownership of the Deed of Trust While Its Servicer Serves as Beneficiary of Record

Freddie Mac is the owner of millions of mortgages nationwide and hundreds of thousands of mortgages in Nevada pursuant to its congressionally mandated mission to support the national secondary mortgage market. Therefore, it contracts with servicers that often serve as the beneficiary of record of deeds of trust to facilitate the servicers' efficient management of those loans. The Guide serves as a central document governing the contractual relationship between Freddie Mac and its servicers nationwide, including Chase. *See* Ex. 9 at 1101.2(a).

Reflecting the principles of Nevada law discussed *supra*, the Guide provides that a servicer may act as the beneficiary of record while Freddie Mac maintains ownership of the deed of trust and can "compel an assignment of the deed of trust." *Montierth*, 354 P.3d at 651. For example:

> For each Mortgage purchased by Freddie Mac, the Seller and the Servicer agree that Freddie Mac may, at any time and without limitation, require the Seller or the Servicer, at the Seller's or the Servicer's expense, to make such endorsements to and assignments and recordations of any of the Mortgage documents so as to reflect the interests of Freddie Mac.

Ex. 9 at 1301.10. The Guide also provides that:

> The Seller/Servicer is not required to prepare an assignment of the Security Instrument to Freddie Mac. However, *Freddie Mac may, at its sole discretion and at any time, require a Seller/Servicer, at the Seller/Servicer's expense, to prepare, execute and/or record assignments of the Security Instrument to Freddie Mac*.

Id. at 6301.6 (emphasis added).

The provisions of the Guide demonstrate that Freddie Mac and its loan servicers maintain the type of relationship described in the Restatement and consistent with Nevada's adoption of the

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UCC, as they also permit a temporary transfer of possession of the note when necessary for servicing and to protect the interests of Freddie Mac. *Id.* at 8107.1, 8107.2, 9301.11. For example, the note may be constructively transferred to the servicer when the servicer is pursuing a foreclosure on Freddie Mac's behalf. *See id.* Nevertheless, the Guide is clear that ownership always lies with Freddie Mac: "All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac." Ex. 9 at 1201.9; *see also id.* at 3302.5, 8107.1(b).

Thus, under Nevada law and pursuant to the Guide, the fact that Freddie Mac's servicer, Chase, was the beneficiary of record of the Deed of Trust at the time of the HOA Sale does not negate the fact that Freddie Mac remained the owner of the note and the Deed of Trust at that time. Accordingly, the Federal Foreclosure Bar, which protects Freddie Mac's property interests, protected the Deed of Trust from extinguishment, and Freddie Mac continued to own both the Deed of Trust and the note after the HOA Sale.

ii. The Federal Foreclosure Bar's Protection Extends to Freddie Mac's Property Interest Here

a. The Federal Foreclosure Bar Provides Broad Protection to Freddie Mac's Lien Interests

Under federal law, Freddie Mac's ownership of the Loan qualifies as a protected property interest for purposes of the Federal Foreclosure Bar. Indeed, federal law defines the scope of property interests protected by statutes such as the Federal Foreclosure Bar broadly. *See Matagorda Cty. v. Russell Law*, 19 F.3d 215, 221 (5th Cir. 1994). Courts have repeatedly held that mortgage liens constitute property for purposes of the analogous FDIC statute, 12 U.S.C. § 1825(b)(2).[7] "[T]he term 'property' in § 1825(b)(2) encompasses all forms of interest in property, including mortgages and other liens." *Simon v. Cebrick*, 53 F.3d 17, 20 (3d Cir. 1995); *see also S/N-1 REO Ltd. Liab. Co. v. City of Fall River*, 81 F. Supp. 2d 142, 150 (D. Mass. 1999)

[7] When analyzing HERA's provisions, courts have frequently turned to precedent interpreting the analogous receivership authority of the FDIC. *See, e.g., Cty. of Sonoma v. FHFA*, 710 F.3d 987, 993 (9th Cir. 2013) (referring to the FDIC's statutory authority in a related area as "analogous to 12 U.S.C. § 4617(f)"); *In re Fed. Home Loan Mortg. Corp. Derivative Litig.*, 643 F. Supp. 2d 790, 795 (E.D. Va. 2009), *aff'd sub nom. La. Mun. Police Ret. Sys. v. FHFA*, 434 F. App'x 188 (4th Cir. 2011).

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("A lien held by the FDIC as mortgagee is 'property' within the meaning of § 1825(b)(2)."); *37 Huntington St., H, LLC v. City of Hartford*, 772 A.2d 633, 641 (Conn. 2001) (same); *Cambridge Capital Corp. v. Halcon Enterps., Inc.*, 842 F. Supp. 499, 503 (S.D. Fla. 1993) (same). Likewise, Freddie Mac's interest here—which, as described above, consisted of ownership of both the Deed of Trust and the note—was a protected property interest under Section 4617(j)(3).

In sum, just as courts routinely hold that foreclosures cannot extinguish property interests to which the FDIC has succeeded as receiver without its consent, foreclosure sales do not extinguish the property interests of Freddie Mac under Section 4617(j)(3) without FHFA's consent. *See Trembling Prairie Land Co. v. Verspoor*, 145 F.3d 686, 691 (5th Cir. 1998) ("In deference to the will of Congress, we hold that the tax sale at issue was conducted without the consent of the FDIC. Accordingly, the tax sale violated 12 U.S.C. § 1825(b)(2) and thus is null and void."); *FDIC v. Lee*, 130 F.3d 1139, 1143 (5th Cir. 1997) ("12 U.S.C. § 1825(b)(2) applies . . . and that the tax sale conducted by Jefferson Parish is null and void.").

b. The Federal Foreclosure Bar Extends to Freddie Mac When It Is under FHFA's Conservatorship

The Federal Foreclosure Bar necessarily protects the Deed of Trust because the Conservator has succeeded by law to all of Freddie Mac's "rights, titles, powers, and privileges," 12 U.S.C. § 4617(b)(2)(A)(i). "Accordingly, the property of [Freddie Mac] effectively becomes the property of FHFA once it assumes the role of conservator, and that property is protected by section 4617(j)'s exemptions." *Skylights*, 112 F. Supp. 3d at 1155; *accord Elmer*, 2015 WL 4393051, at *3-4; *Premier One*, 2015 WL 4276169, at *3; *Williston*, 2015 WL 4276144, at *3-4; *My Glob. Vill.*, 2015 WL 4523501, at *4. This interpretation is supported by the text and structure of HERA. *See Skylights*, 112 F. Supp. 3d at 1155. Section 4617 concerns FHFA's "[a]uthority over" Freddie Mac and Fannie Mae when they are "critically undercapitalized" and thus must be placed into conservatorship or receivership. Furthermore, the protections of Section 4617(j)(3) apply in "any case in which [FHFA] is acting as a conservator or a receiver." 12 U.S.C. § 4617(j)(1).

Indeed, courts uniformly have rejected any argument that the immunities provided by

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Section 4617(j) do not apply to the property of Freddie Mac or Fannie Mae while in FHFA conservatorship. *See Skylights*, 112 F. Supp. 3d at 1155 (collecting cases); *Nevada v. Countrywide Home Loans Servicing, LP,* 812 F. Supp. 2d 1211, 1218 (D. Nev. 2011) ("[W]hile under the conservatorship with the FHFA, Fannie Mae is statutorily exempt from taxes, penalties, and fines to the same extent that the FHFA is."); *FHFA v. City of Chicago*, 962 F. Supp. 2d 1044, 1064 (N.D. Ill. 2013) (argument is "meritless"). The courts have also rejected similar arguments in the context of FDIC receiverships. *See In re Cty. Of Orange*, 262 F.3d 1014, 1020 (9th Cir. 2001) ("We also note that subsection (b)(2) provides 'nor shall any involuntary lien attach to the property of the Corporation.' That language's plain meaning is that once the property belongs to the FDIC, that is, when the FDIC acts as receiver, no liens shall attach.") (Emphasis omitted) (Quoting 12 U.S.C. § 1825(b)(2)); *Cty. Of Fairfax v. FDIC*, Civ. A. No. 92-0858, 1993 WL 62247, at *4 (D.D.C. Feb. 26, 1993) (rejecting contention that statutory penalty bar applicable to the FDIC as receiver, 12 U.S.C. § 1825(b)(3), only "exempts the FDIC *itself* from penalty assessment but not the [financial institution] for which the FDIC assumes receivership").

iii. FHFA Did Not Consent to the Extinguishment of the Deed of Trust

As discussed above, there can be no dispute that Freddie Mac —and, thus, its Conservator, FHFA—had an interest in the Property at the time of the HOA Sale. The Federal Foreclosure Bar thus precludes the HOA Sale from extinguishing Freddie Mac's interest in the Property unless SFR had obtained FHFA's consent to that extinguishment. SFR cannot show that it received such consent. The Conservator has publicly announced that it has not and will not consent to the extinguishment of Freddie Mac's property interest through HOA non-judicial foreclosure sales. (*See* Ex. 22,[FHFA Statement](FHFA "has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens.")). This public statement on a government website is subject to judicial notice. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010). Accordingly, the Federal Foreclosure Bar protected Freddie Mac's interest, and the HOA Sale could not have extinguished the Deed of Trust.

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3. Chase May Assert the Federal Foreclosure Bar to Protect Its Interest and Freddie Mac's Interest in the Deed of Trust

The Federal Foreclosure Bar works automatically by operation of law, protecting the Deed of Trust and thereby limiting the property rights SFR could have acquired in the HOA Sale. While Freddie Mac is the owner of the Deed of Trust and the note, Chase, as Freddie Mac's servicer, also has an interest to protect through its contractual servicing relationship with Freddie Mac and as the record beneficiary of the Deed of Trust. Therefore, when the Federal Foreclosure Bar prevented the extinguishment of a Deed of Trust owned by Freddie Mac, it did not merely preserve Freddie Mac's property interest; it also preserved Chase's interests. SFR's claims would seek to undo the protection of the Federal Foreclosure Bar. Accordingly, Chase has standing to raise the Federal Foreclosure Bar in this litigation because (1) Chase's interest in the Deed of Trust as beneficiary of record is preserved when the Federal Foreclosure Bar applies, and (2) Chase has a contractual duty as servicer to protect Freddie Mac's interest in litigation relating to the Loan.

As discussed above, the Nevada Supreme Court recognized in *Montierth* that when a noteholder authorizes the beneficiary of record of a deed of trust to enforce the deed of trust, the beneficiary of record may do so. *See Montierth*, 354 P.3d at 651 (citing the Restatement § 5.4 cmt. c). Relatedly, Nevada law recognizes that servicers are valid representatives of note-holders for purposes of participation in foreclosure mediations and other proceedings. *See Markowitz v. Saxon Special Servicing*, 310 P.3d 569, 574 (Nev. 2013); *Edelstein*, 286 P.3d at 260 n.11. Accordingly, it is common practice for servicers to appear in Nevada courts in litigation concerning loans that they may service, but not own.

Article III standing may be conferred by contract and assignment. *See, e.g., Sprint Comm'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 271-72 (2008) (A third-party assignee has standing to litigate on behalf of its assignor, even if the assignee has no interest in the litigation aside from the fee it is paid for its service.). Federal courts have applied this principle in the context of the relationships common in the mortgage industry. *See, e.g., CWCapital Asset Mgmt., LLC v. Chicago Props.*, 610 F.3d 497, 501 (7th Cir. 2010) ("There is no doubt about Article III standing in this case; though the plaintiff may not be an assignee, it has a personal stake in the

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outcome of the lawsuit because it receives a percentage of the proceeds of a defaulted loan that it services."); *Mortg. Elec. Registration Sys., Inc. v. Bellistri*, No. 4:09-cv-731, 2010 WL 2720802 (E.D. Mo. July 1, 2010) ("MERS had a legal right to file suit to foreclose the mortgage . . . . [T]he right to file suit is an 'a substantial property right.'" (internal citation omitted)).

Accordingly, federal courts have recognized that servicers like Chase, who may be the record beneficiaries of a deed of trust but do not own the corresponding loan, have constitutional and prudential standing to bring an action regarding the loan. *See, e.g.*, *Greer v. O'Dell*, 305 F.3d 1297, 1299 (11th Cir. 2002) ("[A] loan servicer is a 'real party in interest' with standing to conduct, through licensed counsel, the legal affairs of the investor relating to the debt that it services."); *BAC Home Loans Servicing, LP v. Texas Realty Holdings, LLC*, 901 F. Supp. 2d 884, 905-09 (S.D. Tex. 2012) (Mortgage servicer was a real party in interest and "clearly" had constitutional standing to bring lawsuit in its own name to administer the loan.); *TFG-Illinois, L.P. v. United Maint. Co., Inc.*, 829 F. Supp. 2d 1097, 1111 (D. Utah 2011) ("[S]ervicer standing . . . does not seem to require anything more than that a servicer have a pecuniary interest that is harmed by a borrower's default."); *Kiah v. Aurora Loan Serv., LLC*, No. 10-46161-FDS, 2011 WL 841282, at *5 (D. Mass. Mar. 4, 2011) (Fannie Mae often requires servicers to initiate legal proceedings in the servicer's name if the servicer or MERS is the mortgagee of record.); *CitiMortgage, Inc. v. Country Gardens Owners' Ass'n*, No. 2:13-CV-02039-GMN, 2013 WL 6409951, at *1, *4 (D. Nev. Dec. 5, 2013) (granting servicer preliminary injunction to enjoin foreclosure sale to enforce a super-priority lien).

Here, Chase is the beneficiary of record of the Deed of Trust and is in a contractual relationship with Freddie Mac to service the Loan. *See* Ex. 4 at ¶ 5d; Ex. 7 at ¶ 2. Pursuant to its contract with Freddie Mac, Chase is authorized to protect Freddie Mac's interests— including, if necessary, foreclosing on the Deed of Trust. *See* Exhibi6 at 8105.3, 9301.1, 9301.12, 9401.1. Nothing more is required.

Moreover, the Conservator has stated that it supports invocation of the Federal Foreclosure Bar by "authorized servicers" such as Chase, in litigation such as this one: "FHFA supports the reliance on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of

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[Freddie Mac] to preclude the purported involuntary extinguishment of [Freddie Mac]'s interest by an HOA foreclosure sale." *See* Ex. 22. FHFA Statement on Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations, http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf.

Finally, there is no bar against private parties raising a federal preemption argument. *See Thunder Props., Inc. v. Wood*, No. 3:14-cv-00068-RCJ-WGC, 2015 WL 1926768, at *4 (D. Nev. Apr. 28, 2015) ("[W]hether N.R.S. 116.3116 as applied to federally insured mortgages conflicts with [the Supremacy Clause] is a question of law that may be raised by any party, and not just a government agency." (citing *Armstrong v. Exceptional Child Care Ctr., Inc.*, 135 S. Ct. 1378, 1383 (2015))); *see also Saticoy Bay LLC v. SRMOF II 2012-1 Trust*, No. 2:13-CV-1199, 2015 WL 1990076, at *4 (D. Nev. Apr. 30, 2015) ("Plaintiff cites no case law, nor does the court know of any, limiting federal preemption arguments to government parties."); *Beal Bank*, 973 F. Supp. at 133 (Private parties asserted claims to protect property interest by invoking the operation of the FDIC's similar property-protection statute.); *Cambridge Capital*, 842 F. Supp. 499 (same); *Grimsley v. Bd. of Cty. Comm'rs of Atoka Cty., Okla.*, 9 F. App'x 970, 973 n.3 (10th Cir. 2001) (noting that private party injured by a sale without FDIC consent could bring claim invoking the operation of FDIC's property-protection statute).

Here, the federal preemption argument would protect both Freddie Mac's interest and, by extension, Chase's interests derived from its contractual relationship with Freddie Mac and its role as record beneficiary of the Deed of Trust. Accordingly, Chase may argue that the Federal Foreclosure Bar preempts Nevada state law to protect both its interest and that of Freddie Mac.

C. ***SFR vs. U.S. Bank* Cannot Apply Retroactively**

SFR relies on the Nevada Supreme Court's decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408 (2014) ("*SFR*") for the proposition that a homeowners association lien has "priority over a first deed of trust." SFR's Motion at 8:16-17. As fully briefed in Chase's Motion for Summary Judgment "Chase's Motion," which is fully incorporated herein, this reliance is misplaced, as *SFR* does not apply retroactively to HOA foreclosures conducted

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before September 18, 2014. *See* Chase's Motion at 23:6-25:3.

D. The Grossly Inadequate Purchase Price Was Accompanied By Unfairness and Oppression in the Foreclosure Process

SFR argues that the Association's foreclosure sale should not be invalidated based on SFR's nominal purchase price of $3,700 because NRS Chapter 116 does not explicitly require commercial reasonableness[8] and "price alone is never enough to unwind a sale." *See* SFR's Motion at 13:10-13. Alternatively, SFR contends that its purchase price was commercially reasonable and that Chase has waived any argument that fraud, oppression, or unfairness caused the grossly inadequate price. *Id.* at 13:7-10. None of these arguments is availing as mapped out in Chase's Motion, which Chase fully incorporates herein. First, Nevada follows the Restatement of Property and as such, under Restatement (Third) of Property: *Mortgages* (1997) (hereinafter "Restatement"), the Court may invalidate an HOA Sale based on price alone. *See* Chase's Motion at 25:5 – 26:11. Here, the fair market value of $123,000 coupled with a sale price of $3,700 means the property was sold for only 3% of its value. *See* Exs. 3 & 23. Further, the grossly low sale price was accompanied with sale improprieties that justify setting aside the sale, or at the very least, create a genuine issue of material fact to defeat SFR's Motion. *See* 26:12 – 27:9. The sale improprieties included incorrect debt amounts in the HOA Notices in violation of the State Foreclosure Statute and bankruptcy law. *See* Chase's Motion at 26:12-23. Further, the foreclosure sale also violated the Association's CC&Rs. *Id* at 26:24-28. Finally, the plain language of the Foreclosure Deed states that SFR purchased only the Association's lien interest in the Property. *Id* at 27:3 – 22.

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[8] SFR relies on *Shadow Wood*, *Golden v. Tomiyasu*, *Long v. Towne*, and *Iama Corp. v. Wham* to claim that "commercial reasonableness deals with looking at whether there was conduct in the sale process that led to the low price, not simply comparing price to value. . . ." SFR's Motion at 16:18-17:6. This reliance is misplaced. *Golden*, *Long*, and *Iama* are inapposite, as they predate the Restatement by 15 years or more. *Golden*, 79 Nev. 503, 387 P.2d 989 (Nev. 1963); *Iama Corp. v. Wham*, 99 Nev. 730, 669 P.2d 1076 (1983); *Long v. Towne*, 98 Nev. 11, 639 P.2d 528 (1982). Further, *Shadow Wood* explicitly supports an analysis under the Restatement, as it cites Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b for the proposition that "a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value." 366 P.3d at 1112.

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1. *Chase Has Not Waived Its Right to Argue Unfairness in the Sale*

SFR argues that Chase "has waived any right to challenge the sale" because it "failed to specifically allege such fraud, oppression or unfairness in its pleadings." SFR's Motion at 9:21-22 (citing NRCP 8(a)-(c), 12 (b)). The record plainly disproves this assertion. *See, e.g.*, Chase's Am.Compl. ¶¶ 44, 53 ("did not comply with NRS Chapter 116, including, **but not limited to**, providing notice of the HOA sale."); Chase's Answer to Am, Countercl. at 7-8 (stating as a second affirmative defense that "[t]he alleged homeowner's association foreclosure sale was not reasonable, and **the circumstances of the sale of the property violated the Association's obligation of good faith under NRS 116.1113 and duty to act in a reasonable manner.**"); *id.* at 9 (stating as a tenth affirmative defense that "[t]he Association foreclosure sale is void or otherwise insufficient to extinguish the deed of trust based on the Association's failure to comply with all mailing, noticing **and/or other requirements of Nevada and federal law**."). [9]

2. *Chase Is Entitled to An Equitable Remedy*

SFR contends that *Shadow Wood* does not permit Chase to set aside a foreclosure sale on equitable grounds because *Shadow Wood* involved a homeowner, not a lienholder. SFR's Motion at 11:11-17. In support of this argument, SFR contends that a homeowner can seek equitable relief because it has a bundle of property rights, whereas a lienholder merely has a collateral interest that gives it a right to foreclose and can be compensated with money damages. *Id.* at 11:17-22. This contention is meritless.

Nowhere in its analysis does the *Shadow Wood* Court hold that only property owners may set aside a foreclosure sale on equitable grounds. Rather, the *Shadow Wood* Court explicitly recognized that parties other than property owners may seek quiet title, stating "a plaintiff **not in possession** still may seek to quiet title by invoking the court's inherent equitable jurisdiction to settle title disputes." *Shadow Wood HOA v. N.Y. Cmty. Bancorp.,* 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1111 (2016). Other cases recognize this principle by permitting lienholders to challenge

[9] Chase also asserts as affirmative defenses SFR's purchase of the Property with knowledge of the senior Deed of Trust and in violation of the Association's CC&Rs, which are two of the specific sale improprieties on which Chase now relies.. *See* Chase's Answer to Am. Countercl. at 9.

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foreclosure actions. *Nationstar Mort., LLC v. Amber Hills II Homeowners Ass'n, Inc.*, 2016 WL 1298108, at *4-5 (D. Nev. Mar. 31, 2016) (rejecting argument that lender's quiet title claim was time-barred and permitting lender to proceed with its suit for quiet title); *Wells Fargo Bank, N.A. v. Premier One Holdings, Inc.*, No. 67873 (Nev. June 22, 2016) (finding meritless the argument that the lender had no standing to argue the commercial reasonableness of the sale).

In any event, Nevada courts have specifically held that a deed of trust constitutes a property interest. *Leyva v. Nat'l Default Serv. Corp.*, 255 P.3d 1275, 1279 (Nev. 2011) (holding that an assignment of a deed of trust must be in writing signed by the assignor because a deed of trust conveys an estate or interest in land as contemplated by the statute of frauds); *Summa v. Greenspun*, 96 Nev. 247, 252, 607 P.2d 569, 572 (1980) (holding that the statute of frauds applies to the surrender of a deed of trust because, unlike a mortgage, a trust deed "conveys the trustor's title or interest in land to the trustee," and is "a conveyance of an interest in land within the statute of frauds"); *Ray v. Hawkins*, 76 Nev. 164, 166–67, 350 P.2d 998, 999 (1960) (explaining that a trust deed is a conveyance of land, but declining to decide whether an incomplete reference in a trust deed means the trust deed transferred fee title or instead operated like a mortgage).

By way of further illustration, in recognizing that Nevada is a "title theory" state, the Nevada Supreme Court has held that a trust deed conveys an interest properly characterized as "title." *See, e.g., Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, at *3(Nev. 2011) ("[A] deed of trust conveys to the trustee the legal title of the property for the purpose of securing the borrower's performance under the note and deed of trust for the benefit of the beneficiary.") (emphasis added). Likewise, in a case holding that a promissory note secured by a deed of trust had been paid in full, the Nevada Supreme Court affirmed a trial court order "requiring reconveyance of title." *Miller v. York*, 548 P.2d 941, 942, 945 (Nev. 1976). While the "title" conveyed in a trust deed is not *possessory* title, *Edelstein v. Bank of N.Y. Mellon*, 286 P.3d 249 (Nev. 2012), it is still a property interest.

Even if a deed of trust did not constitute a property interest (which it does), equity compels the Court to permit lienholders to sue for quiet title. Any "bundle of rights" from the homeowner standpoint is necessarily impacted by the existence, or non-existence, of a senior deed of trust

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since having a lien on property would impact the extent of that "bundle." For instance, if a borrower has fee title to a property that it bought using a loan, which in turn is secured by a deed of trust, the borrower's "bundle of rights" in the property is subject to the deed of trust. If only the borrower may set aside the foreclosure sale, it could revive its "bundle of rights" to the exclusion of the lender's deed of trust. This is an untenable result. Moreover, precluding a lienholder from seeking quiet title unfairly punishes an innocent party. The property owner is directly responsible for the deficiency allowing the association to foreclose, whereas a lienholder is not. Akin to a bona fide purchaser who receives more protection than a purchaser with actual or constructive notice, an innocent lienholder should receive more protection than the culpable homeowner.

E. Bona Fide Purchaser Status Cannot Save SFR

SFR asserts that, even if the Association Foreclosure Sale was invalid, SFR is a bona fide purchaser. *See* SFR's Motion at 18:1-2, 20:14-16. To support this claim, SFR argues that it "had no notice of a competing or superior interest in the Property." *Id.* at 18:24-25. Nevada law and the evidence in this case demonstrate otherwise.

1. SFR Is Not a Bona Fide Purchaser

"The bona fide doctrine protects a subsequent purchaser's title against competing legal or equitable claims of which the purchaser had no notice at the time of the conveyance." *25 Corp. v. Eisenman Chem. Co.*, 101 Nev. 664, 675, 709 P.2d 164, 172 (1985) (citing 77 Am.Jur.2d Vendor and Purchaser § 633 at 754 (1975) and *Berge v. Fredericks*, 95 Nev. 183, 591 P.2d 246 (1979)); A subsequent purchaser is not a bona fide purchaser if he or she was under a duty to inquire. *Tai-Si Kim v. Kearney*, 838 F. Supp. 2d 1077, 1088 (D. Nev. 2012) (citing *Berge v. Fredericks*, 95 Nev. 183, 591 P.2d 246, 249 (1979)). A duty to inquire arises when a purchaser "possesses facts which would lead a reasonable person under the circumstances to investigate. Even if the subsequent purchaser does not actually conduct an investigation, the law deems him or her to have constructive notice of whatever the investigation would uncover." *Id.* (internal citation omitted).

SFR is not a bona fide purchaser of the Property. First, SFR knew that the Property was at risk of litigation by virtue of it being sold at an Association sale. *See* Ex. 28, P. Kelso Dep. Tr., at 53:21-54:3 (SFR did a "risk assessment" and Hardin "was aware when he was bidding on these

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properties [including 3263 Morning Springs] and purchasing them from the HOA sales that there was a risk of litigation."); *id.* at 54:7-12 (SFR knew "the homes were going for the prices that they were [] because of the risk of litigation [] associated with it."); *id.* at 134:7-12 (testifying that "probably somebody associated with the First Deed of Trust" would be involved in the litigation); *id.* at 129:12-16, 130:16-22. SFR also knew that a court could find that the deed of trust was not extinguished by the sale. *Id.* at 56:2-9 (SFR knew **"that there was that possibility that the Court wouldn't rule with SFR's interpretation"** of NRS 116) (emphasis added); *id.* at 129:17-24. SFR nevertheless decided to take its chances and purchase the Property.

Moreover, the recorded documents in this case would have caused a reasonable person in SFR's position to investigate the sale. *See* NRS 111.315 (recording operates as notice to third persons). All of the foreclosure notices state that the Association is foreclosing pursuant to its CC&Rs. This fact would have led a reasonable purchaser to review the CC&Rs to determine whether any provision precluded the sale from extinguishing the Deed of Trust. Similarly, upon seeing that Chase had recorded a "Substitution of Trustee" on February 22, 2013—only *7 days* before the Foreclosure Sale—a reasonable person in SFR's position would have questioned why Chase would make the effort to substitute its trustee, only to allow its interest in the collateral to be extinguished one week later. *See* Ex. 29, Substitution of Trustee.

SFR, however, did not investigate these facts. *See* Ex.28, P. Kelso Dep. Tr. at 108:9-10; 134:22-135:10. Had SFR done so, it would have discovered that the Foreclosure Sale was violating the very CC&Rs that the Association's notices claimed authorized the sale in the first place. Cloaking SFR with bona fide purchaser status would unfairly reward SFR for remaining oblivious, ignoring signs that the sale was flawed, and exploiting NRS Chapter 116's non-judicial foreclosure process. The Court should reject any argument that SFR is a bona fide purchaser.

2. Bona Fide Purchaser Status Is Not Dispositive

Even if SFR is a bona fide purchaser (which it is not), such status is not dispositive. In *Shadow Wood*, the Nevada Supreme Court instructed that courts determining whether to set aside a foreclosure sale "must consider the entirety of the circumstances that bear on the equities." *Shadow Wood*, 366 P3dat 1114 (emphasis added). Accordingly, the *Shadow Wood* Court

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considered all the issues raised by the parties. *Id.* at 1115. Notably, the Nevada Supreme Court held that a purchaser's BFP status is not dispositive. Rather, if a purchaser is found to be a BFP, then the district court may consider the harm to the innocent purchaser when deciding whether it is equitable to set aside the association foreclosure sale. *Id.* at 24. In other words, BFP status is **merely one factor** for the district court to evaluate as part of "the entirety of the circumstances." *See id.* at 20. Based on SFR's knowledge of the risk of litigation, the recorded documents and SFR's lack of investigation as set forth above, the equities weigh in favor of Chase and, at the very least, preclude summary judgment in SFR's favor.

F. NRS 116.31166's Conclusive Presumption Cannot Preclude the Court from Invalidating the Improper Association Foreclosure

SFR also tries to insulate itself from the defects in the Foreclosure Sale by arguing that the Foreclosure Deed recitals constitute conclusive proof of the matters recited pursuant to NRS 116.31166. SFR's Motion at 9:7-10. SFR's position fails for several reasons.

1. *Chapter 116's Foreclosure Scheme Is Unconstitutional*

The prior version of NRS 116.3116 *et seq.* that applied to the Association foreclosure sale violates due process on its face and constitutes an unconstitutional taking. Chase fully incorporates the arguments in its Motion for Summary Judgment, which alone, is a basis for setting aside the HOA Foreclosure Sale. *See* Chase's Motion at 27:25 – 30:9.

2. *The Conclusive Recitals Are Not the End of the Discussion*

Even if the Court could apply NRS 116.31166 despite its facial violations of due process, the vague statements included in the Foreclosure Deed are not sufficient to dispose of this case. In *Shadow Wood*, the Nevada Supreme Court established that NRS 116.31166's conclusive presumptions cannot defeat equitable challenges to an association foreclosure sale. *See Shadow Wood,* 366 P.3d at 1110. The *Shadow Wood* foreclosure sale purchaser argued that NRS 116.31166's "conclusive" recitals "bar any post-sale challenge regardless of basis, whether it disputes the HOA's compliance with the statutory default, notice, and timing requirements or, as here, seeks to set aside the sale for equity-based reasons." *Id.* The Nevada Supreme Court rejected this argument. *Id.* (declining "to give the default recital such a broad and unprecedented

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reading").

G. Chase's Unjust Enrichment Claim Survives Summary Judgment

SFR contends that Chase's unjust enrichment claim is "barred by the voluntary payment doctrine" and cannot otherwise succeed because SFR's retention of Chase's money would not violate "fundamental principles of justice or equity and good conscience." SFR's Motion at 20:23-24, 22:1-3. Both arguments are meritless.

1. The Voluntary Payment Doctrine Does Not Apply

As the party asserting the voluntary payment doctrine defense, SFR "bears the burden of proving its applicability." *See Nev. Ass'n Servs., Inc. v. Dist. Ct.*, 338 P.3d 1250, 1254 (Nev. 2014). The voluntary payment doctrine bars a party that has paid taxes or assessments: (1) from recovering overpayments from the taxing or assessing body itself, and (2) only if the party that paid did so voluntarily and with full knowledge of the facts. *Id.* at 1254; *see also Berrum v. Otto*, 255 P.3d 1269, 1273 n.5 (Nev. 2011). Indeed, "the purpose of the doctrine is to encourage stability and certainty for the taxing entity." *Berrum*, 255 P.3d at 1273 n.5 (emphasis added).

SFR cites three cases that involve the voluntary payment defense, all of which involve parties trying to recover payments from the taxing or assessing entities. *See Nev. Ass'n Servs., Inc.*, 338 P.3d at1252 (seeking to recover community association fees from the association); *Best Buy Stores, v. Benderson-Wainberg Assocs.*, 668 F.3d 1019, 1023 (8th Cir. 2012) (seeking to recover from landlord insurance-related costs billed by and paid to landlord); *Randazzo v. Harris Bank Palatine, N.A.*, 262 F.3d 663, 666 (7th Cir. 2001) (seeking to recover stock proceeds paid to a bank in relation to bank's claim that it had a legal right to such proceeds).

Here, Chase is not attempting to recover tax payments from the government or insurance payments from the insurer. Rather, it seeks to recover these payments from SFR, which claims to have owned the Property since March 1, 2013, but conveniently failed to pay taxes and insurance on the same.[10] The doctrine does not prevent Chase's equitable claim to recover payments from

[10] Chase asserts its unjust enrichment claim in the alternative in the event that the Court deems the First Deed of Trust was extinguished.

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SFR that Chase made without knowledge of the alleged fact that SFR owned the Property free and clear of the First Deed of Trust.[11]

2. SFR's Retention of Benefits to the Loss of Chase is Inequitable and Unjust

SFR's argument that it did not "retain[] property belonging to" Chase because Chase does not possess an ownership interest in the Property is nonsensical. SFR's Motion at 22:4-7. Unjust enrichment pertains not only to the retention of money or property, but also to retention of "a benefit to the loss of another." *Topaz Mut. Co. v. Marsh*, 839 P.2d 606, 613 (Nev. 1992). It would be both inequitable and unjust for SFR to retain the benefits conferred upon it by Chase's payment of property taxes and hazard insurance – the absence of a lien for failure to pay taxes and the protection of the property in the event of a hazard.[12]

IV. CONCLUSION

For the reasons set forth above, SFR is not entitled to summary judgment and its motion should be denied.

DATED: July 26, 2016

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[11] Even if the voluntary payment doctrine does apply to payments made to entities other than the taxing or assessing bodies (which it does not), Chase's payments constitute an exception to the rule, as it made the tax and insurance payments to protect its collateral and pursuant to the Guide.

[12] SFR's claim that it did not benefit from the insurance payments "unless the Bank made SFR an additional insured," SFR's Motion at 21:23-24, likewise lacks merit. The benefit conferred on SFR was the protection of *the Property* that it claims to own.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 26th day of July, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing PLAINTIFF JPMORGAN CHASE BANK, N.A.'S OPPOSITION TO SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT, was served to the parties following in the manner set forth below:

[ ] E-MAIL TRANSMISSION

[ ] U.S. MAIL, POSTAGE PREPAID

[Xx] Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter

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TAB 18

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive, Defendants.	Case No. A-13-692304-C Dept. No. XXIV **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter-Claimant, vs. JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, Counter-Defendant/Cross-Defendants	

SFR Investments Pool 1, LLC ("SFR") hereby files its reply in support of its Motion for Summary Judgment. This reply is based on the papers and pleadings on file herein, the following memorandum of points and authorities, and such evidence and oral argument as may

be presented at the time of hearing on this matter. This reply is also based on SFR's Motion for Summary Judgment, which is incorporated fully herein by reference.

DATED this 1st day of August, 2016.

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

The Bank has failed to provide any justifiable basis upon which summary judgment in its favor should be granted and cannot postulate a single solid reason against granting summary judgment in favor of SFR because: (1) the Association had a valid lien on the subject property; (2) SFR was a bona fide purchaser; (3) the bank cannot use the Supremacy Clause to displace Nevada law; (4) the bank cannot enforce the National Housing Act; (5) there were no irregularities with the sale constituting fraud, unfairness, or oppression, the Bank cannot overcome the presumption that the foreclosure sale and resulting deed are valid, and SFR can rely on the conclusive recitals in the foreclosure deed; (6) the Bank's commercial reasonableness argument lacks merit since **price alone is never enough**, and there is nonetheless no evidence of fraud, unfairness, or oppression which accounted for or brought about the price paid by SFR (See Golden v. Tomiyasu, 387 P.2d 989, 997 (Nev. 1963); (7) the Bank has presented no evidence which precludes SFR's status as a bona fide purchaser, although not required by Nevada law in the first instance; (8) the Bank's Unjust Enrichment Claim is barred because it is barred by the Voluntary Payment Doctrine. As such, summary judgment should be denied as to the Bank, and granted in favor of SFR.

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ARGUMENT

A. STATEMENT OF DISPUTED AND UNDISPUTED FACTS

SFR incorporates fully herein by reference its Statement of Undisputed Facts in SFR's Motion for Summary Judgment ("MSJ"). Further, SFR responds to the Bank's Statement of Undisputed Facts as set forth in its Opposition to SFR's MSJ as follows:

1. **SFR's Undisputed Fact:** "Association perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions & Restrictions ("CC&Rs) as Instrument No. 01962 in Book 911108."

Bank's Response: "SFR has not provided a complete copy of the CC&R's. See N.R.C.P. 56(e). Accordingly, SFR has failed to carry its burden of providing admissible evidence for this fact."

SFR's Response: The pages from the CC&Rs were provided simply to show the date of recording and were taken from the complete copy of the CC&Rs disclosed by the bank, see attached CC&Rs, Exhibit A.

2. **SFR's Undisputed Fact:** "First Deed of Trust in favor of GreenPoint Mortgage Funding, Inc. recorded as Instrument No. 200606120003526."

Bank's Response: "Disputed."

SFR's Response: The bank does not provide any reasoning why they dispute the fact "First Deed of Trust in favor of GreenPoint Mortgage Funding, Inc. recorded as Instrument No. 200606120003526." The document speaks for itself and this is a correctly stated fact.

3. **SFR's Undisputed Fact:** The lender prepared, and the Hawkinses signed, a Planned Unit Development Rider as part of the First Deed of Trust, recognizing the need to pay assessments to the Association and the ability of the lender to pay the assessments should the Hawkinses default.

Bank's Response: "SFR mischaracterizes the Planned Unit Development Rider ("PUD Rider"). Under the PUD Rider, a lender is not *required* to pay assessments in the event of a default. Further, the PUD Rider attached to the First Deed of Trust does not identify the Association."

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SFR's Response: SFR's stated fact does not state the bank is "required" to pay. Additionally, the bank is incorrect that the PUD Rider does not identify the Association. See Exhibit A-3 attached to SFR's MSJ, see specifically [CHASE-HAWKINS0040].

4. **SFR's Undisputed Fact:** The First Deed of Trust also included language that allowed the lender to escrow funds for "(a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property."

Bank's Response: "Lastly, Chase was not the lender that prepared the PUD Rider. The originating lender was GreenPoint Mortgage Funding, Inc."

SFR's Response: SFR stated the originating lender is GreenPoint Mortgage as referenced in the fact: "First Deed of Trust in favor of GreenPoint Mortgage Funding, Inc. recorded as Instrument No. 200606120003526." This is a correctly stated fact and Chase is the successor-in-interest to GreenPoint, it cannot disclaim the PUD now.

5. **SFR's Undisputed Fact:** Substitution of Trustee substituting MERS to California Reconveyance Company, recorded as Instrument No. 20091027000619.

Bank's Response: "Disputed. The referenced document substitutes California Reconveyance Company for Marin Conveyancing Corp."

SFR's Response: SFR does not dispute bank's statement that this document does in fact substitute California Reconveyance Company for Marin Conveyancing Corp.

6. **SFR's Undisputed Fact:** The Notice of Sale was posted on the Property in a conspicuous place. The Notice of Sale was thereafter posted at three public places within Clark County for 20 consecutive days. The Notice of Sale was published in the Nevada Legal News for three consecutive weeks.

Bank's Response: "Immaterial. Further, none of the documents SFR cites in support of these allegations indicate that the referenced document was posted for 20 consecutive days."

SFR's Response: SFR attached the Affidavit of Publication, attached as Exhibit A-14 to SFR's MSJ, see specifically [Chase-Hawkins_NAS00169].

7. **SFR's Undisputed Fact:** Association recorded the Notice of Sale.

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Bank's Response: "The referenced document does not contain recording information."

SFR's Response: This document was produced by the bank, wherein the recording information was "Redacted". See Exhibit A-15, attached to SFR's MSJ. See also, bank's disclosed Notice of Foreclosure Sale, bate stamped [CHASE-HAWKINS0016] and [SFR80-81], attached hereto as Exhibit B.

8. **SFR's Undisputed Fact:** There were multiple bidders in attendance at the sale.

Bank's Response: "Disputed. SFR's statement that "there were multiple bidders in attendance at the sale" mischaracterizes paragraph 15 of the Hardin Declaration. Hardin stated that he has "never attended a sale where there was only one qualified bidder in attendance." Here, only 2 investors bid on the Property."

SFR's Response: The bank's own statement that there were 2 bidders is contrary to their claimed dispute of the fact, "There were multiple bidders in attendance at the sale."

9. **SFR's Undisputed Fact:** No one acting on behalf of the Bank attended the sale.

Bank's Response: "Immaterial."

SFR's Response: Bank states the fact that "No one acting on behalf of the Bank attended the sale" is immaterial. The bank gives no reasoning why this is not a correct fact, as such, the bank admitted and testimony was given that no one acting on behalf of the bank attended the sale. See Exhibit A-11, at No. 3; see also Exhibit A-12, at [33:1-3] attached to SFR's MSJ. What the Bank seeks is equity, and this fact is material to whether the Bank deserves equity.

10. **SFR's Undisputed Fact:** Association foreclosure deed vesting title in SFR recorded as Instrument No. 201303060001648. As recited in the Association Foreclosure Deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, the elapsing of 90 days, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale

Bank's Response: "Disputed. The "Foreclosure Deed" recorded on March 6, 2013 as Clark County Recorded Instrument No. 201303060001648 states as follows: Nevada

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Association Services, Inc. as agent for Pebble Canyon HOA does hereby grant and convey, but without warranty express or implied to: SFR Investments Pool 1, LLC.....all its right, title and interest in and to that certain property... Ex. 18 (emphasis added). The interest NAS had as agent for the Association was merely a lien interest, not a title interest.

SFR's Response: As the bank states, SFR was vested with "all its right, title and interest..." (emphasis added). Further, it is the statute that defines what is transferred by the sale.

11. **SFR's Undisputed Fact:** As recited in the Association Foreclosure Deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, the elapsing of 90 days, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale. (Same as No. 10 above.)

Bank's Response: "Disputed. While the "Foreclosure Deed" speaks for itself, Chase disputes the legal conclusion that the sale "complied with all requirements of law" and the implication that the document references recording of the Notice of Sale. Chase further disputes any attempt to infer or conclude from the document that the Association mailed Chase a Notice of Delinquent Assessment."

SFR's Response: The bank first states the "Foreclosure Deed" speaks for itself, but then disputes the document. SFR agrees, the document speaks for itself.

12. **SFR's Undisputed Fact:** SFR has no reason to doubt the recitals in the Foreclosure Deed. If there were any issues with delinquency or noticing, none of these were communicated to SFR.

Bank's Response: "Immaterial. SFR's doubts and subjective beliefs are not facts relevant to this case. To the extent the Court could construe these doubts and subjective beliefs as a material fact, Chase disputes it. SFR concedes that it knew the Property posed a litigation risk, yet it bought the Property anyway. As set forth below, SFR had inquiry notice to confirm the circumstances of the sale but chose to be willfully ignorant when it purchased the property. *See* Ex. 28."

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SFR's Response: Whether the bank likes the "fact" or not, it is a fact as stated by SFR that "SFR has no reason to doubt the recitals in the Foreclosure Deed. If there were any issues with delinquency or noticing, none of these were communicated to SFR." The Bank provides no evidence to the contrary.

13. **SFR's Undisputed Fact:** Further, neither SFR, nor its agent, have any relationship with the Association besides owning property within the community. Similarly, neither SFR, nor its agent, have any relationship with NAS, the Association's agent, beyond attending auctions, bidding, and occasionally purchasing properties at publically-held auctions conducted by NAS.

Bank's Response: "As noted above, to the extent that Hardin's assertions regarding SFR's relationship with the Association and NAS are based on what is relayed by other members of SFR, these statements are hearsay."

SFR's Response: The fact that there was not a relationship between SFR and NAS was testified to by NAS's witness, Susan Moses. See Moses Deposition Transcript at 51:9-23, attached hereto as Exhibit C.

14. **SFR's Undisputed Fact:** The Bank never contacted NAS or the Association prior to the sale.

Bank's Response: "Immaterial and disputed. While Chase's contact with NAS prior to the sale is irrelevant for purposes of the present motion, the cites in support of this allegation do not support the broad statement that "[t]he Bank never contacted NAS or the Association prior to the sale."

SFR's Response: The bank admitted in their Responses to Request for Admissions that "Chase admits that after a reasonable investigation of its business records, to the best of its knowledge and belief, it has not located any records showing that it contacted the Association or its agents…" See Exhibit A-11, at No. 13, and Exhibit A-12, at [40:3-9], both attached to SFR's MSJ.

15. **SFR's Undisputed Fact:** No release of the superpriority portion of the Association's lien was recorded against the Property.

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Bank's Response: "Disputed. The Hardin Declaration cited to support of this factual allegation lacks foundation, as Hardin has no personal knowledge of the acts of third parties such as the Association and the Association trustee. Specifically, Hardin lacks knowledge as to whether the lien was in fact released. Further, he has no personal knowledge of whether there was a "super-priority" portion included in the lien. To the extent that Hardin relies on information provided by the Association, this assertion contains hearsay."

SFR's Response: Christopher Hardin states in his declaration, "Based on my research, there was no release of the super-priority portion of the Association's lien recorded against the Property prior to SFR purchasing the Property." (sic) See Exhibit B, at No. 18, attached to SFR's MSJ. Further, the Bank provides no evidence that any release was recorded or that the association's lien, including superpriority amounts, did not exist at the time of the foreclosure sale.

16. **SFR's Undisputed Fact:** No lis pendens was recorded against the Property.

Bank's Response: "Immaterial and disputed. The Hardin Declaration cited to in support of this factual allegation lacks foundation, as Hardin has no personal knowledge of the acts of the Clark County Recorder. Finally, to the extent that Hardin relies on website information, this assertion contains hearsay."

SFR's Response: Christopher Hardin states in his declaration, "Based on my research, there was no lis pendens recorded against the Property prior to SFR purchasing the Property." See Exhibit B, at No. 19, attached to SFR's MSJ. The bank has not provided any evidence to contrary to the fact that there was not a lis pendens recorded against the Property prior to SFR purchasing the Property.

17. **SFR's Undisputed Fact:** Various facts of which the Bank disputes.

The bank states the following throughout the disputed facts section of their Opposition.

Bank's Response: "The mailing of the referenced document is immaterial. The mailing and receipt of the referenced document are immaterial. And the receipt of the referenced document is immaterial."

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SFR's Response: As notice of the corresponding documents are of a material matter in this litigation, SFR disputes that these documents are immaterial. Additionally, the bank claims the filed pleadings in this matter are immaterial, however, these are undisputed facts.

B. Association had a valid lien on the property pursuant to NRS 116.3116

For the first time, the Bank argues that the Association did not have a super-priority lien under NRS 116.3116. Because this has never been claimed or asserted as an affirmative defense, this argument is waived and should be disregarded. However, should the Court entertain this argument by the bank, the bank is incorrect. As evidenced throughout this litigation and evidenced by a plethora of documents as outlined below, the Association had a valid super-priority lien.

November 8, 1991	Association perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions & Restrictions ("CC&Rs) as Instrument No. 01962 in Book 911108.[1]
August 3, 2012	Association recorded Notice of Delinquent Assessment Lien ("NODA") as Instrument No. 20120803000297 2.[2]
September 20, 2012	After more than 30 days elapsed from the date of mailing of the NODA, Association recorded a Notice of Default and Election to Sell Under Homeowners Association Lien ("Notice of Default") as Instrument No. 20120920000144 6.[3] Bank admits to receiving the Notice of Default.[4] [5]
March 6, 2013	Association foreclosure deed vesting title in SFR recorded as Instrument No. 20130306000164 8.[6]

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[1] See Association's Declaration of CC&Rs, attached hereto as Exhibit A, at [Chase-Hawkins0062-0094].

[2] See Notice of Delinquent Assessment Lien, attached to SFR's MSJ as **Exhibit A-7**, at [Chase-Hawkins_NAS0048].

[3] See Notice of Default and Election to Sell Under Homeowners Association Lien, attached to SFR's MSJ as **Exhibit A-9**, at [Chase-Hawkins0014-0015].

[4] See Bank's Responses to Requests for Admissions, attached to SFR's MSJ as **Exhibit A-11**, at No. 5.

[5] See Deposition transcript of the Bank's 30(b)(6) witness Susan Lyn Newby, attached to SFR's MSJ as **Exhibit A-12**, at [8:16-9:25] and [30:1-19].

[6] See Foreclosure Deed, attached to SFR's MSJ as **Exhibit B-2**.

C. Retroactive application of SFR v. U.S. Bank

Again, for the first time, the Bank argues that SFR Investement Pool 1, LLC. v. U.S. Bank, N.A., 130 Nev. ___, 334 P.3d 408 (2014) should not be applied retroactively, specifically that Christiana Trust v. S&P Homes, et al., Case No. 2:15-cv-01534-RCJ-VCF, 2015 WL 6962860 (D. Nev. Nov. 9, 2015) "prevents" this Court from "retroactively" applying the decision in SFR. Bank's Opp., pp. 12-13. Because the Bank has never claimed or asserted this as an affirmative defense, this argument is waived and should be disregarded. Furthermore, retroactivity concerns are removed from the statutory construction context because, "'[a] judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.'" Morales-Izquierdo v. Dept. of Homeland Sec., 600 F.3d 1076, 1087-88 (2010) (quoting Rivers v. Roadway Express, Inc., 511 U.S. 298, 312–13 (1994)) (overruled in part on other grounds by Garfias-Rodriguez v. Holder, 702 F.3d 504, 516 (2012)). When a court interprets a statute, "'it is explaining its understanding of what the statute has meant continuously since the date when it became law.'" Morales-Izquierdo, 600 F.3d at 1088 (quoting Rivers, 511 U.S. at 313 n.12). Consequently, judicial interpretations are given "[f]ull retroactive effect[.]" Morales-Izquierdo, 600 F.3d at 1008 (quoting Harper, 509 U.S. at 97). In Christiana Trust, Judge Jones analyzed the Chevron Oil[7] factors in determining that SFR should not be applied retroactively. The non-binding Christiana Trust case does not prevent this Court from reaching its own conclusions.

In sum, the Bank has waived its right to assert this argument as a claim or defense. Besides, Chevron Oil is distinguishable from SFR in that the latter dealt with statutory construction of an existing law and not application of a new rule of law. If this Court determines the issue was not waived, and is inclined to do a full analysis, SFR requests the opportunity to brief the issue. Here, SFR does not wish to "waive the waiver" by engaging further than to say it does not apply.

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[7] Chevron Oil Co. v. Huson, 404 U.S. 97, 106-107 (1971).

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D. The Bank cannot use the Supremacy Clause to Displace Nevada Law

The United States Supreme Court recently determined that private litigants cannot use the Supremacy Clause to displace state law. Armstrong v. Exceptional Child Care Ctr., Inc., 575 U.S. ___, 135 S.Ct. 1378, 1383-85 (2015). Clarifying the Supremacy Clause's purpose and scope, Armstrong determined that the Supremacy Clause does not authorize private litigants to: (i) displace state law or (ii) enforce federal law. Id. at 1383-85. Rather, a judge-made equitable remedy allows private parties to enjoin government actors from violating federal law. Id. at 1384-85. And, Congress —via a law's text—determines who can enforce a federal statute. Id. at 1383-84. Here, Congress authorized HUD's Secretary to enforce the National Housing Act ("NHA"). The Bank is not HUD's Secretary.

E. The Bank cannot Enforce the National Housing Act

This lawsuit involves private litigants, not the government. The government interest here is too remote or speculative to require a "uniform" judge-made federal rule. Texas Indus., Inc. v. Radcliff Materials, Inc., 451 U.S. 630, 642 (1981); Miree v. DeKalb Cntv., 433 U.S. 25, 31 (1977); Bank of Am. Nat'l Trust & Sav. Ass'n v. Parnell, 352 U.S. 29, 33 (1956); Pankow Constr. Co. v. Advance Mortg. Corp., 618 F.2d 611, 613-14 (9th Cir. 1980). HUD is not a party and the Bank has not shown that it assigned the deed of trust to HUD. When looking to the "rule of decision" determinations—instances when judges engage in common law rule-making—are "few and restricted," limited to "conflicts" between state and federal policy. O'Melveny & Myers v. FDIC, 512 U.S. 79, 87-88 (1994). If there is no "conflict," then state law controls. Id. Here, Nevada and HUD have the same policy: banks should pay association dues. SFR, 334 P.3d at 414; HUD Handbook 4310.5, Rev-2, Ch. 4, § 4-37(A), p. 4-12. Ultimately, the Bank's reliance on the National Housing Act to protect their private interest is misplaced.

F. NRS 116 Does Not Conflict with HUD Policies.

The Bank eludes to the proposition that NRS 116 undermines the FHA Program's foreclosure avoidance scheme and therefore violates the Supremacy Clause. In other words, because HUD has a lengthier foreclosure process than NRS 116, the two conflict. However, again this argument is misplaced because NRS 116 does not frustrate or conflict with HUD policies.

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Both NRS 116 and the HUD scheme still contemplate foreclosure and allow for it. NRS 116 is not a foreclosure statute for banks; it is a foreclosure statute for the associations. There is no compliance on the part of the Bank that is required by NRS 116 that conflicts with the rules the Bank must follow in order to foreclose on an FHA-insured loan. The Bank is not required to do anything under NRS 116 that would make it violate any rules or guidelines of HUD. Instead, HUD encourages the payment of Association liens.

The purpose of HUD is not frustrated by NRS 116 because Nevada HOA laws "are entirely consistent with [HUD's] goals of improving residential community development, eliminating blight, and preserving property values." Freedom Mortg. Corp., 106 F. Supp. 3d at 1188 (emphasis added); see also JPMorgan Chase Bank, N.A., v. SFR Investments Pool 1, LLC, Case No. 2:14-cv-0280-RFB-GWF, at 19-22 (D.Nev. July 28, 2016) (Order granting summary judgment in favor of SFR and adopting the reasoning in Freedom Mortg.). Also, the goals of HUD are furthered by Nevada's HOA lien laws because the laws encourage lenders to pay the liens so that the homeowners can avoid foreclosure, thereby meeting the federal policy of keeping homeowners in their homes. Id. (emphasis added). Therefore, NRS 116, does not conflict with HUD Policies.

G. The Bank as a Lienholder, is not Entitled to Equitable Relief.

What the Bank seeks is equitable relief by having the foreclosure sale or subsequent sale invalidated, or allowing its deed of trust to encumber the Property.[8] However, under Nevada law, "courts lack authority to grant equitable relief when an adequate remedy at law exists." Las Vegas Valley Water Dist. V. Curtis Park Manor Water Users Ass'n, 646 P.2d 549, 551 (Nev. 1982). While the Nevada Supreme Court recently found that while the deed recitals contained in NRS 116.31166 are conclusive as to those matters asserted, a court may still set aside a defective foreclosure sale on equitable grounds. Shadow Wood, 366 P.3d at 1110. But Shadow Wood is distinguishable from this case in one key aspect: the bank in Shadow Wood was the homeowner of the Property which the Association foreclosed. Id. at 1107-1109. In other words, it was the homeowner who challenged the validity of the sale, not a lienholder. A homeowner,

[8] To the extent the Bank suggests, even by inference, that taking title subject to the first deed of trust is an option, the statute does not provide such an option.

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unlike a lienholder, has a whole bundle of rights that accompany property ownership and, therefore, its property is unique and a homeowner can be entitled to equity. Unlike a homeowner, the Bank simply had a collateral interest in the Property which gave it the right to foreclose and sell the Property. Because the Bank has an adequate remedy at law, equitable relief is not available to it. And if the Bank could prove any such irregularity, its remedy would be from those who injured it, not from SFR, who merely purchased the Property after being the highest bidder at a public auction. Unless the Bank can demonstrate actual fraud, unfairness, or oppression by SFR at the publically advertised and held auction, which it cannot because it is an impossibility, SFR should not be subject to any acts that would set aside its unencumbered deed. Furthermore, the Bank's remedy, if one is even triggered, is at law in the form of money damages from the persons who harmed it, such as the foreclosing association or trustee. Munger v. Moore, 89 Cal.Rptr. 323 (Ct. App. 1970).

H. The Association Foreclosure Deed is Presumed Valid, and SFR Can Rely on the Recitals Contained Therein as Conclusive Proof of the Association's Compliance.

Foreclosure sales and the resulting deeds are presumed valid. NRS 47.250(16)-(18); see also Breliant v. Preferred Equities Corp., 918 P.2d 314, 319 (Nev. 1996). "A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." Yeager v. Harrah's Club, Inc., 897 P.2d 1093, 1095 (Nev. 1995) (citing Vancheri v. GNLV Corp., 777 P.2d 366, 368 (Nev. 1989).) "These presumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence." Id. (citing NRS 47.180.).

Put simply, the Bank bears the burden to have pled and proven a claim for fraud with particularity, or alleged and provided admissible evidence of some fraud, unfairness or oppression that is not overshadowed by its own bad acts. Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 366 P.3d 1105, 1112-1114 (Nev. 2016); see also Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 80 F.Supp.3d 1131, 1135 (D.Nev. 2015). However, as fully elaborated in SFR's Motion and Opposition, the Bank would

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have to prove that the recitals were incorrect to even advance its arguments further, and it cannot since it **received actual notice** of the Association's foreclosure.[9] Further, the Bank failed to produce any admissible evidence whatsoever to prove fraud, oppression or unfairness in the sale process that would allow the sale to be set aside. None of the arguments presented by the Bank validate a claim for oppression or unfairness. First, the Bank's reliance on the professed "inadequacy" of the sales price as evidence of unfairness and oppression is contrary to existing law. Next, as to adequacy of content of the notice, the Bank erroneously assumes that certain specifications were required by law, which they were not.[10] To that end, the Bank has failed to establish any issue with the propriety of notices and the Bank has certainly provided nothing to indicate any irregularities in the sale itself.

Regardless of the above, while the presumption of a regular and proper sale is rebuttable, the presumption is **conclusive as to a bona fide purchaser**. See Moeller v. Lien, 30 Cal.Rptr.2d 777, 783 (Ct. App. 1994) (emphasis added); see also, 4 Miller & Starr, Cal. Real Estate (3d ed. 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2 Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59, pp. 476-477). This conclusive presumption is key because it "precludes an attack by the trustor on the trustee's sale to a bona fide purchaser even where the trustee wrongfully rejected a proper tender of reinstatement by the trustor[,]" and even where "the sale price was only 25 percent of the value of the property ..." Moeller, 30 Cal.Rptr.2d at 783. In addition, while here SFR is a bona fide purchaser for value,[11] under Nevada law, it need not be a BFP to rely on the recitals as conclusive proof. See Pro-Max Corp. v. Feenstra, 16 P.3d 1074, 1077-78 (2001), opinion reinstated on reh'g (Jan. 31, 2001)(holding that no limitation of bona fide purchaser can be read into a statute providing a conclusive presumption).

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[9] See Bank's Responses to Requests for Admissions, attached to SFR's MSJ as **Exhibit A-11**, at No.10.

[10] See NRS 116.31162; see also, SFR, 334 P.3d at 418.

[11] See SFR's MSJ, 17:19-20:7.

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I. The Sale was Commercially Reasonable.

Even if this Court believes that NRS 116 requires sales to be commercially reasonable, the Bank has not proven that the sale in this case was commercially unreasonable. Under Nevada law, in order to prove a sale was not commercially reasonable, a party must show (1) low price, and (2) fraud, unfairness or oppression that accounts for and brought about the low price. Shadow Wood, 366 P.3d at 1110 (2016) (citing Long v. Towne, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982)); see also Golden, 79 Nev. at 504, 514 (adopting the California rule that " inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness or oppression as accounts for and brings about the inadequacy of price" (internal citations omitted) (emphasis added).

As to the first element, the Bank has failed to show that the price paid by SFR was "low." While the Bank attempts to argue that a fair market value should be applied to the sale, which is improper.[12] Even if this Court were to consider this fair market value approach, and use this as a comparison to conclude that the price paid by SFR was low, the Bank still has failed to show that any fraud, unfairness or oppression brought about or accounted for the low price. Put simply, commercial reasonableness deals with looking at whether there was **conduct in the sale process that led to the low price**, not simply comparing price to value. See Iama Corp. v. Wham, 99 Nev. 730, 735-738, 669 P.2d 1076, 1079 (1983) (must look to the sale process, i.e., "whether proper notice was given, whether the bidding was competitive, and whether the sale was conducted pursuant to . . . normal procedures") (emphasis added).

Here, the Association complied with the notice requirements of NRS 116; the Bank actually received notice of the Association non-judicial foreclosure sale several times;[13] the sale was publicly noticed, the sale was held in a public place; multiple bidders attended the sale; and, neither the homeowner nor the Bank paid an amount to cure the lien before the sale.

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[12] See Section I (a), below.

[13] See Proof of Mailings of Notice of Default, attached to SFR's MSJ as **Exhibit A-10**, at [Chase-Hawkins_NAS00075-116], see also, Bank's Responses to Requests for Admissions, attached to SFR's MSJ as **Exhibit A-11**, at No. 5 and No. 10; see also, Deposition transcript of the Bank's 30(b)(6) witness Susan Lyn Newby, attached to SFR's MSJ as **Exhibit A-12**, at [8:16-9:25] and [30:1-19].

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In short, the Bank has proven absolutely no fraud, oppression or unfairness which accounted for and brought about the price paid by SFR.

In sum, because (1) there is no requirement that NRS 116 sales be commercially reasonable, (2) the price paid by SFR was not "low," and (3) the Bank failed to demonstrate any fraud, oppression or unfairness which brought about and accounted for the price paid by SFR, the Bank's commercial unreasonableness argument fails.

1. The Price of the Foreclosure Sale was Not Low.

Any evaluation that does not consider the entirety of a property's circumstances, including the fact that it was sold at an association non-judicial foreclosure sale, cannot shed light on the proper disposition value of a property. As the Bourne Valley Court recognized, when assessing commercial reasonableness of an association sale, the material facts affecting the specific market at that time must be considered, including the split in the courts as to the interpretation of NRS 116.3116(2), and whether there was evidence of fraud, oppression or unfairness:

> The commercial reasonableness here must be assessed as of the time the sale occurred. Wells Fargo's argument that the HOA foreclosure sale was commercially unreasonable due to the discrepancy between the sale price and the assessed value of the property ignores the practical reality that confronted the purchaser at the sale. Before the Nevada Supreme Court issued SFR Investments, purchasing property at an HOA foreclosure sale was a risky investment, akin to purchasing a lawsuit. Nevada state trial courts and decisions from the United States District Court for the District of Nevada were divided on the issue of whether HOA liens are true priority liens such that their foreclosure extinguishes the first deed of trust on the property. SFR Investments, 334 P.3d at 412. Thus, a purchaser at an HOA foreclosure sale risked purchasing merely a possessory interest in the property subject to the first deed of trust. This risk is illustrated by the fact that title insurance companies refused to issue title insurance policies on titles received from foreclosures of HOA super priority liens absent a court order quieting title. (Mot. to Remand to State Court (Doc. #6, Decl. of Ron Bloecker.) Given these risks, a large discrepancy between the purchase price a buyer would be willing to pay and the assessed value of the property is to be expected.

Bourne Valley, 80 F.Supp.3d 1131,1136 (D.Nev. 2015).

Likewise, in BFP, the United States Supreme Court was analyzing whether the price received at a mortgage foreclosure sale was less than "reasonably equivalent value" under the bankruptcy code. Similar to the arguments made by the Bank in this case, the Chapter 11 debtor

in BFP argued that because the property sold for a fraction of its fair market value, the price paid was not reasonable. The Court held that "a 'reasonably equivalent value" for foreclosed real property is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with." BFP v. Resolution Trust Corporation, 511 U.S. 531, 545, 114 S.Ct. 1757 (1994). The Court explained that in a forced sale situation, "fair market value cannot—or at least cannot always—be the benchmark[]' used to determine reasonably equivalent value. Id. at 537. This is so because the market conditions that generally lead to "fair market value" do not exist in the forced sale context, where sales take place with significant restrictions:

> [M]arket value, as it is commonly understood, has no applicability in the forced-sale context; indeed, it is the very antithesis of forced-sale value. 'The market value of ... a piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell and a purchaser who desires to buy but is not compelled to take the particular ... piece of property.' In short, 'fair market value' presumes market conditions that, by definition, simply do not obtain in the context of a forced sale.

Id. at 537-538, quoting Black's Law Dictionary 971 (6th ed. 1990).

The Court recognized that property sold in a forced sale context i.e. a foreclosure, "is simply worth less [because] [n]o one would pay as much to own such property as he would pay to own real estate that could be sold at leisure and pursuant to normal marketing techniques." Id. at 539. As the Court further noted,

> Unlike most other legal restrictions, however, foreclosure has the effect of completely redefining the market in which the property is offered for sale; normal free-market rules of exchange are replaced by the far more restrictive rules governing forced sales. Given this altered reality, and the concomitant inutility of the normal tool for determining what property is worth (fair market value), the only legitimate evidence of the property's value at the time it is sold is the foreclosure-sale price itself.

Id. at 548-549 (emphasis in original).[14]

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[14] Courts have extended the BFP analysis to tax-defaulted sales of real property with adherence to requirements of state law, where such statutes included public noticing or advertising of the sale and competitive bidding or auction procedures. See In re Tracht Gut, LLC, 503 B.R. 804, 815-818 (9th Cir. B.A.P. 2014); T.F. Stone v. Harper, 72 F.3d 466 (5th Cir. 1995); Kojima v. Grandote Int'l Ltd. Co, 252 F.3d 1146 (10th Cir. 2001). Regardless of the type of sale, however, the analysis still aptly explains how market value cannot be compared to a forced sale transaction

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SFR paid more than most buyers were willing to pay for comparable properties. Meaning that even by the Bank's "Fair Market Value" definition the purchase would still be reasonable. Frankly, if the Bank believes the property was worth more, they could have also been a buyer, but chose not to purchase the property.

The evidence shows that SFR was the highest bidder at a publicly held auction with multiple bidders. In other words, SFR paid more than any other bidder was willing to pay. As discussed in BFP, a publicly held auction is a method use to sell property at its current value since any person or entity, including the Bank, could have bid more to receive the foreclosure deed to the Property. Although the Bank may be disappointed in the resulting sale price, no other buyer present was willing to pay more.

2. *Inadequacy of Price, However Gross, is Not in Itself a Sufficient Ground for Setting Aside a Sale.*

No matter how many times the Bank says differently, the Nevada Supreme Court **did not** adopt the Restatement (Third) of Property: Mortgages § 8.3, cmt. b (the "Restatement") to allow a court to unwind a sale due to low price as a matter of law. Rather, as the Nevada Supreme Court affirmed that an allegation of inadequate sales price alone, no matter how low, is insufficient to set aside a foreclosure sale; "there must also be a showing of fraud, unfairness, or oppression" that caused the price. Shadow Wood, 366 P.3d at 1110 (citing Long v. Towne, 639 P.2d 528, 530 (Nev. 1982) and Golden v. Tomiyasu, 79 Nev. 503, 514, 387 P.2d 989, 995 (Nev. 1963) (adopting the California rule that " inadequacy of price, **however gross**, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness or oppression as accounts for and **brings about the inadequacy of price**" (internal citations omitted) (emphasis added); see also Shadow Wood, 366 P.3d at 1111 (citing Golden (same)). In adopting the California Rule the Golden court went on to say that even when the inadequacy was so great as to "shock the conscience" the California rule as stated above would still apply. See Golden 79 Nev. at 514-15, 386 P.2d at955. ("In approving the rule thus stated, we necessarily reject the dictum in Dazet v. Landry, … , implying that the rule requiring more than mere inadequacy of price will not be applied if 'the inadequacy be so great as to shock

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the conscience.'")

The language "however gross" should be a clue to the Bank that no inadequacy of price by itself will allow the Court to set aside the sale. Thus, when the Bank argues that "gross inadequacy "of price *is* enough, it calls into question the Bank's legal analysis. Frankly, the Bank never directly addresses the California rule adopted in Golden as reaffirmed by Shadow Wood; instead the Bank dances around the topic by citing the Model UCIOA, the Restatement and foreign cases regarding gross inadequacy and "shocks the conscience" that have clearly not adopted the California rules as shown above.

But even an analysis of the Restatement shows that the Restatement never contemplates the facts and conditions surrounding association foreclosure sales in Nevada at the time of this sale. SFR was constantly forced to litigate to defend against lenders like the Bank attempting to foreclose on their extinguished deeds of trust following association foreclosure sales. See Bourne Valley, 80 F.Supp.3d at 1136. This was not the typical mortgage foreclosure sale where everyone accepts that when the lienholder with priority forecloses, all junior liens against the property are extinguished and attach to the proceeds. Here, every sale was under attack by lenders refusing to accept that "prior" meant "prior," and every sale remains under attack to this day. The Bank cannot create and perpetuate the situation that bidders—despite having correctly interpreted the statutes—have to consider the high risk and cost of litigation into their bidding, thereby keeping prices lower than at NRS 107 sales, and then complain that the prices are too low. They cannot use their legal position and litigation as both a sword and a shield; the Bank can point to nothing in the Restatement or in Shadow Wood that would contemplate allowing such an outcome. The Bank's Restatement argument fails.

However, if any doubt remained as to if the Nevada Supreme Court adopted the California Rule or some other set of rules or the Model UCIOA, a panel of the Nevada Supreme Court, in an unpublished order, reaffirmed Shadow Wood's reaffirmance "that a low sales price is not a basis for voiding a foreclosure sale absent 'fraud, unfairness, oppression . . ." Centeno v. J.P. Morgan Chase Bank, N.A., Nevada Supreme Court Case No. 67365 (Mar. 18, 2016) (unpublished Order Vacating and Remanding (preliminary injunction wrongly denied based on

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low price alone)).[15] Bottom-line, the Nevada Supreme Court's dicta in citing the Restatement did not introduce a new rule of law abrogating Nevada's long-standing law set forth in Long and Golden.[16]

J. SFR is a Bona Fide Purchaser for Value; Equity Lies in SFR's Favor.

A BFP is one who "takes the property 'for a valuable consideration and without notice of the prior equity. . . .'" Shadow Wood, 366 P.3d at 1115 (internal citations omitted). The fact that SFR "paid 'valuable consideration' cannot be contested.'" Id. (citing Fair v. Howard, 6 Nev. 304, 308 (1871). Further, notice by a potential purchaser that an association is conducting a sale pursuant to NRS 116, and that the potential exists for challenges to the sale "post hoc[,]" do not preclude that purchaser from BFP status. Shadow Wood, 366 P.3d at 1115-1116.

1. SFR's Experience as a Purchaser Does Not Defeat SFR's BFP Status.

The experience of the purchaser does not automatically defeat bona fide purchaser status. Melendrez v. D & I Inv., Inc., 26 Cal.Rptr.3d 413, 425 (Ct. App. 2005). In Melendrez, the California Court of Appeals concluding, "[W]e see no reasoned basis for a blanket rule that would preclude a buyer from being a BFP simply because he or she has experience in foreclosure sales and purchases property at less than fair market value." Id. at 426. The Melendrez court concluded,

> [a] holding that an experienced foreclosure buyer perforce cannot receive the benefits of the law as a BFP if he or she buys property for substantially less than its value would chill participation at trustees' sales by this entire class of buyers, and, ultimately, could have the undesired effect of reducing sales prices at foreclosure. We conclude therefore that the proper standard to determine whether a buyer at a foreclosure sale is a BFP is whether the buyer (1) purchased the property for value, and (2) had ***no knowledge or notice of the asserted rights of***

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[15] Available at http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567, as Doc. 16-08672 There, the price paid at the homeowners association's auction was $5,950.00. While the value of the property was not established, on appeal the bank argued that that the deed of trust secured a loan for $160,001.00 and the property later reverted to the bank at its own auction for $145,550.00, approximately 4% of the bank's credit bid. (See Case No. 67365, Response to Appellant's Pro se Appeal Statement, filed Feb. 17, 2016 (Doc. No. 16-04982), available at http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567). The panel included J. Pickering, the author of Shadow Wood.

[16] Unlike SFR, which dealt with statutory interpretation of an existing law, adopting the Restatement Third would be creating a new rule of law to which Chevron Oil analysis would apply and potentially prevent application this new rule of law retroactively. Chevron Oil Co. v. Huson, 404 U.S. 97, 106-107 (1971).

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another.

Melendrez, 26 Cal.Rptr.3d at 427 (emphasis added). General knowledge by a purchaser is not enough to defeat BFP.

A duty of inquiry arises "when the circumstances are such that a purchaser is in possession of facts which would lead a reasonable man in his position to make an investigation that would advise him of the existence of prior unrecorded rights ." Huntington v. Mila, Inc., 119 Nev. 355, 357, 75 P.3d 354, 356 (2003). While the Bank correctly identifies that SFR has experience in purchasing at association foreclosure sales, it fails to identify how this experience would have put them on a duty of inquiry in this case. Here SFR did not have a duty to inquire past the publically recorded documents. The public records only showed (1) that a deed of trust was recorded **after** the Association perfected its lien by recording its declaration of CC&Rs; (2) that there was a delinquency by the homeowner, which resulted in the Association instituting foreclosure proceedings, and after complying with NRS Chapter 116, it sold the Property at a public auction. Additionally, the Bank did not file an action challenging the superpriority amount or the sale, and it did not record a release of superpriority lien or a lis pendens. Nothing was recorded to lead SFR to believe the Bank's priority had changed in relation to the Association's.

In regards to this property and SFR, there are simply no specific facts here that would alert a buyer, of any sophistication, or create a heightened duty of inquiry beyond the recorded documents on the Property. In fact, even today, the Bank has failed to present any facts that would challenge the validity of the foreclosure sale. Frankly, with all the Bank's rhetoric on inquiry notice, the Bank fails to identify what information SFR would have learned, and how SFR would have found it and what specific information would have triggered a duty on SFR to look for this information outside the recorded documents. Contrary to the Bank's assertions, simply buying multiple homes at association foreclosure sales does not prevent SFR from being BFP. The Bank has not been able to advance a single position other than the defunct argument that the CC&Rs, FDOT or risk of litigation defeats SFR's BFP status.

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2. The Equities Weigh in favor of SFR.

Unless the Bank can demonstrate actual fraud, unfairness, or oppression by the purchaser at the publically advertised and held auction, the purchaser should not be subject to any acts that would set aside its unencumbered deed. Even if the Bank could be entitled to equity, which it is not, while a court may consider equities following a foreclosure sale, courts in equity "must consider the entirety of the circumstances that bear upon the equities[,]" including the actions and inactions of the parties and "whether an innocent party [a BFP] may be harmed by granting the desired relief." Id. at 1114 (citing In re Petition of Nelson, 495 N.W.2d 200, 203 (Minn. 1993) and Smith v. United States, 373 F.2d 419, 424 (4th Circ. 1966)). This is true ***even when there are potential irregularities in the foreclosure process***, such as pre-sale disputes between the association and the lender, ***where the buyer has no knowledge or participation in the irregularities***. Shadow Wood, 336 P.3d at 1115-1116 (emphasis added). Such consideration of harm is particularly important where the lender has failed to avail itself of the legal remedies available to it to prevent the foreclosure sale. Id. at 1114, n.7. In Shadow Wood, even when the bank made an attempt to pay, the Court noted it still had remedies it did not take. Id. Here, **the Bank**—with notice—**did nothing**. It did not attend the sale and announce a dispute and it did not file an action to enjoin the Association foreclosure sale nor did it file a lis pendens or otherwise put the world on notice that it disputed the superpriority amount of the lien or the Association foreclosure sale. As a result, title properly vested in SFR at the Association foreclosure sale. SFR would be harmed by a claim now, years after the sale, to set aside the sale or to encumber SFR's title. Therefore, summary judgment should be granted in favor of SFR.

K. The Bank Cannot Prevail on its Unjust Enrichment Claim.

The Bank is barred by the voluntary payment doctrine from the making an unjust enrichment claim. The voluntary payment doctrine law "clearly provides that one who makes a payment voluntarily, cannot recover it on the ground that he was under no legal obligation to make the payment." Best Buy Stores v. Benderson-Wainberg Assocs., 668 F.3d 1019, 1030 (8th Cir. 2012). Recently, the Nevada Supreme Court weighed in on this issue on whether the voluntary payment doctrine applies in Nevada to bar a property owner from recovering fees that

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it paid to a community association and, if so, whether the property owners demonstrated an exception to this doctrine by showing that the payments were made under business compulsion or in defense of property. Nevada Association Services, Inc. v. The Eighth Judicial District, 130 Nev. ___, ___, 338 P.3d 1250 (2014). In NAS the Nevada Supreme Court ruled that the voluntary payment doctrine is a valid affirmative defense in Nevada. Id. at 1254. Because the voluntary payment doctrine is an affirmative defense, the defendant bears the burden of proving its applicability. Schwartz v. Schwartz, 95 Nev. 202, 206, 591 P.2d 1137, 1140 n. 2 (1979). Once a defendant shows that a voluntary payment was made, the burden shifts to the plaintiff to demonstrate that an exception to the voluntary payment doctrine applies. Randazo v. Harris Palatine, N.A., 262 F.3d 663, 666 (7th Cir. 2001). There are two exceptions to the voluntary payment doctrine. These exceptions are (1) coercion or duress caused by a business necessity and (2) payment in the defense of property.

Despite the Bank's assertions otherwise, SFR can meet its initial burden of proving that the applicability of the doctrine and the Bank cannot show that it meets one of the exceptions to the doctrine. The bank disingenuously argues that it did not have "full knowledge" that its Deed of Trust had been extinguished and therefore reasonably continued to make payments toward taxes and insurance after the Association foreclosure sale. The fact is, NRS 116.3116 plainly establishes (and did so at the time of the relevant sale) that a portion of the association's lien is senior to the first deed of trust, that an association can non-judicially foreclose on its lien, and that said foreclosure would extinguish junior liens. The 2014 SFR decision simply confirmed the plain language of the statute. While there may not have been uniformity in the position that an association foreclosure would extinguish a first deed of trust, the notion that the Bank could not foresee that the first deed of trust would be extinguished under NRS 116.3116 is ludicrous and disingenuous; 116.3116 "clearly foreshadowed" this result. Accordingly, SFR can clearly show that any payment was a voluntary payment. As such, the burden shifts to the Bank to prove that one of the exceptions applies.

Here, the Bank was under no compulsion or obligation to pay any expenses on the Property. Just like any other homeowner, it was SFR's duty and obligation to pay obligations

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such as the taxes, insurance and assessments, not the Bank's. Had the Bank simply paid the assessments prior to the sale, we would not be here today. Why it would pay post-sale is inexplicable.

Additionally, the Bank's payments were not in defense of the property. That is because the Bank cannot show that SFR failed or refused to pay and assessment, taxes or other expense of the property. Furthermore, the Bank has not shown that some foreclosure due to unpaid taxes or assessments was imminent. Furthermore, to the extent the Bank voluntarily made payments for insurance, SFR has not benefitted from this unless the Bank made SFR an additional insured. Additionally, it is presumed that the Bank voluntarily paid the property taxes, which was unnecessary. Furthermore, the Bank has provided no evidence that SFR would not have paid the tax bill if given the opportunity.

Lastly, under Nevada law, in order to prevail on an unjust enrichment claim, the Bank must show that SFR retained the money or property of the Bank against fundamental principles of justice or equity and good conscience. Asphalt Products v. All Star Ready Mix, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995). Here, the subject Property was never property belonging to the Bank. Instead, the Property merely represented collateral that secured the first deed of trust until that security interest was extinguished by the Association foreclosure sale. As such, SFR has not retained property belonging to the Bank. Even if this Court were to consider a collateral interest as ownership interest in the Property, for all the reasons stated above, the Association foreclosure sale extinguished the deed of trust, and therefore there is no inequity or injustice as SFR has maintained possession of property it rightfully purchased at the Association sale. Therefore, SFR is entitled to summary judgment on the Bank's claim for unjust enrichment.

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CONCLUSION

Based on the above, the Court should enter summary judgment in favor of SFR, stating that (1) SFR is the title holder of the Property, (2) the Bank's deed of trust was extinguished when the Association foreclosed its lien containing super priority amounts, thus making the Bank's purported interest in the first deed of trust invalid, and (3) the Bank, and any agents acting on its behalf, are permanently enjoined from any sale or transfer that would affect SFR's title to the Property.

DATED this 1st day of August, 2016.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Attorneys for SFR Investments Pool 1, LLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of August, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, to the following parties:

Ballard Spahr		
	Contact	**Email**
	Abran Vigil	vigila@ballardspahr.com
	Mary Kay Carlton	carltonm@ballardspahr.com
Ballard Spahr Andrews & Ingersoll, LLP		
	Contact	**Email**
	Sarah Walton	waltons@ballardspahr.com
Ballard Spahr LLP		
	Contact	**Email**
	Catherine Wrangham-Rowe	wranghamrowec@ballardspahr.com
	Holly Priest	priestH@ballardspahr.com
	Las Vegas Docketing	lvdocket@ballardspahr.com
	Lindsay Demaree	demareel@ballardspahr.com
	Russell J. Burke	BurkeR@ballardspahr.com

/s/Jeremy R. Beasley
An Employee of Kim Gilbert Ebron

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DECLARATION OF JACQUELINE A. GILBERT IN SUPPORT OF SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I, Jacqueline A. Gilbert, Esq., declare as follows:

1. I am an attorney with Kim Gilbert Ebron, and I am admitted to practice law in the State of Nevada.

2. I am counsel for SFR Investments Pool 1, LLC ("SFR") in this action.

3. I make this declaration in support of SFR's Reply in Support of Motion for Summary Judgment.

4. I have personal knowledge of the facts set forth below based upon my review of the documents produced in this matter, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.

5. I am knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case. In connection with this litigation **3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-514-043 (the "Property")**, I reviewed the documents attached hereto as **Exhibits A-C**.

6. Attached hereto as **Exhibit A** and **Exhibit B [CHASE-HAWKINS0016]**, are true and correct copies of excerpts from JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("the Bank") Initial and Supplemental Disclosures of Witnesses and Documents.

7. Attached hereto as part of **Exhibit B [SFR80-81]** is a true and correct copy of the recorded Notice of Foreclosure Sale, that was obtained from the Clark County Recorder's Office and included in SFR's Initial Disclosures of Witnesses and Documents.

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8. Attached hereto as **Exhibit C** is a true and correct copy of the relevant portion of the deposition transcript of Susan Moses, the Nevada Association Service's Rule 30(b)(6) Witness, with reporter's certification.

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

Dated this 1st day of August, 2016.

/s/ Jacqueline A. Gilbert
Jacqueline A. Gilbert

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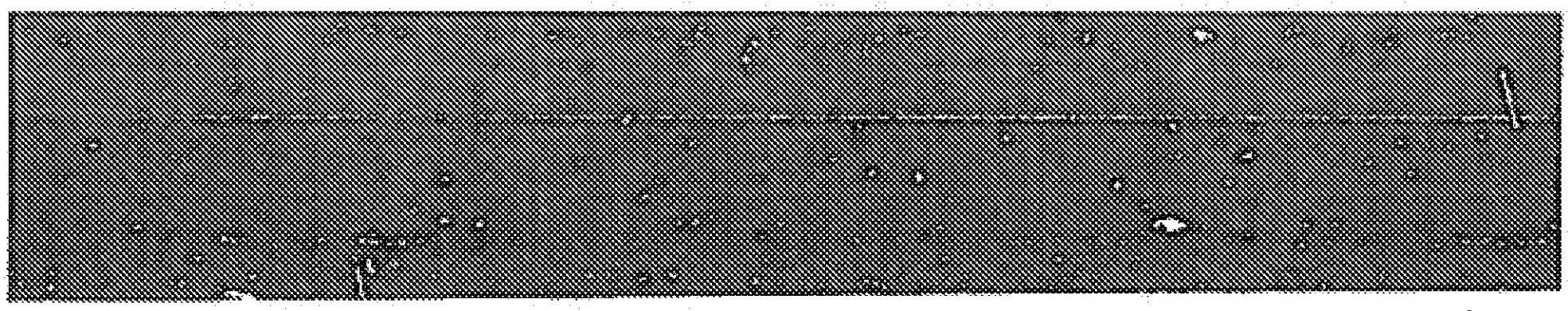
EXHIBIT A



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RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Mark Lemons, Esq.
Lionel Sawyer & Collins
1700 Valley Bank Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR

PEBBLE CANYON HOMEOWNERS ASSOCIATION

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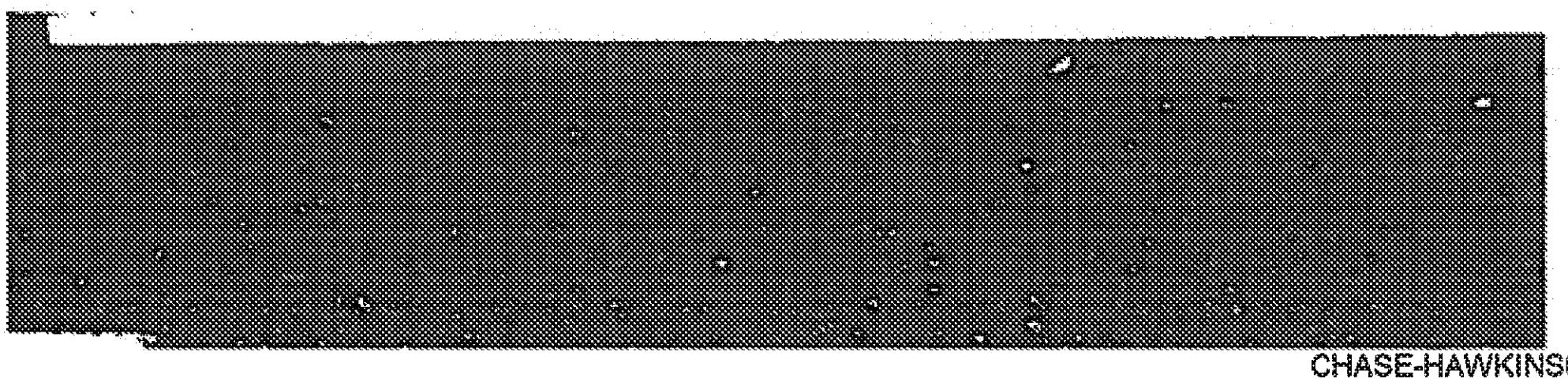

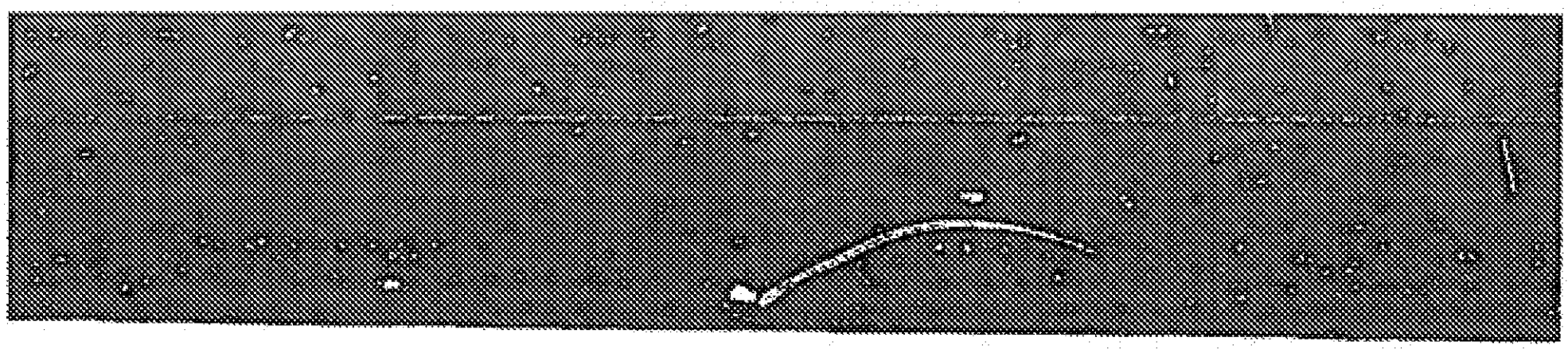

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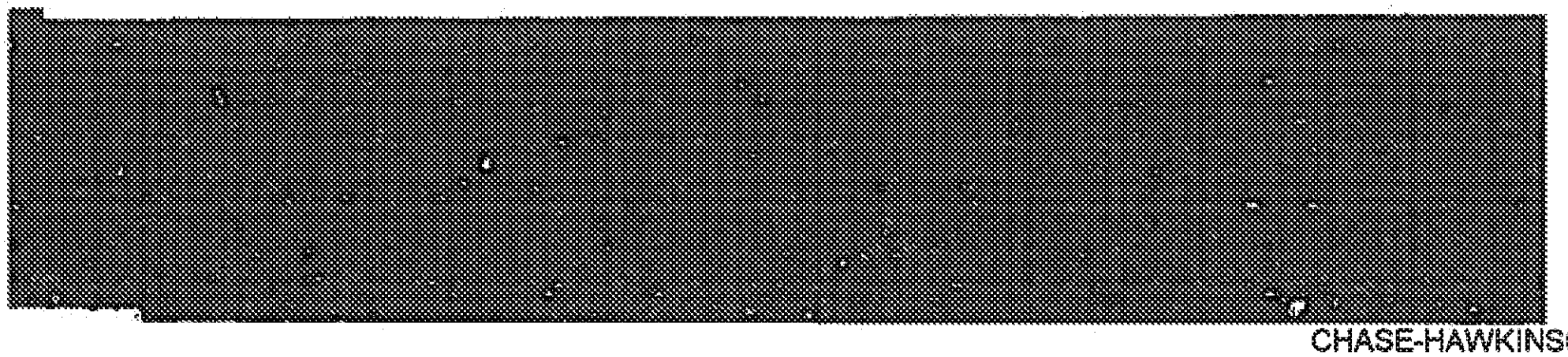

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PEBBLE CANYON HOMEOWNERS ASSOCIATION

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND
GRANT OF EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS is made by Pebble Canyon Limited Partnership, a Nevada limited partnership ("Declarant"), with reference to the following facts:

A) Declarant is the owner of the real property located in Clark County, Nevada, more particularly described in Article 1 below as the First Phases and the Annexable Area, which Declarant intends to develop and improve and offer single family residences constructed thereon for sale to the public (the "Development").

B) Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the First Phases and in the additional property which may be annexed thereto pursuant to the provisions of this Declaration, to create a corporation under the laws of the State of Nevada which shall be delegated and assigned the powers of, among other things, owning, maintaining and administering the Association Property (as hereinafter defined) for the private use of its members and authorized guests.

C) Declarant will cause or has caused such corporation, the members of which shall be the respective Owners of Lots in the Properties to be formed for the purpose of exercising such functions.

D) Before conveying any interest in the Properties, Declarant desires to subject the Properties to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future owners of portions of the Properties, in accordance with a common plan and scheme of improvement and development.

NOW, THEREFORE, Declarant hereby declares and establishes the following general plan for the protection and benefit of the Properties, and has fixed and does hereby fix the following protective covenants, conditions and restrictions upon each and every ownership interest in the Properties under and pursuant to which covenants, conditions and restrictions each such ownership interest shall hereafter be held, used, occupied, leased, sold, encumbered, conveyed or transferred. Each and all of the covenants, conditions and restrictions set forth herein are for the

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purposes of protecting the value and desirability of the Properties, and each and every Lot, and inure to the benefit of, run with, and shall be binding upon and pass with each and every ownership interest therein and shall inure to the benefit of and apply to and bind respective successors in interest of Declarant.

ARTICLE I

DEFINITIONS

Section 1.01. "Annexable Area" shall mean the real property described in Exhibit B attached hereto and incorporated herein by this reference, all or any portion of which may from time to time be made subject to this Declaration.

Section 1.02. "Association" shall mean and refer to Pebble Canyon Homeowners Association, a Nevada non-profit corporation.

Section 1.03. "Association Property" shall mean and refer to all the real and personal property which is owned at any time by the Association for the common benefit, use and enjoyment of all of the Owners.

Section 1.04. "Board" shall mean and refer to the Board of Directors of the Association.

Section 1.05. "Bylaws" shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

Section 1.06. "Declarant" shall mean and refer to Pebble Canyon Limited Partnership, a Nevada limited partnership, and its successors if the rights and obligations of Declarant should be assigned to, and accepted and assumed by, any successor or successors.

Section 1.07. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and Grant of Easements as it may from time to time be amended.

Section 1.08. "Development" shall mean and refer to the First Phases and the Annexable Area.

Section 1.09. "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws.

Section 1.10. "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Lot who has requested notice

from the Association of those matters which such holder is entitled to notice or by reason of this Declaration or the Bylaws.

Section 1.11. "First Phases" shall mean and refer to Phase 1 of the subdivisions known as Mirada at Pebble Canyon and Vistara at Pebble Canyon as described in Exhibit A attached hereto and incorporated herein by this reference.

Section 1.12. "Lot" shall mean and refer to any plot of land in the Properties (other than Association Property or any property owned by any non-profit corporation for the common use and enjoyment of owners) shown upon any recorded final map of the Properties, the Owner of which is required by this Declaration to be a member of the Association.

Section 1.13. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage, and the terms may be used interchangeably herein.

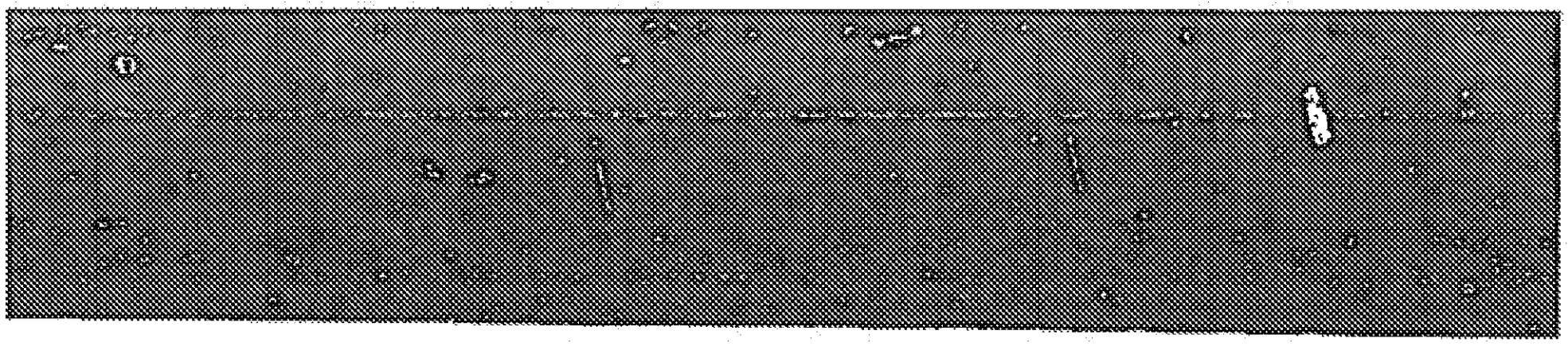
Section 1.14. "Mortgagee" shall mean and refer to a beneficiary under or holder of a deed of trust as well as a mortgagee, and the terms may be used interchangeably herein.

Section 1.15. "Mortgagor" shall mean and refer to the trustor of a deed of trust as well as a mortgagor, and the terms may be used interchangeably herein.

Section 1.16. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable title in fee simple (or legal title if equitable title has merged) to any Lot, including contract sellers. Owner shall not include a person or entity having an ownership interest merely as security for the performance of an obligation. The trustor of a deed of trust encumbering a Lot where fee simple title is vested in a trustee shall be considered to be the Owner.

Section 1.17. "Properties" shall mean and refer to the First Phases, together with such portions of the Annexable Area which are annexed to the property subject to this Declaration.

Section 1.18. "Phase of Development" shall mean and refer to all of the First Phases and all of the real property designated as a Phase of Development in a Notice of Annexation recorded pursuant to the provisions of this Declaration.

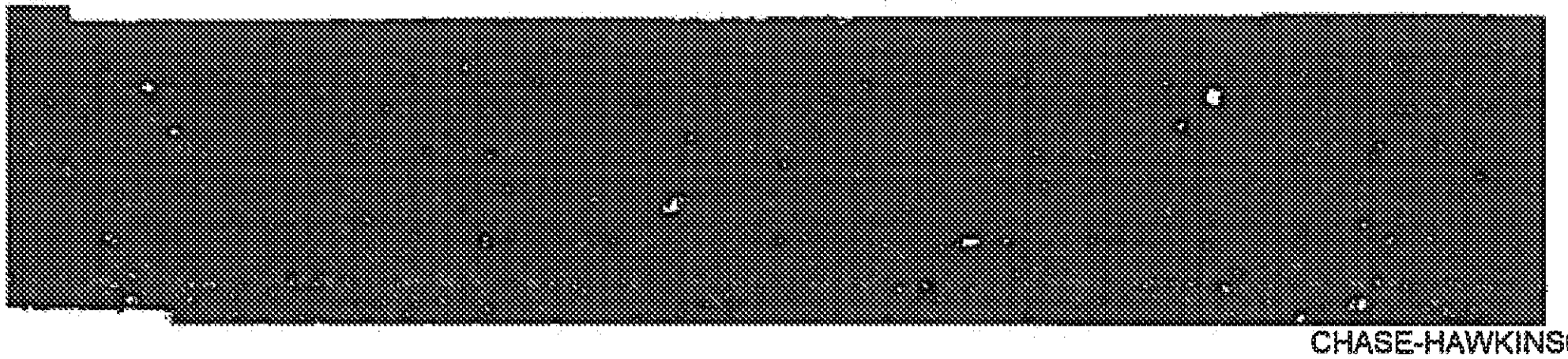


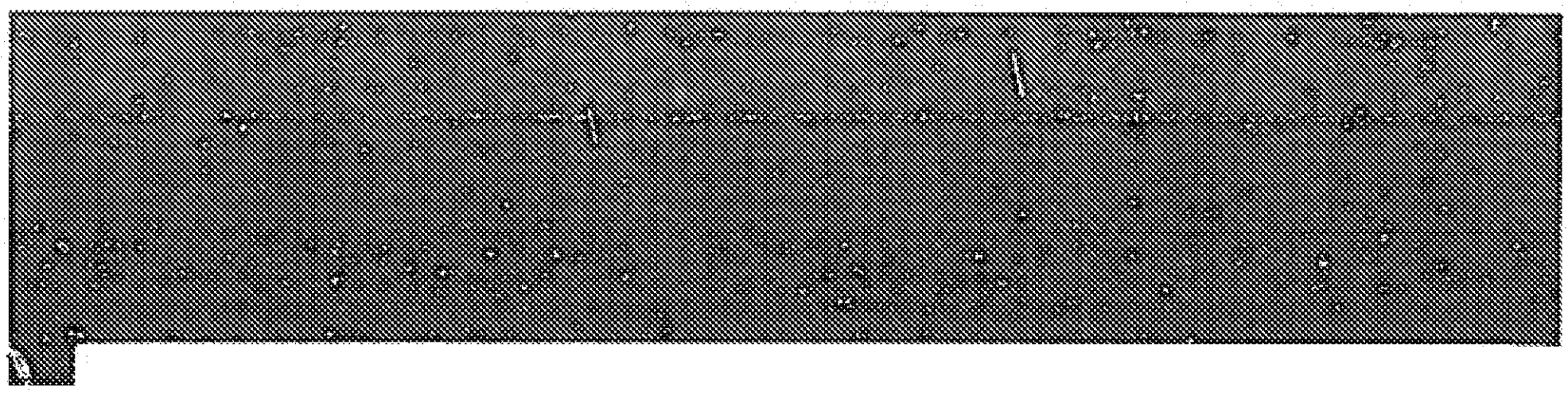
ARTICLE II

ANNEXATION OF ANNEXABLE AREA

Section 2.01. Annexation Declarant may, but shall not be required to, at any time or from time to time, add to the Properties covered by this Declaration all or any portion of the Annexable Area then owned by Declarant by recording with the Recorder of Clark County, Nevada, a Notice of Annexation of Territory ("Notice of Annexation") with respect to the real property to be annexed ("Annexed Territory"). If the Notice of Annexation for a proposed annexation is not recorded prior to the third (3rd) anniversary of the recordation of the most recently recorded Notice of Annexation (or the third anniversary of the recordation of this Declaration with respect to the first Notice of Annexation), then such annexation shall further require the vote or written consent of at least two-thirds (2/3rds) of the voting power of the Association. Upon the recording of a Notice of Annexation covering any portion of the Annexable Area and containing the provisions set forth herein, the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Territory in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the Properties; and thereafter the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the Annexed Territory shall be the same as with respect to the First Phases, and the rights, obligations, privileges, duties and liabilities of the owners and occupants of Lots within the Annexed Territory shall be the same as in the case of the Lots originally affected by this Declaration.

Section 2.02. Notice of Annexation This Notice of Annexation referred to above shall contain at least the following provisions: (i) a reference to this Declaration, which reference shall state the date of recordation hereof and other relevant recording data of the Clark County Recorder's office; (ii) a statement that the provisions of this Declaration shall apply to the Annexed Territory as set forth therein; (iii) an exact description of the Annexed Territory; and (iv) a description of the Association Property, if any, located in the Annexed Territory. A Notice of Annexation may cover one or more Phases of Development, as designated in such Notice of Annexation. For so long as Declarant has the right to add Annexable Area to the Properties without the approval of at least two-thirds (2/3rds) of the voting power of the Association, each Notice of Annexation relative to real property owned by Declarant shall be signed only by Declarant. From and after the date on which any annexation of Annexable Area requires the approval of at least two-thirds (2/3rds) of the voting power of the Association, each Notice of Annexation must also be signed by at least two (2) officers of the Association, certifying that the vote of the requisite percentage of voting power has been obtained. As





a condition precedent to any annexation of the Annexable Area, VA and FHA, as applicable, shall be advised of any such annexation, shall determine that the annexation is in accordance with the development plan submitted to and approved by VA and FHA, and shall so advise Declarant.

Section 2.03. Deannexation Declarant may delete all or a portion of a Phase of Development from coverage of this Declaration and the jurisdiction of the Association or amend a Notice of Annexation covering said Phase of Development so long as Declarant is the Owner of all of such Phase of Development, and provided that (i) a Notice of Deletion of Territory or amendment to the Notice of Annexation, as applicable is recorded in the same manner as the applicable Notice of Annexation was recorded, (ii) no Association vote has been exercised with respect to any portion of the Phase of Development, (iii) assessments have not yet commenced with respect to any portion of such Phase of Development, (iv) there has been no close of escrow for the sale of any Lot in such Phase of Development, (v) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase of Development, and (vi) VA and FHA, as applicable, has approved such deannexation or amendment.

Section 2.04 Other Additions In addition to the provisions for annexation specified in this Article, additional real property may be annexed to the Properties and brought within the general plan and scheme of this Declaration upon the approval by two-thirds (2/3rds) of the total voting power of the Association.

ARTICLE III

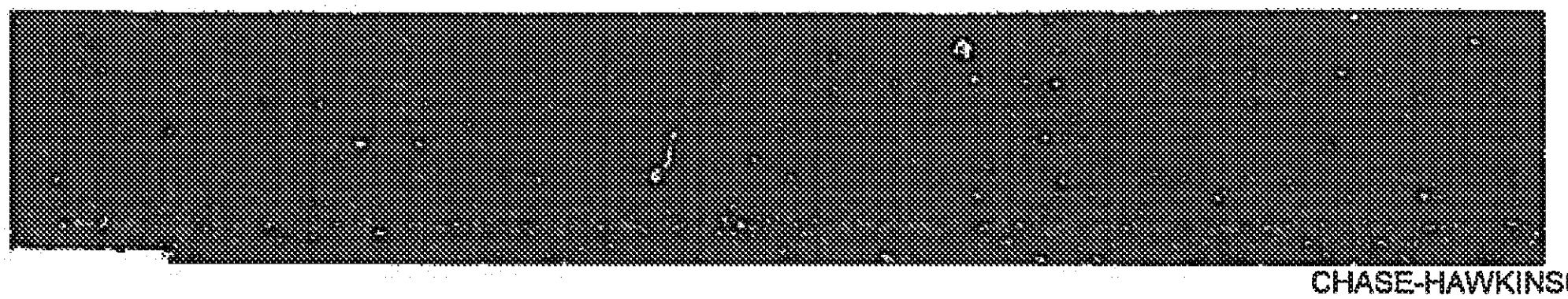
PROPERTY RIGHTS

Section 3.01. Owners' Easements of Enjoyment Every Owner shall have a right and easement of ingress and egress and of enjoyment in and to the Association Property which shall be appurtenant to and shall pass with the title to each Lot, subject to:

(a) The right of the Association to charge reasonable fees for the use of any recreational facility situated upon the Association Property.

(b) The right of Declarant to use the Association Property for sales, development and related activities pertaining to the Development together with the right of Declarant to transfer such easements to others.

(c) The right of the Association to impose fines and to suspend an Owner's right to use any recreational facilities for



nonpayment of any regular or special assessment by the Association, or if an Owner is otherwise in breach of obligations imposed under this Declaration, the Bylaws, or the rules and regulations set forth in the Bylaws.

(d) The right of the Association to dedicate or transfer all or any part of the Association Property to any public agency, authority or utility subject to such conditions as may be agreed to by the Owners. The granting of easements for utilities or for other purposes consistent with the intended use of the Association Property, and the granting of easements for maintenance purposes, shall not be deemed to be a dedication or transfer requiring the vote or written consent of the Owners.

(e) The right of the Association to transfer all or any part of the Association Property to a corporation to which all the Owners are members and which was established as the successor to the Association and its obligations hereunder and to replace the Association upon its termination.

(f) The right to adopt uniform rules and regulations regarding use, maintenance and upkeep of the Association Property.

Section 3.02. Delegation of Use Any Owner may delegate the right of enjoyment of the Association Property and facilities to family members, tenants or contract purchasers who reside on or in the Lot owned by such Owner, provided, however, that if any Owner delegates such right of enjoyment to tenants or contract purchasers, neither the Owner nor Owner's family members shall be entitled to use such facilities by reason of ownership of that Lot during the period of delegation. Guests of an Owner may use such facilities only in accordance with rules and regulations adopted by the Association, which rules and regulations may limit the number of guests who may use such facilities. The Association may also promulgate rules and regulations limiting the use of the Association Property to one co-Owner and such co-Owner's immediate family with respect to any Lot held in co-ownership.

ARTICLE IV

PEBBLE CANYON HOMEOWNERS ASSOCIATION

Section 4.01. Membership in the Association The initial members signing the Association's Articles of Incorporation and all Owners shall be members of the Association. The initial members shall be members only until close of escrow of the first three Lots sold to retail purchasers.

Section 4.02. Voting Those Owners appearing in the official records of the Association on the date forty-five (45) days prior to the scheduled date of any meeting of the Owners required or

permitted to be held under this Declaration, as record Owners of Lots shall be entitled to notice of any such meeting as provided herein. If there is more than one record Owner of any Lot, any and all of the Owners owning such Lot may attend any meeting of the Owners, but the vote attributable to the Lot so owned shall not be increased by reason thereof. Co-Owners owning the majority interest in a Lot may from time to time designate in writing one of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-Owner is designated, or if the designation has been revoked, the vote for the Lot shall be exercised as the co-Owners owning the majority interests in the Lot mutually agree. However, no vote shall be cast for any Lot if the co-Owners present in person or by proxy cannot agree to said vote or other action. Unless the Association receives a written objection in advance from a co-Owner, it shall be conclusively presumed that the voting co-Owner is acting with the consent of all other co-Owners.

Section 4.03. Proxies Every Owner entitled to attend, vote at or exercise consents with respect to any meeting of the Owners may do so either in person or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Association prior to the meeting to which it is applicable. Any proxy may be revoked at any time by written notice to the Association or by attendance in person by such Owner at the meeting for which such proxy was given. In any event, no proxy shall be valid beyond the maximum period permitted by law.

Section 4.04. Vote Appurtenant to Lot The right to vote may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that any Owner may give a revocable proxy in the manner described above, may assign its right to vote to a contract purchaser, a lessee or tenant actually occupying said Owner's Lot or to a Mortgagee of the Lot concerned, for the term of the lease or Mortgage, and any sale, transfer or conveyance of such Lot to a new Owner or Owners shall operate automatically to transfer the appurtenant vote to the new Owner, subject to any assignment of the right to vote to a contract purchaser, lessee or Mortgagee as provided herein.

Section 4.05. Notice of Meetings Meetings of Owners shall be held at a convenient location in or near the Development as designated in the notice of the meeting. Written notice of meetings shall state the place, date and time of the meeting and those matters which, at the time the notice is given, are to be presented for action by the Owners. Notice of any meeting at which directors are to be elected shall include the names of all those who are nominees at the time the notice is given to Owners. The Secretary of the Association shall cause notice of meetings to be sent to each Owner no later than ten (10) days prior to the meeting. A special meeting of the Owners may be called at any

reasonable time and place by written request (1) by the Board, (2) by the Declarant, for so long as the Declarant is an Owner, or (3) by the Owners having not less than twenty percent (20%) of the total voting power of the Association. To be effective, such written request shall be delivered to either the President or Secretary of the Association. Such officers shall then cause notice to be given to Owners entitled to vote that a meeting will be held at a time and place fixed by the Board not less than ten (10) days, nor more than thirty (30) days after receipt of the written request. Notice of special meetings shall specify the general nature of the business to be undertaken and that no other business may be transacted.

Section 4.06. Quorum The presence at any meeting, in person or by written proxy, of Owners entitled to vote at least fifty percent (50%) of the total votes of the Association shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Owners present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirement shall be the presence, in person or by written proxy, of Owners entitled to vote at least twenty-five percent (25%) of the total votes of the Association. If twenty-five percent (25%) of the total votes of the Association are not present at the adjourned meeting, in person or by written proxy, the Owners present, either in person or by written proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the adjourned meeting was called, at which meeting those Owners present, either in person or by written proxy, shall constitute a quorum. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is not fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Owners in the manner prescribed for annual or special meetings, as applicable. The Owners present at each meeting shall select a chairman to preside over the meeting and a secretary to transcribe minutes of the meeting. Unless otherwise expressly provided, any action authorized hereunder may be taken at any meeting of such Owners upon the affirmative vote of Owners having a majority of a quorum of the voting power present at such meeting in person or by proxy.

Section 4.07. Suspension of Membership Rights The Board shall have the authority to suspend the membership rights of any Owner, including the right to vote at any meeting of the members, for any period during which the payment of any assessment against the Lot owned by such Owner remains delinquent, it being understood that any suspension for nonpayment of any assessment shall not

constitute a waiver or discharge of the Owner's obligation to pay the assessments provided for herein.

Section 4.08. Classes of Voting Membership The Association shall have two (2) classes of voting membership as follows:

(a) Class A. Class A members shall be all Owners (with the exception of Declarant for so long as there exists a Class B membership). Class A members shall be entitled to cast one vote for each Lot owned and subject to assessment.

(b) Class B. The Class B member shall be Declarant. Declarant shall be entitled to cast three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earliest:

(1) Seven (7) years from the date of close of escrow of the first lot sold to a retail purchaser subject to this Declaration; or

(2) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership.

Section 4.09. Transfer of Membership Except as permitted by this Declaration or the Bylaws, membership in the Association shall not be transferred, pledged or assigned. Any attempted transfer, other than as permitted above, shall be deemed a prohibited transfer, shall be void, and shall not be reflected as a transfer upon the Association's books and records.

Section 4.10. Duty of Association The Association shall have the sole and exclusive right and duty to manage, operate, control, repair, replace and restore the Association Property, all as more fully set forth in the Bylaws.

Section 4.11. Non-Liability of Members In discharging their duties and responsibilities, the members' actions shall be on behalf of and as the representatives of the Association which shall, in turn, be on behalf of and as the representative of the Owners, and no member shall be individually or personally liable for performance or failure of performance of such member's duties and responsibilities unless an act or omission involves intentional misconduct, fraud or a knowing violation of law.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 5.01. Creation of Liens and Personal Obligations Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association such (i) regular assessments, and (ii) special assessments as may be established in the Bylaws. The regular and special assessments, together with interest, costs, late payment charges and reasonable attorneys' fees, shall be a charge on the Lots, as the case may be, and appurtenances thereto, and shall be a continuing lien upon the Lot and appurtenances thereto against which each such assessment is made. Each such assessment, together with interest, costs, late payment charges and reasonable attorneys' fees, shall also be the personal obligation of each person who was an Owner of a Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in interest unless expressly assumed by them. The initial maximum annual assessment shall be One Hundred Eighty Dollars ($180.00) per Lot.

Section 5.02. Rate of Assessments Both regular and special assessments of the Association shall be borne equally by all Owners. Assessments may be collected on a monthly basis or as otherwise determined by the Association.

Section 5.03. Effect of Nonpayment of Assessments; Remedies of the Association Any installment of a regular or special assessment shall be delinquent if not paid within ten (10) days of the due date as established by the Board. The Board shall be authorized to adopt a system pursuant to which any installment of a regular or special assessment not paid within ten (10) days after the due date shall bear interest at the rate determined by the Board, commencing ten (10) days from the due date until paid. In addition, the Board may require the delinquent Owner to pay a reasonable late charge to compensate the Association for increased bookkeeping, billing, and other administrative costs. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Association Property or abandonment of such Owner's Lot. If any installment of an assessment is not paid within ten (10) days after its due date, the Board may mail an acceleration notice to the Owner and to each first Mortgagee of a Lot which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified

in the notice may result in acceleration of the balance of the installments of such assessment for the then current fiscal year and sale of the Lot. If the delinquent installment or installments of any assessment and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of such assessment levied against such Owner and such Owner's Lot for the current fiscal year to be immediately due and payable and without further demand may enforce the collection of the full assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 5.04. Notice of Assessment No action shall be brought to enforce any assessment lien created herein, unless a "Notice of Assessment" is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot and a copy thereof has been recorded by the Association. Said Notice of Assessment must state (a) the amount of the assessment and interest, costs (including attorneys' fees) and penalties, (b) a description of the Lot against which the assessment was made, and (c) the name of the record Owner of the Lot. The Notice of Assessment shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied.

Section 5.05. Foreclosure Sale A sale to foreclose a Association lien may be conducted by the Association, its agent or attorney in any manner permitted by law. The Association shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage or convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. No sale to foreclose an assessment lien may be conducted until (1) the Association, its agent or attorney has first executed and recorded a notice of default and election to sell the Lot or cause its sale ("Notice of Default") to satisfy the assessment lien, and (2) the delinquent Owner or such Owner's successor in interest has failed to pay the amount of the delinquent assessment and interest, late fees, costs (including attorneys' fees) and expenses incident to its enforcement for a period of sixty (60) days. Such sixty (60) day period shall commence on the first day following the day upon which the Notice of Default is recorded and a copy thereof is mailed by certified mail with postage prepaid to the Owner or such Owner's successor in interest at his address, if the address is known, and otherwise to the address of the Lot. The Notice of Default must describe the deficiency in payment. The Association, its agent or attorney shall, after the expiration of such sixty (60) day period and before the foreclosure sale, give notice of the

time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed on or before the first publication or posting by certified mail with postage prepaid to the Owner or such Owner's successor in interest at his address if known, and otherwise to the address of the Lot.

Section 5.06. Curing of Default Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate "Release of Lien", upon payment by the defaulting Owner of a reasonable fee to cover the cost of preparing and recording such release. A certificate executed and acknowledge by two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

Section 5.07. Priority of Assessment Lien The lien of the assessments, including interest, late fees and costs (including attorneys' fees), provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. When the beneficiary of a first Mortgage of record or other purchaser of a Lot obtains title pursuant to a judicial or nonjudicial foreclosure of the first Mortgage, such person, his successors and assigns, shall not be liable for assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such person. Such unpaid assessments shall be collectible from all of the Lots subject to assessment, including the Lot belonging to such person, his successors or assigns.

Section 5.08. Capital Contributions to the Association Upon acquisition of record title to a Lot from a Declarant, such Owner shall contribute to the capital of the Association an amount equal to one-sixth (1/6) of the amount of the then regular annual assessment for the Lot. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association. Within six (6) months after the close of the first sales escrow of a Lot by Declarant, Declarant shall pay to the Association an amount equal to one-sixth (1/6) of the then regular assessment for all unsold Lots. Upon the close of escrow of any Lot for which Declarant prepaid the capital contribution,

escrow shall remit to the Declarant the capital contribution collected from the Owner.

Section 5.03. Obligations of Declarant Until the close of escrow for the first Lot sold by Declarant to a member of the home-purchasing public, Declarant shall pay all costs and expenses incurred by the Association.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 6.01. Required Approvals No building, fence, wall, or other structure or improvement shall be commenced, erected, placed, or altered upon any Lot, until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board or by an architectural committee appointed by the Board and composed of three (3) representatives. In the event the Board or its designated committee fails to approve or disapprove such locations, plans and specifications, or other requests within sixty (60) days after the submission thereof to it, then such approval will not be required, provided that any structure or improvement so erected or altered conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Development. No alteration shall be made in the exterior color, design or openings of any building or other construction undertaken unless prior written approval of the alteration shall have been obtained from the Board or its designated committee. The grade, level or drainage characteristics of any Lot shall not be altered without the prior written approval of the Board or its designated committee. The Association or its designated committee submitted to it shall review and approve or disapprove all plans for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Development generally. The Board or its designated committee shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, topography, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. Anything herein to the contrary notwithstanding, approval by the Board or its designated committee is not exclusive and all plans and specifications required to be approved by Clark County, Nevada, whether through the building permit process or

otherwise, shall be so approved prior to the commencement of any work.

Section 6.02. Garages Garages shall not be converted into living area without the approval of the Board or the architectural committee.

Section 6.03. Roofs Nothing shall be mounted on a roof without the approval of the Board or the architectural committee. All satellite dishes, antennae, air conditionar and/or heating systems shall be ground-mounted and shall not extend above the wall surrounding any lot.

Section 6.04. Parking No boats, recreational vehicles, trucks larger than one ton or trailers shall be parked on any street within the Properties for more than twenty-four hours. If said vehicles are parked on a lot, they shall be screened from view.

Section 6.05. Front Yards Owners shall landscape their front yards within six months of obtaining record title to a Lot from Declarant and shall maintain, repair and replace such landscaping such that it is in a safe and attractive condition. No landscaping shall be installed until plans are approved by the architectural committee.

Section 6.06. Animals No animals, fowl, reptiles, poultry, fish or insects of any kind ("Animals") shall be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable local ordinance or any other provision of this Declaration. "Unreasonable quantities" shall ordinarily mean more than two (2) pets per household. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the Animal. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any Animals brought or kept within the Properties by an Owner or by members of his family, his tenants or his guests.

Section 6.07. Nuisances No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the Properties, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, or offensive from any public or private street or from any other lot. No noise or other nuisance shall be permitted to

exist or operate upon any portion of a Lot so as to be offensive or detrimental to any other Lot in the Properties or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably disturb other Owners or their tenants shall be located, used or placed on any portion of the Properties. Alarm devices used exclusively to protect the security of a Lot and its contents, shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

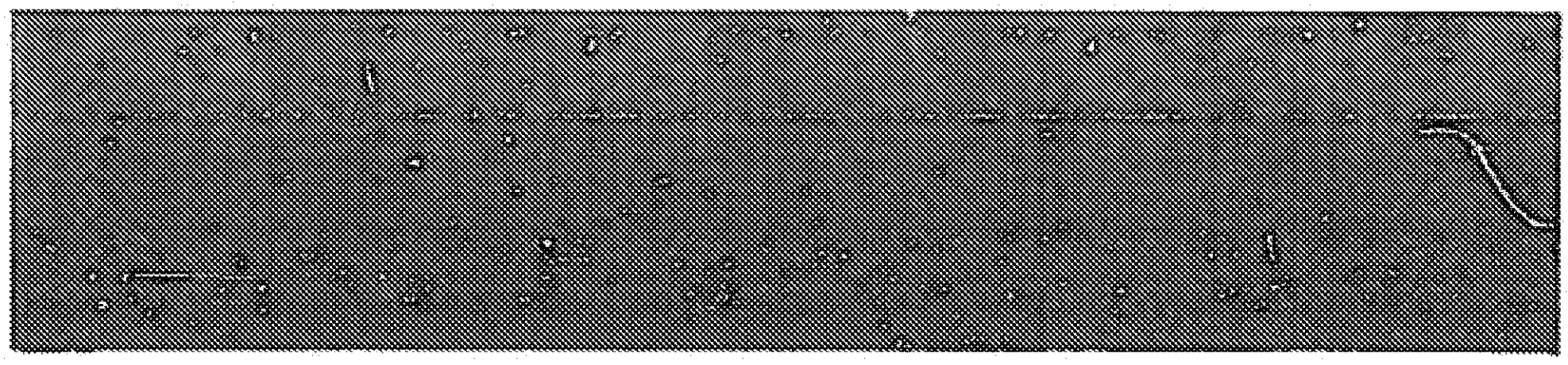
Section 6.08. Signs No sign, poster, billboard, advertising device or other display of any kind shall be displayed so as to be visible from outside any Lot without the approval of the Board or the architectural committee, except such signs of customary and reasonable dimensions as may be displayed on each Lot advertising the Lot for sale or lease.

Section 6.09. Interpretation All questions of interpretation or construction of any of the terms or conditions in this Article shall be resolved by the Board or its designated committee, and its decision shall be final, binding and conclusive on all of the parties affected.

Section 6.10. Violations In the event a violation of these restrictions exists, or in the event of the failure of any Owner to comply with a written directive or order from the Board or its designated committee, then in such event, the Board shall have the right and authority to perform the subject matter of such directive or order, including, if necessary, the right to enter upon the Lot, and the cost of such performance shall be charged to the Owner of the Lot in question, which cost shall be due within five (5) days after receipt of written demand therefor, and the amount thereof shall become a lien upon the Lot enforceable in the same manner as set forth in this Declaration with respect to assessments.

Section 6.11. No Waiver The approval of the Board or its designated committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Board, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever, subsequently or additionally submitted for approval or consent.

Section 6.12. No Liability Neither Declarant nor the Association, the Board or its designated committee, nor any member



thereof, nor their duly authorized representatives shall be liable for any loss, damage or injury arising out of, or in any way connected with, the performance of duties under this Article, unless due to fraud, intentional misconduct or a knowing violation of law.

Section 6.13. Temporary Structures No movable or permanent structure of any kind shall be placed on any Lot without the prior written permission of the Board, except such temporary structures and facilities as may be placed by Declarant in the course of construction of improvements within the Development.

Section 6.14. Diligently Prosecuting Work The work of constructing and erecting any building or other structure shall be prosecuted diligently from the commencement thereof and the same shall be complete within a reasonable time, in accordance with the requirements herein contained, provided, however, that the time for completion shall be extended by the period of delays in construction caused by strikes, inclement weather or other causes beyond the control of the Owner.

Section 6.15. Applicability to Declarant Nothing in this Article regarding obtaining architectural approval shall apply to Declarant.

ARTICLE VII

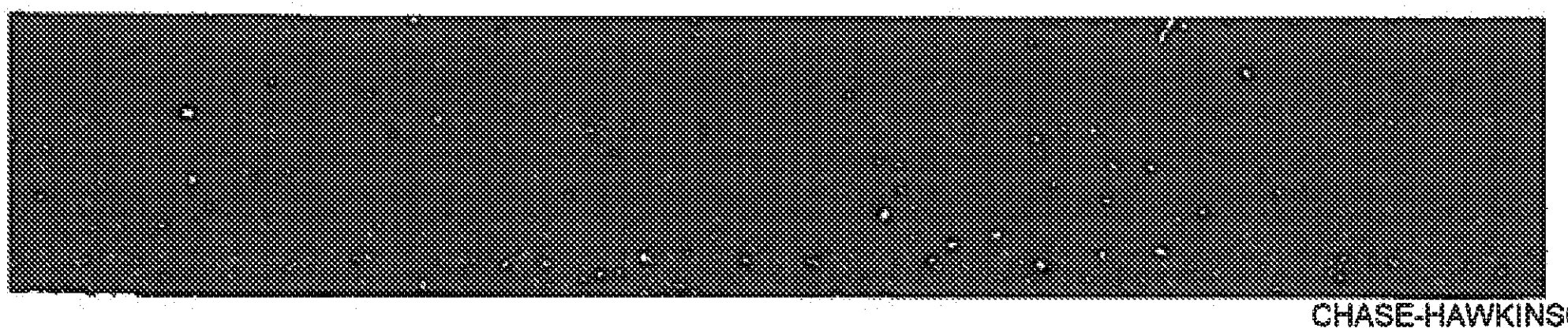
UTILITY EASEMENTS

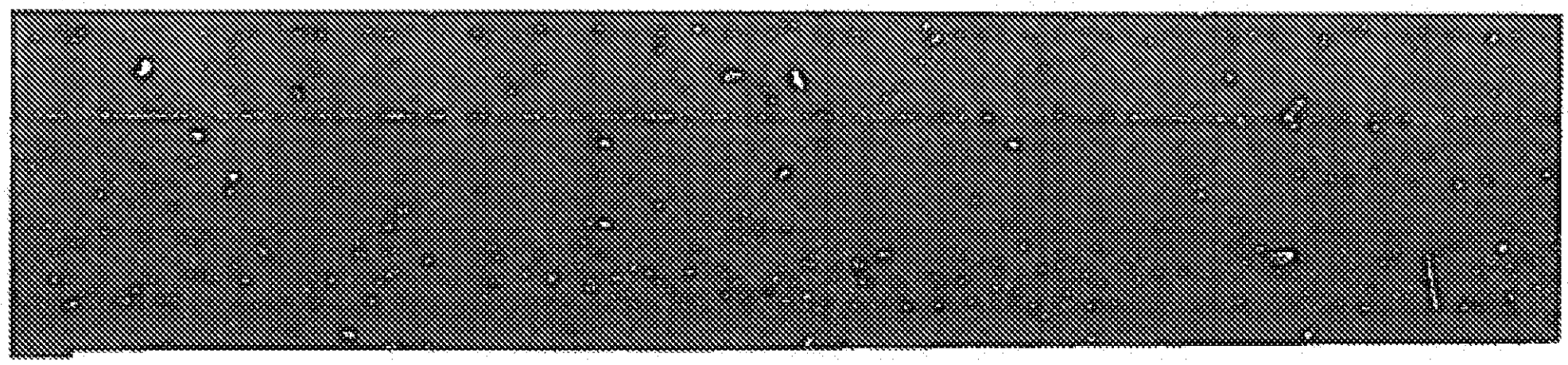
There is hereby created a blanket easement upon, across, over and under the Properties, including Association Property and each Lot, for purposes of ingress, egress, installation, replacement, repaid, and maintenance of utility and service lines and systems, by Declarant, its contractors and subcontractors and agents and employees of the providing utility or service company, including but not limited to, gas, electricity, communication, sewer, telephone, television, and water.

ARTICLE VIII

INSURANCE

Section 8.01. Hazard Insurance The Association shall obtain and maintain in effect for (i) any improvements located on Association Property, insurance against loss by fire and the risks covered by a standard all risk of loss perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof, and (ii) all personalty owned by the Association, insurance with coverage in the





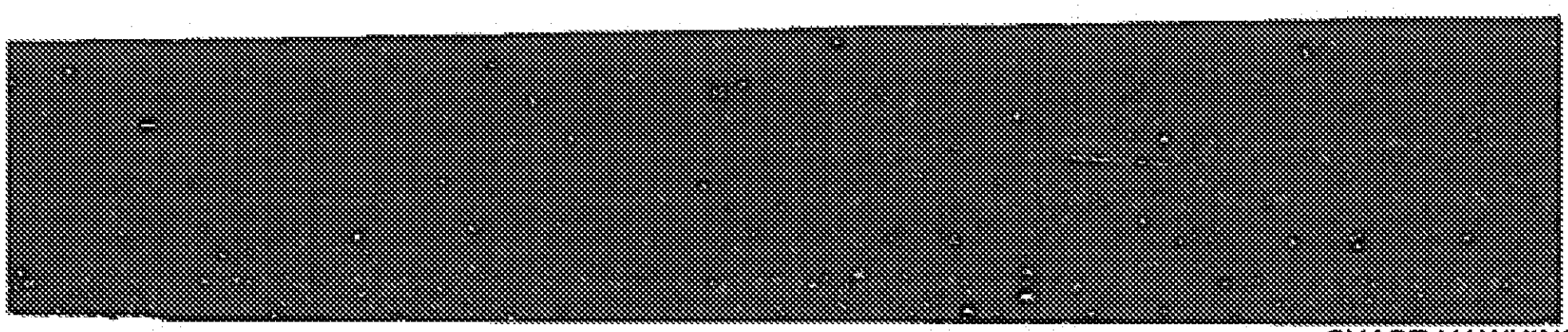
maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Board. Insurance proceeds for improvements to Association Property and personalty owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction, the Association may cause the same to be replaced, repaired or rebuilt. In the event the cost of such replacement, repair or rebuilding of the Association Property (a) exceeds the insurance proceeds available therefor, or (b) no insurance proceeds are available therefor, the deficiency may be assessed to the Owners as a special assessment.

Section 8.02. Liability Insurance The Association shall obtain and maintain in effect public liability insurance in the name of the Association and against any liability for personal injury or property damage resulting from any occurrence in or about the Association Property and the property described in Exhibit D attached hereto and incorporated herein in an amount not less than $1,000,000 with respect to the claim of one (1) person in one (1) accident or event and not less than $2,000,000 with respect to claims of two (2) or more persons in one (1) accident or event, and not less than $100,000 for damage to property.

Section 8.03. Inspection of Policies Copies of all insurance policies obtained by the Association (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time. All such insurance policies shall (i) provide that they shall not be cancelled by the insurer without first giving at least ten (10) days prior notice in writing to the Association and to each holder of a first mortgage listed on a schedule to the policies and (ii) contain a waiver of subrogation by the insurer(s) against the Association.

Section 8.04. Premiums and Proceeds Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be an expense to be included in the repair and special assessments levied by the Association. The Board is granted the authority to negotiate and settle with insurance carriers.

Section 8.05. Bond; Additional Insurance The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and the officers of the Association against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. However, fidelity bond coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors,



trustees, employees or agents of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of any such person at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum equal to one-fourth (1/4) of the annual assessments on all Lots in the Properties, plus reserve funds.

ARTICLE XI

CONDEMNATION

In the event the Association Property or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association. The Association is granted the authority to negotiate and settle with the condemning authority.

ARTICLE X

MAINTENANCE AND LANDSCAPING RESPONSIBILITIES

Section 10.01. Association Property Maintenance The Association shall maintain, repair and replace the Association Property and all improvements thereon. The Association shall also maintain, repair and replace landscaping of the Association Property and the landscaping of the property designated as landscaping easements on the final map of Mirada at Pebble Canyon and the final map of Vistara at Pebble Canyon such that it is in a safe and attractive condition.

Section 10.02. Restoration of Association Property Any restoration or repair of Association Property after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and original plans and specifications unless otherwise approved by Eligible Mortgage Holders and Eligible Insurers or Guarantors of at least fifty-one percent (51%) of the Lots subject to Eligible Mortgage Holders and Eligible Insurers or Guarantors.

Section 10.03. Owner Maintenance Each Owner shall keep and maintain in good repair and appearance all portions of such Owner's Lot and improvements thereon, including, but not limited to, any fence which is on the Lot line and the residence located on such Owner's Lot. The Owner of each Lot shall water, weed, maintain and

care for the landscaping located on such Owner's Lot so that the same presents a neat and attractive appearance. No Owner shall, however, maintain or change any portion of such Owner's Lot which is covered by a maintenance easement in favor of the Association or any other nonprofit owners' association.

Section 10.04. Right of Entry The Association shall have the right to enter upon any Lot in connection with any maintenance, repair or construction in the exercise of the powers and duties of the Association; provided the Association first gives reasonable notice of such entry to the Owner of such Lot. Any damage caused by an entry upon a Lot shall be repaired at the expense of the entering party.

ARTICLE XI

RIGHTS OF MORTGAGEES

Section 11.01. Payments of Taxes or Premiums by Mortgagees Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Association Property, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage on the lapse of a policy covering Association Property, and Mortgagees making such payments shall be entitled to immediate reimbursement thereof from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee who requests the same to be executed by the Association.

Section 11.02. Approval of First Mortgagees Unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each first Mortgage owned) have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property or this Declaration (but the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this section.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(c) By act or omission, change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the

architectural design or exterior appearance of residences, the exterior maintenance of residences, the maintenance of the Association Property, walks or common fences and driveways, or the upkeep of lawns and plantings in the Properties.

(d) Fail to maintain fire and extended coverage insurance on the Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value.

(e) Use hazard insurance proceeds for losses to any portion of the Association Property for other than the repair, replacement or reconstruction of Association Property.

An Eligible Mortgage Holder who receives a written request to approve an amendment, addition, or deletion, who does not respond in writing within thirty (30) days of the request, shall be deemed to have approved the amendment, addition or deletion.

Section 11.02. Notice to Eligible Mortgage Holders and Eligible Insurers or Guarantors. Upon written request for notice delivered to the Association identifying the name and address of the Eligible Mortgage Holder, Eligible Insurer or Guarantor and the Lot address, each Eligible Mortgage holder and each Eligible Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or any Lot on which there is a loan held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor.

(b) Any delinquency in the payment of Association assessments or charges owed by an Owner subject to a loan held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders and Eligible Insurers or Guarantors as specified herein.

Section 11.04. Documents to be Available to Mortgagees. The Association shall make available to Owners, Mortgagees, and Eligible Insurers or Guarantors of any first Mortgage, current copies of this Declaration, the Bylaws, other rules concerning the Use of the Association Property and its books, records and financial statements. The term "available" means available for

inspection, upon request, during normal business hours or under other reasonable circumstances. The holders of fifty-one percent (51%) or more of first Mortgages shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Any such financial statement so requested shall be furnished within a reasonable time following such request.

Section 11.05. Mortgagee Protection A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrance of any first Mortgage made for value which may then exist on any Lot, provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Lot in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale or note holder acquiring title in lieu thereof shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

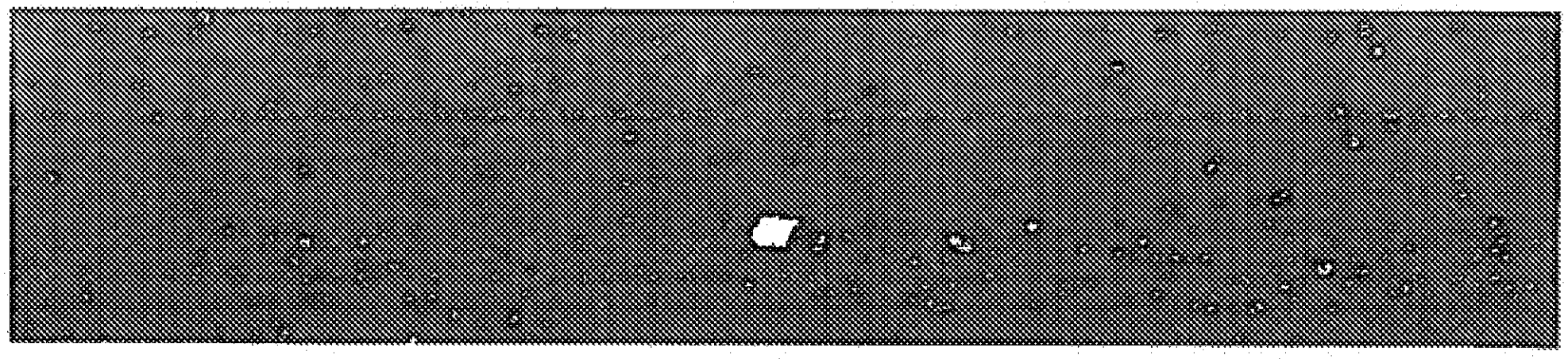
ARTICLE XII

ENFORCEMENT

Section 12.01. Parties Entitled to Enforce The Declarant, (so long as Declarant owns a Lot in the Properties), the Association, and any Owner shall have the right to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration.

Section 12.02. Remedies Cumulative No right, power or remedy conferred upon or reserved to any person is exclusive of any other right, power or remedy set forth or reserved in this Declaration or otherwise afforded by law or in equity; but each and every right, power and remedy shall be cumulative to and concurrent with each and every other right, power and remedy now or hereafter provided in this Declaration, by law or in equity.

Section 12.03. No Waiver The failure by any person to enforce any provision of this Declaration shall not constitute or be deemed a waiver of the right of any other person to do so. Further, the failure by any person or all persons to enforce any provision of this Declaration shall not constitute or be deemed a waiver of the right to do so by any person on account of any subsequent occasion for any similar, identical or unrelated violation.



ARTICLE XIII

GENERAL PROVISIONS

Section 13.01. Severability Invalidation of any one of these covenants or restrictions by judgment or a court order shall not effect any other provisions, which shall remain in full force and effect.

Section 13.02. Amendment

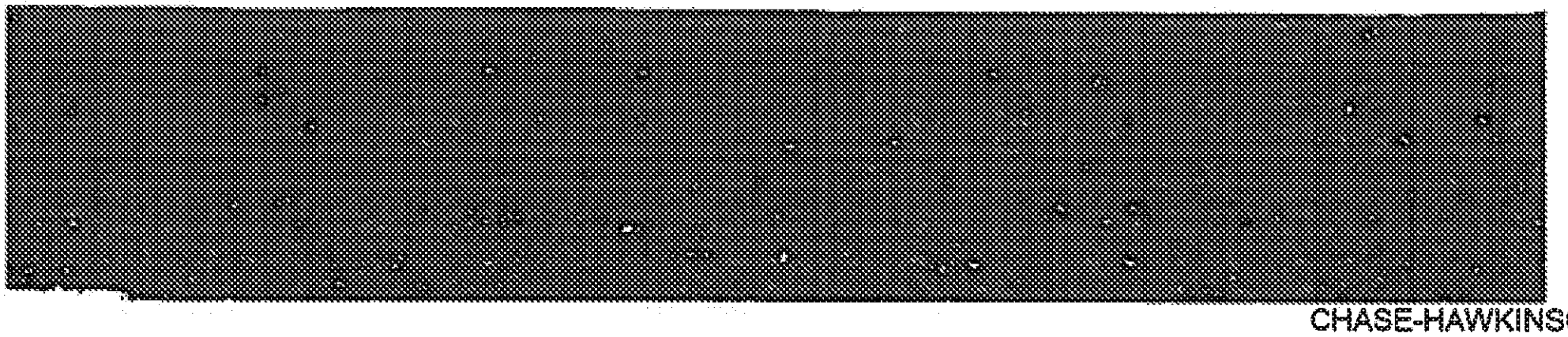
(a) Except as may otherwise be stated in this Declaration, this Declaration may be amended at any time and from time to time by an instrument in writing signed by members of the Association entitled to exercise a majority of the voting power of the Association. An amendment shall become effective upon the recording thereof with the Office of the County recorder of Clark County, Nevada.

(b) Anything contained herein to the contrary notwithstanding, no material amendment may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Lots. An Eligible Mortgage Holder who receives a written request to approve an amendment, addition, or deletion, who does not respond in writing within thirty (30) days of the request, shall be deemed to have approved the amendment, addition or deletion.

Section 13.03. Violation of Law Any violation of laws, ordinances or regulation of any state, county or other local authority having jurisdiction over the Properties is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

Section 13.04. Delivery of Notices and Documents Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, notice shall be deemed to have been given twenty four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to an Owner at the address of any Lot or to any other address last furnished by an Owner to the Association.

Section 13.05. Acceptance; Binding Effect By acceptance of a deed, lease or document of conveyance, or acquiring any ownership interest in any of the real property included within this Declaration, each person binds such person and such person's heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and



any amendment hereto. In addition, each such person by so doing hereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby and evidences such person's intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration, as amended, shall run with the land and be binding on all subsequent and future owners, lessees, grantees, purchasers, assignees and transferees of property subject to this Declaration. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

Section 13.06. Headings; Construction

(a) The headings and captions which have been used throughout this Declaration have been inserted for convenience of reference only and do not constitute words to be construed in interpreting this Declaration.

(b) Words of any gender used in this Declaration shall be construed to include any other gender and words in the singular number shall include the plural, and visa versa, unless the context requires otherwise.

(c) Words such as "herein", "hereof", "hereby", and "hereunder", when used in this Declaration shall refer to this Declaration as a whole unless a specific provision of this Declaration is expressly identified.

Section 13.07. Annexation to Association Property Declarant may transfer to the Association additional Association Property and the Association shall accept title and the obligation to maintain and repair the same.

Section 13.07. Litigation; Attorney Fees In the event any person or entity shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorneys' fees as the court may adjudge reasonable and proper.

Section 13.09. Declarant's Exemption Declarant is undertaking the work of construction of residential dwellings and incidental improvements upon the Properties. The completion of that work, and the sale, rental and other disposal of the dwellings is essential to the establishment and welfare of the Development as a residential community. In order that said work may be completed and the Lots established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Lots whatever is reasonably necessary or advisable in connection with the completion of said work, or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any Lot such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing the Lots as a residential community and disposing of the same by sale, lease or otherwise, or

(c) Prevent Declarant from conducting on any Lot the business of completing said work and of establishing a plan of disposing of the Lots by sale, lease or otherwise, or

(d) Prevent Declarant from maintaining such sign or signs, flags, poles, banners, parking, advertisements and other facilities attendant to sales, leasing and other marketing activities on any of the Lots or the Association Property as may be necessary for the sale, lease or disposition thereof.

The rights of Declarant provided for herein shall terminate when all of the Lots subject to this Declaration are sold to retail purchasers or seven (7) years from the date of close of escrow of the first Lot sold to a retail purchaser subject to this Declaration, whichever shall first occur.

Section 11.10. Actions Requiring Approval of U.S. Department of Veterans Affairs. So long as there is a Class B membership, the following actions will require the prior approval of the U. S. Department of Veterans Affairs:

(a) Annexation or deannexation of additional property in accordance with Article II;

(b) Any merger or consolidation of the Association;

(c) Any special assessment; or

(d) Any amendment to the Declaration (a draft of any amendment shall be submitted to the U.S. Department of Veterans Affairs for its approval prior to recordation.)

IN WITNESS WHEREOF, the undersigned, being the Declarant and legal owner of all of the real property comprising the Development, has executed this Declaration as of November 6, 1991.

PEBBLE CANYON LIMITED PARTNERSHIP,
a Nevada limited partnership

By: Pacific Properties and
Development Corporation,
a Nevada corporation,
general partner

By: _____
Gene C. Harrison
Its: Vice President

STATE OF NEVADA)
:ss
COUNTY OF CLARK)

On this 6 day of Nov, 1991, personally appeared before, me, a notary public, Gene C. Harrison, (personally known) (proven) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the instrument.

_____
NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
WILLYNNE TULLY
My Appointment Expires November 25, 1992

KL/4843-157
050891/01/1

25

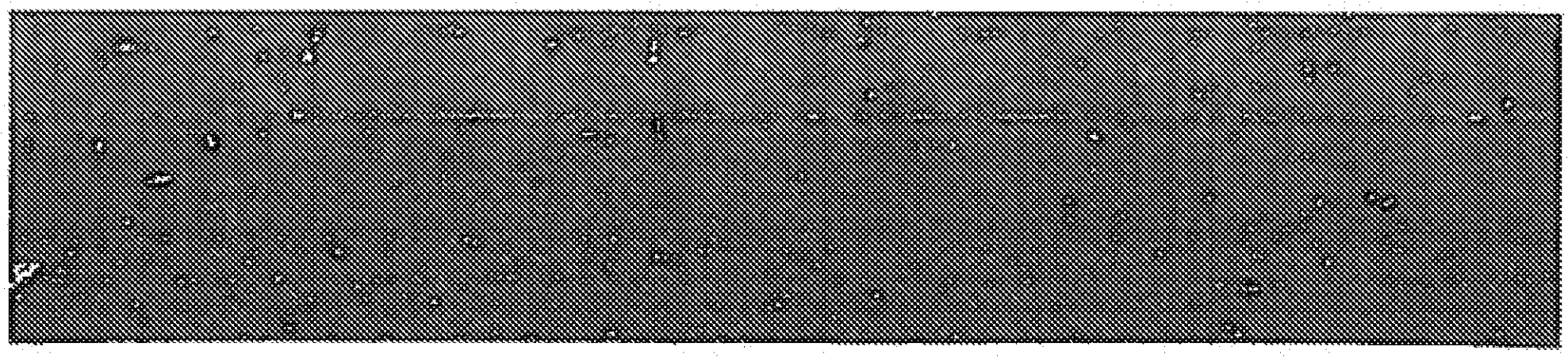


EXHIBIT A

I. Vistara at Pebble Canyon

That portion of the North Half (N1/2) of Section 24, Township 22 South, Range 61 East, M.D.M., Clark County, Nevada, more particularly described as Vistara at Pebble Canyon as shown by map thereof recorded June 14, 1991, as Instrument No. 011144 in Book 49, Page 94 of Plats, in the official Records of the County Recorder, Clark County, Nevada.

II. Mirada at Pebble Canyon

That portion of the North Half (N1/2) of Section 24, Township 22 South, Range 61 East, M.D.M., Clark County, Nevada, more particularly described as Mirada at Pebble Canyon as shown by map thereof recorded May 22, 1991, as Instrument No. 006688 in Book 49, Page 65 of Plats, in the official Records of the County Recorder, Clark County, Nevada.

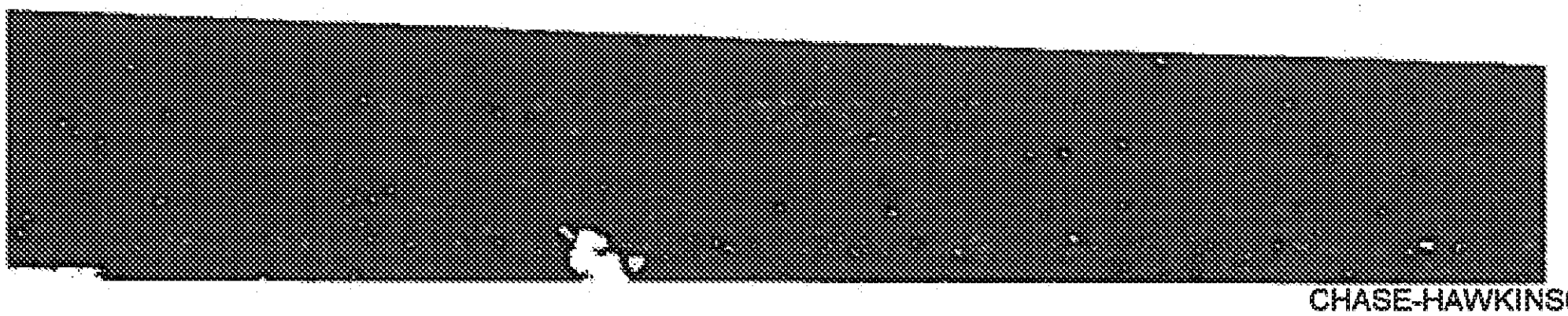


EXHIBIT B

ANNEXABLE AREA

PARCEL ONE (1):

The North Half (N 1/2) of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of Section 24, Township 22 South, Range 61 East, County of Clark, State of Nevada.

PARCEL TWO (2):

The South Half (S 1/2) of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M.

PARCEL THREE (3):

The North Half (N 1/2) of the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M., Clark County, Nevada.

PARCEL FOUR (4):

The North Half (N 1/2) of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M., Clark County, Nevada.

PARCEL FIVE (5):

The East Half (E 1/2) of the North Half (N 1/2) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M.

EXCEPTING the interest in the North Thirty (30) feet and the East Thirty (30) feet and that certain spandral area located at the Southwest (SW) corner of Pecos Road and Agate Avenue, as conveyed to Clark County for road purposes by Deed recorded July 31, 1979 in Book 1095 of Official Records, Clark County, Nevada Records as Document No. 1054011.

PARCEL SIX (6):

The West Half (W 1/2) of the North Half (N 1/2) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M.

Quarter (NE 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M.

EXCEPTING the interest in the North Thirty (30) feet and the West Thirty (30) feet of that certain spandral area located in the Southeast (SE) corner of Manhattan Road and Agate Avenue, as conveyed to Clark County for road purposes by Deed recorded July 31, 1979 in Book 1095 of Official Records as Document No. 1034011.

PARCEL SEVEN (7):

The South Half (S 1/2) of the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M.

PARCEL EIGHT (8):

The South Half (S 1/2) of the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/2) of Section 24, Township 22 South, Range 61 East, M.D.B. & M.

EXCEPTING THEREFROM all that portion lying within the exterior boundary of MIRADA AT PEBBLE CANYON, as shown by map thereof on file in Book 49 of Plats, Page 65, in the Office of the County Recorder of Clark County, Nevada.

EXCEPTING THEREFROM all that portion lying within the exterior boundary of VISTARA AT PEBBLE CANYON, as shown by map thereof on file in Book 49 of Plats, Page 94, in the Office of the County Recorder of Clark County, Nevada.

EXCEPTING THEREFROM all that portion conveyed to Clark County for road purposes by Deed recorded May 20, 1991 in Book 910520 as Document No. 00819, Official Records.

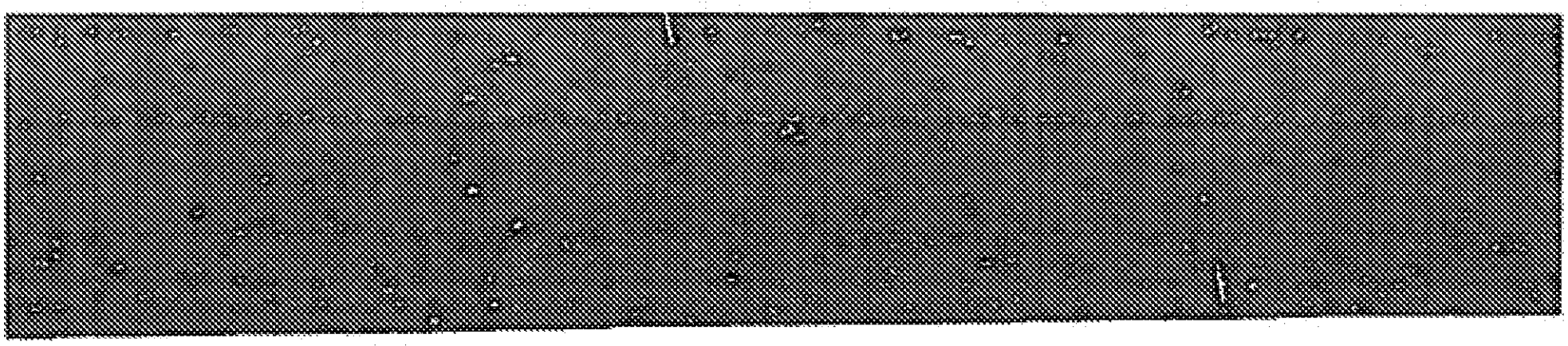
EXCEPTING THEREFROM all that portion conveyed to Clark County for road purposes by Deed recorded May 20, 1991 in Book 910520 as Document No. 00820, Official Records.

PARCEL NINE (9):

The South Half (S 1/2) of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M.

EXCEPTING THEREFROM all that portion lying within the exterior boundary of MIRADA AT PEBBLE CANYON, as shown by map thereof on file in Book 49 of Plats, Page 65, in the Office of the County Recorder of Clark County, Nevada.

PARCEL TEN (10):



The South Half (S 1/2) of the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M., Clark County, Nevada Records.

PARCEL ELEVEN (11):

The North Half (N 1/2) of the Northwest Quarter (NW 1/4) of the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M., Clark County, Nevada Records.

EXCEPTING THEREFROM all that portion conveyed to Clark County for road purposes by Deed recorded May 20, 1991 in Book 910520 as Document No. 00820, Official Records.

PARCEL TWELVE (12):

The North Half (N 1/2) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of the Northwest Quarter (NW 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M., Clark County, Nevada Records.

EXCEPTING THEREFROM all that portion conveyed to Clark County for road purposes by Deed recorded May 20, 1991 in Book 910520 as Document No. 00820, Official Records.

PARCEL THIRTEEN (13):

The North Half (N 1/2) of the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M.

EXCEPTING THEREFROM all that portion lying within the exterior boundary of MIRADA AT PEBBLE CANYON, as shown by map thereof on file in Book 49 of Plats, Page 65, in the Office of the County Recorder of Clark County, Nevada.

PARCEL FOURTEEN (14):

The North Half (N 1/2) of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 24, Township 22 South, Range 61 East, M.D.B. & M.

EXCEPTING THEREFROM all that portion lying within the exterior boundary of MIRADA AT PEBBLE CANYON, as shown by map thereof on file in Book 49 of Plats, Page 65, in the Office of the County Recorder of Clark County, Nevada.

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
LIONEL SAWYER ET AL

11-08-91 16:13 PDR 33
OFFICIAL RECORDS
BOOK: 911108 INST: 01962
FEE: 37.00 RPTT: .00

ML/6863-157
SEC891/01/1

B-3

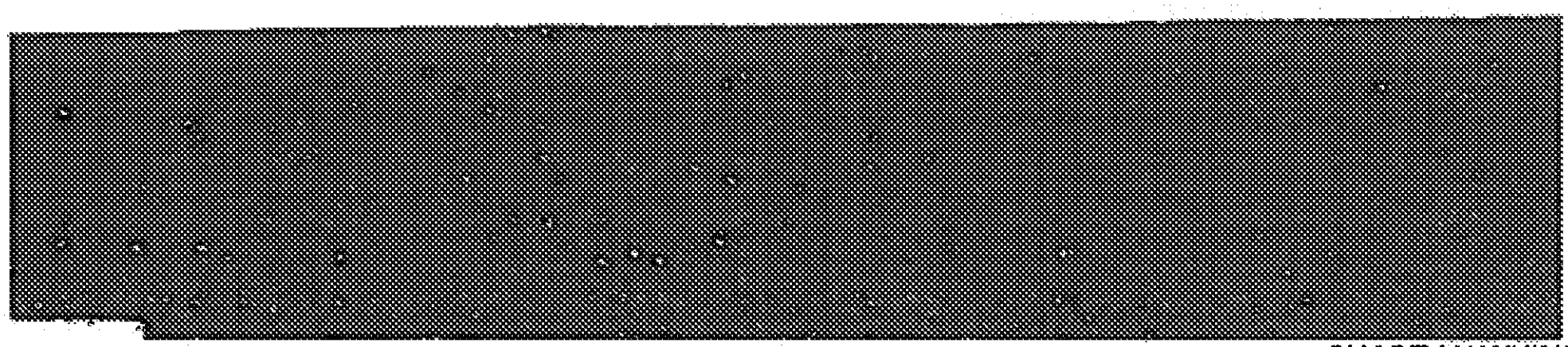


EXHIBIT B

Redacted

APN # 177-24-514-043
Pebble Canyon HOA

NAS # N7188

NOTICE OF FORECLOSURE SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, July 31, 2012. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 3/1/2013 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on November 8, 1991 as instrument number 01962 Book 911108 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on August 3, 2012 as document number 0002972 Book 20120803 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 3263 Morning Springs Drive, Henderson, NV 89074. Said property is legally described as: SEASONS AT PEBBLE CANYON, PLAT BOOK 53, PAGE 45, LOT 50, BLOCK 16, official records of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: Robert M Hawkins, Christine V Hawkins

The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $3,142.43. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 9/20/2012 as instrument number 0001446 Book 20120920 in the official records of Clark County.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

February 1, 2013

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544

By: Elissa Hollander, Agent for Association and employee of Nevada Association Services, Inc.

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

Inst #: 201302070000892
Fees: $18.00
N/C Fee: $0.00
02/07/2013 09:34:04 AM
Receipt #: 1488994
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: RNS Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

(9)

RECORDING COVER PAGE

Must be typed or printed clearly in black ink only.

APN# 177-24-514-043
11 digit Assessor's Parcel Number may be obtained at:
http://redrock.co.clark.nv.us/assrealprop/ownr.aspx

TITLE OF DOCUMENT (DO NOT Abbreviate)

NOTICE OF FORECLOSURE SALE

Title of the Document on cover page must be EXACTLY as it appears on the first page of the document to be recorded.

Recording requested by:

NORTH AMERICAN TITLE COMPANY

Return to:

Name NORTH AMERICAN TITLE COMPANY

Address 8485 W. SUNSET ROAD #111

City/State/Zip LAS VEGAS, NV 89113

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of $1.00 will apply.

To print this document properly—do not use page scaling.

P:\Recorder\Forms 12_2010

SFR80

APN # 177-24-514-043
Pebble Canyon HOA

NAS # N71869

Accommodation

NOTICE OF FORECLOSURE SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, July 31, 2012. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 3/1/2013 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on November 8, 1991 as instrument number 01962 Book 911108 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on August 3, 2012 as document number 0002972 Book 20120803 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 3263 Morning Springs Drive, Henderson, NV 89074. Said property is legally described as: SEASONS AT PEBBLE CANYON, PLAT BOOK 53, PAGE 45, LOT 50, BLOCK 10, official records of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: Robert M Hawkins, Christine V Hawkins

The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $3,142.43. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 9/20/2012 as instrument number 0001446 Book 20120920 in the official records of Clark County.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

February 1, 2013

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544

By: Elissa Hollander, Agent for Association and employee of Nevada Association Services, Inc.

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

SFR81

EXHIBIT C

DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association,

Plaintiff,

vs.

CASE NO. A-13-692304-C

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10; ROE CORPORATIONS 1 through 10, inclusive,

Defendants.

///

DEPOSITION OF SUSAN MOSES

30(b)(6) Deposition of Nevada Association Services

Taken at the offices of Ballard Spahr, LLP

on Thursday, May 12, 2016

at 12:53 p.m.

at 100 N. City Parkway, Suite 1750
Las Vegas, Nevada

Reported by: Denise R. Kelly, CCR #252, RPR

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

Counterclaimant,

vs.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1-10 and ROE BUSINESS ENTITIES 1 through 10, inclusive,

Counter-Defendant/
Cross-Defendants.
/

(Discussion held off the record.)

MR. BURKE: I don't have any further questions.

MS. SCHIMMING: We have to go back on the record. I'll be really super quick.

EXAMINATION

BY MS. SCHIMMING:

Q. Did you see anything in your review of the file that indicated that you had any communication with SFR Investments Pool 1, LLC prior to the sale?

A. I didn't see anything in the file.

Q. Are you or anyone else at NAS -- do you or anyone else at NAS have any ownership interest in SFR?

A. Not that I'm aware.

Q. Any management control over SFR?

A. Not that I'm aware.

Q. Does SFR have any management control over NAS?

A. Not that I'm aware.

Q. Does SFR have any ownership interest in NAS?

A. Not that I'm aware of.

Q. And did you see anything in the file to indicate that you had communications with a bank prior

to the sale, any bank?

A. I don't remember seeing anything from the bank.

Q. In your review of the file, did you see anything that indicated that any bank intended to make a payment prior to the sale?

A. I don't remember seeing anything about that either.

MS. SCHIMMING: I have no further questions.

MR. BURKE: I have no follow up.

(Whereupon, the deposition concluded at 1:59 p.m.)

REPORTER'S DECLARATION

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I Denise R. Kelly, an officer of the court, Clark County, State of Nevada, do hereby declare:

That I reported the taking of the deposition of the witness, SUSAN MOSES, commencing on Thursday, May 12, 2016, at the hour of 12:53 p.m.

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

There being no request by the deponent or party to read and sign the deposition transcript, under Rule 30(e) signature is deemed waived. The original transcript will be forwarded to Russell Burke, Esq.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of my said shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action.

Dated this 20th day of May, 2016.

Denise R. Kelly
CCR #252, RPR

TAB 19

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive,

Defendants.

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

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive,

Counter-Defendant/Cross-Defendants

Case No. A-13-692304-C

Dept. No. XXIV

SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO JPMORGAN CHASE BANK, NATIONAL ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

SFR Investments Pool 1, LLC ("SFR") hereby files its opposition to JPMORGAN CHASE BANK, N.A.'S ("the Bank")[1] Motion for Summary Judgment ("Bank's Motion"). This Opposition

[1] Herein "the Bank" is used to describe JPMorgan Chase Bank, N.A., any predecessors in interest, and any other agents or servicers acting on their behalf.

is based on the papers and pleadings on file herein, the following memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF DISPUTED FACTS

SFR fully incorporates herein its Statement of Undisputed Facts from its Motion for Summary Judgment. Additionally, SFR disputes the following of the Bank's Statement of Facts:

Disputed Fact #1: "Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed of Trust on or about September 27, 2006." (Bank's Mot., 4:16-17.)

The Bank's so-called "evidence" of ownership does not satisfy their burden under NRCP 56(c). For example, the Declaration of Dean Meyer raises questions as to when, or even whether Freddie, "purchased" the loan. According to Dean, Freddie "acquired ownership of a mortgage loan secured by real property … on or about September 27, 2006." See Bank's Mot., Ex. 7 ¶ 5(d). Dean supported this statement by referring to a purported computer screenshot of Freddie's MIDAS system. Yet, the date September 27, 2006 is not contained in the attached exhibits to the deceleration and it is unclear who entered the data or when such information was entered. Essentially, the screenshot does not corroborate Dean's statements. Nor does Dean clarify or detail what the screenshot's cryptic information means. Lastly, the alleged MIDAS computer screenshot does not tell this Court what happened to the loan since Fannie's alleged acquisition.

Dean's declaration, and the screenshot he relies on, also contradict previous statements made by the Bank in previously recorded documents. On October 27, 2009 an Assignment of Deed of Trust was recorded that showed that the Bank was granted, assigned and transferred all beneficial interest under the Deed of Trust. See SFR Mot. at Ex. A-5. Even the Bank's own Substitution of Trustee, recorded on February 22, 2013, is devoid of any mention of Freddie. See SFR's Mot., Ex. A-16. Yet, the Bank now want this Court to believe that Freddie owns the loan.[2]

[2] The Bank's reliance on Montierth v. Deutsche Bank, 354 P.3d 648, 650-51 (Nev. 2015) and Edelstein v. Bank of New York Mellon, 286 P.3d 249, 257-58 (Nev. 2012) is misplaced because neither case addresses the extent to which Fannie and the Bank can make Supremacy Clause or 4617(j)(3) arguments. As is explained below, Congress did not authorize Fannie or the Bank to make such arguments—a proposition that neither Montierth nor Edelstein alters. Similarly, this

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Disputed Fact #2: **"Plaintiff was servicer of the Loan for Freddie Mac…" (Bank's Mot., 4:22).**

To the extent that this "fact" is predicated on Fannie's purported ownership of the loan, it is disputed because the Bank's so-called "evidence" of ownership does not satisfy its burden under NRCP 56(c). See full discussion as Statement of Undisputed Fact #1 above.

Disputed Fact #3: **"The Guide authorizes servicers to foreclose on the Deed of Trust on behalf of Freddie Mac. (citation omitted). Accordingly, the Guide also provides for a temporary transfer of possession of the note when necessary for servicing, including foreclosure. (citation omitted)." (Bank's Mot., 5:17-20.)**

The servicing guidelines produced by the Bank are out of court statements made by Freddie. See Bank's Mot. Ex. 9 and 10. In other words, complete hearsay. Furthermore, the servicing guideline are not directed specifically to this property and thus there is no way to be seen if they were followed in the case herein. Lastly, the guideline contained in the Bank's Exhibit 9 are dated March 2, 2016 and Exhibit 10 is date July 13, 2016. Both these exhibits are nearly 4 years after the date of the foreclosure. Due to the late publishing of these statements, they have no relevance to the property during the relevant time period of the foreclosure sale and should be disregarded.

While the disputes over these facts defeat the Bank's motion for summary judgment, the truth or falsity of these facts have no bearing on SFR's Motion for Summary Judgment, which can still be granted even if these facts were true.

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proposition is not impacted by Fannie's Servicing Guide or the purported limited power of attorney that the Bank and Fanne rely on in their Motion. Fannie and the Bank's arguments about the Servicing Guide and the so-called power of attorney are, therefore, irrelevant.

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II. ARGUMENT

A. Motion for Summary Judgment Standard.

Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). At the summary judgment stage, a court is not to weigh the evidence in order to resolve the motion. Borgerson v. Scanlon, 117 Nev. 216, 220, 19 P.3d 236, 238 (2001). However, if admissible evidence proves that the movant is not entitled to judgment as a matter of law, then summary judgment is inappropriate. California v. Campbell, 138 F.3d 772, 782 (9th Cir. 1988); NRCP 56(c).

B. The Bank Has Not Introduced Any Evidence that Freddie Mac "Owns" the Loan.

The Bank claims Freddie "owns" the loan in question. See Bank's Mot., 4:16-17. [3] Yet, its own evidence raises, at the least, a question "of material fact as to whether Freddie had any interest in the Property at the time of the [Association's sale]." Kielty v. Fed. Home Loan Mortg. Corp., No. 2:15–cv–00230–RCJ–GWF, 2016 WL 1030054, at *3 (D. Nev. Mar. 9, 2016). In fact, the Bank's own evidence eliminates any question of fact that Freddie had an interest at all. Id. In Kielty, a purchaser at an association foreclosure sale sought to quiet title against Freddie Mac, to whom the first deed of trust was transferred after the association's sale. Id. at *1. Freddie (and the Federal Housing Finance Agency ("FHFA"), who had intervened) sought summary judgment

[3] The Bank relies heavily on Skylights LLC v. Byron, 112 F. Supp.3d 1145 (D. Nev. 2015) and its progeny for its arguments. (Bank's Mot., 4 n.1 and 2.) The Bank's reliance is misplaced. In every federal case cited, Fannie or Freddie and Federal Housing Finance Agency ("FHFA") were parties to the litigation, thus the ability to raise 12 U.S.C. 4617(j)(3) was not at issue. Furthermore, in many of those cases, Fannie or Freddie had recorded an interest prior to the association foreclosure sale. See Skylights, 112 F.Supp.3d at 1149; see also, My Global Village, LLC v. FNMA, NO. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 at *1 (D.Nev. July 27, 2015); see also, Saticoy Bay, LLC Series 1702 Empire Mine v. FNMA, 2:14-cv-01975-KJD-NJK, 2015 WL 5709484 (D.Nev. Sept. 29, 2015). The only cases cited by the Bank where the U.S. District Court granted relief to FHFA and Fannie/Freddie without a prior recorded interest were those orders from the Hon. C.J. Navarro, who also decided Skylights. As discussed in text, where Freddie or Fannie's interest was not recorded prior to the date of the association sale, many courts are denying relief due to insufficient facts to support Fannie or Freddie's ownership or interest in the Property.

against the purchaser based primarily on federal preemption and 12 USC 4617(j)(3). Id., and *3. Freddie supported its "ownership" of the loan by affidavit of its director of loss mitigation based on his review of Freddie's records. Id. The affidavit attempted to explain that that Nationstar only obtained servicing rights, not any beneficial interest in the loan itself. Id. There, the original lender was Charter Funding, not Freddie. Id. MERS was the lender's nominee and beneficiary of the deed of trust. Id. There were two assignments prior to the association sale which each transferred both the loan and the deed of trust. Only after the sale did the bank transfer only the deed of trust to Freddie. Id. The court determined that it produced only a "single, self-interested affidavit" that was "so contradicted by the record as a whole that a reasonable jury could not believe it." Id. The court questioned even Freddie's own records regarding acquisition. Id. Thus, the court granted summary judgment against Freddie and the FHFA on the issue of ownership and preemption. Id. at 4.

Here, as in Kielty, according to the deed of trust, Freddie was not the original lender, GreenPoint Mortgage Funding, Inc. was. SFR's Mot., Ex. A-3. As in Kielty, MERS was the named nominee of the lender and the beneficiary under the deed of trust. Id. Prior to the Association foreclosure sale, MERS assigned to the Bank both the deed of trust "together with the note." Id. at Ex. A-5. As in Kielty, the Bank attempts to explain it is only the servicer for the loan, but does so only through a self-serving declaration of an Freddie employee. See Bank's Mot. at Ex. 7. Unlike Kielty in which Freddie was a party, herein Freddie is not a party, and any information obtained as to Freddie actually purchasing the loan would be hearsay. Furthermore, the documents attached to the Dean declaration are unreadable and "cryptic" at best.[4] Furthermore, there is nothing showing when the actual entries were made. However, we can see at the top-right that the documents was generated on April 25, 2016, during the heart of litigation on this issue. This draws into question the admissibility of the evidence as the entry could not have been made at or near the

[4] In fact, the Hon. J. Dorsey has already described similar documents as being "cryptic." LN Mgmt. LC Series 5271 Lindell v. Estate of Piacentini, No. 2:15–cv–00131–JAD–NJK, 2015 WL 6445799, at *2 (D. Nev. Oct. 8, 2015).

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time of the transaction to qualify as a business record exception to the hearsay rule. NRS 51.135. At a minimum, there is serious doubt as to when (or even if) Freddie "purchased" this loan.

To allow the Bank to rely on a self-interested declaration/affidavit that is so contradicted by the record and recorded documents would be extremely inappropriate and highly prejudicial. The Bank provides no documents that would indicate that Fannie either "purchased" or "owned" this particular loan or deed of trust. Furthermore, the declaration also contradicts previous recorded documents by the Bank and or its agents. The Bank's own Substitution of Trustee, is devoid of any mention of Fannie. See SFR's Mot. Ex. A-16. As noted in Kielty, "Freddie Mac produces no underlying documents – none – tending to show its interest in the Property to counter the clear chain of documents provided by Plaintiff showing that Freddie Mac obtained no interest in the Property…" Kielty, at *3. It is the same with the Bank here; this evidentiary deficiency defeats the Bank's motion for summary judgment because, in order to obtain summary judgment, the Bank's evidence must be "'so powerful that no reasonable jury would be free to disbelieve it.'" Shakur v. Schriro, 514 F.3d 878, 890 (9th Cir. 2008) (internal citation omitted). Based on the foregoing, summary judgment should be denied.

C. The Bank cannot use the Supremacy Clause or HERA

Even if the Bank could produce credible evidence of Freddie's so-called ownership, it still cannot overcome the stark reality that it is neither the FHFA or Freddie Mac. As such it cannot enforce 4617(j)(3). The Bank contends that is may assert the Federal Foreclosure Bar to protect Freddie's interest in the Deed of Trust. See Bank's Mot., 17. Yet, the United States Supreme Court recently determined that private litigants cannot use the Supremacy Clause to displace state law. Armstrong v. Exceptional Child Care Ctr., Inc., 575 U.S. ___, 135 S.Ct. 1378, 1383-85 (2015). And, Congress—via a law's text—determines who can enforce a federal statute. Id. at 1383-84. Here, the Housing and Economic Recovery Act of 2008 ("HERA") demonstrates that Congress exclusively authorized FHFA-as-conservator to enforce HERA and to protect Fannie's alleged "assets." Specifically, 12 U.S.C. § 4617(b)(2)(D)(ii) provides that, "the Agency may, as conservator, take such action as may be-appropriate to carry on the business of the regulated entity

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and preserve and conserve the assets and property of the regulated entity [Fannie]" 12 U.S.C. § 4617(b)(2)(D)(ii).

FHFA's regulations reinforce this authorization by stressing FHFA has "the **exclusive authority** to investigate and prosecute claims of any type **on behalf of [Freddie]**, or to **delegate to management of [Freddie] the authority** to investigate and prosecute claims." 12 C.F.R. § 1237.3(a)(7) (emphasis added). The Bank is not FHFA. The Bank has not even provided any evidence that FHFA "delegate[d]" its "authority to investigate and prosecute claims" to the management of Fannie. Id. Even then, the Bank is not management of Fannie. Id.

Finally, 12 U.S.C. § 4617(j)(1) states "provisions of this subsection [4617(j)] shall apply with respect to the Agency **in any case in which the Agency is acting as a conservator** or a receiver." 12 U.S.C. § 4617(j)(1) (emphasis added). If FHFA ("the Agency") is not "acting as a conservator" **in a case**, then 4617(j)(3) does not apply to that case. Here, the FHFA is not a party to this case. Thus, 4617(j)(3) is inapplicable. In sum, Armstrong and Congress's intent prevent the Bank from being able to use the Supremacy Clause or HERA.

However, even if the Court were to find that Armstrong and Congress's intent does not prevent the Bank from being able to assert the Supremacy Clause or HERA, the Bank's further argument that it has standing[5] still fails because it has not established through admissible evidence that Freddie owned this loan, the Bank and Freddie had a contractual servicing relationship as to this loan, or that The Bank was acting as servicer for Freddie. See discussion in Disputed Facts #1-#4 above. In short, the "evidence" upon which the Bank relies on for this argument are insufficient, inadmissible as untimely and/or irrelevant. Id. Furthermore, in its argument The Bank relies on yet another inadmissible piece of "evidence," the FHFA's Statement on Servicer Reliance on HERA in Foreclosures Involving Homeownership Associations. See Bank's Mot., 21:8-15. But this press release does not meet the requirements set forth in 12 C.F.R. § 1237.3(a)(7) by properly "delegate[ing] to management of [Freddie] the authority to investigate and prosecute claims." Id. This argument fails.

[5] See Bank's Mot., pp. 17-18.

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Neither In re Montierth, 131 Nev. ___, ___, 354 P.3d 648, 650-51 (2015) nor Edelstein v. Bank of New York Mellon, 128 Nev. ___, ___, 286 P.3d 249, 257-58 (2012) addresses the extent to which the Bank can make Supremacy Clause or 4617(j)(3) arguments. As is explained above, Congress did not authorize The Bank to make such arguments—a proposition that neither Montierth nor Edelstein alters. Similarly, this proposition is not impacted by Freddie's Servicing Guide that the Bank relies on in their Motion. The Bank's arguments about the Servicing Guide are, therefore, irrelevant as standing is a matter of statutory grant from Congress.

Also, Bank's reliance on Sprint Comm 'ns Co., L.P. v. APCC Servs., Inc., 554 U.S. 269, 271-72 (2008) is misplaced. In APCC Servs. the question before the Court was whether an assignee of a legal claim for money owed has standing to pursue that claim in federal court. Unlike APCC Servs., in the instant case, standing is a matter of statutory grant from Congress. The Bank raises a statutory defense that Congress has determined is only available to the FHFA, or by delegation to the board of Fannie or Freddie. The Bank is neither, therefore the FHFA cannot delegate to the Bank directly. The Bank's reliance on these contract cases fails.

D. Even if the Bank has Standing to Raise 4617(j)(3), Nevada Law is not Preempted.

1. Express Preemption

The Bank acknowledges that the Agency can consent to foreclosure pursuant to 4617(j)(3). Bank's Mot., p. 15. This consent provision is fundamental to several express preemption principles, such as: (i) Congress's intent (which is determined by a law's text) controls a court's preemption analysis;[6] (ii) the presumption against preemption in areas traditionally occupied by state law;[7] (iii) this presumption is overcome only by showing Congress's intent to preempt is "clear and manifest,"[8] (iv) narrow construction of express preemption clauses,[9] and (v) if there is

[6] CTS Corp. v. Waldburger, 573 U.S. ___, 134 S.Ct. 2175, 2185 (2014) ("Congressional intent is discerned primarily from the statutory text."); Valle del Sol Inc. v. Whiting, 732 F.3d 1006, 1023 (9th Cir. 2013).
[7] McClellan v. I-Flow Corp., 776 F.3d 1035, 1039 (9th Cir. 2015).
[8] Id.
[9] Air Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm'n, 410 F.3d 492, 496 (9th Cir. 2005).

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more than one way to read a preemption provision, then courts will select the reading that does not preempt state law.[10]

Here, 4617(j)(3)'s text conveys Congress's intent *not to preempt* Nevada law. This is so because the phrase "without the consent of the Agency" contemplates instances when FHFA can consent to extinguishment; 4617(j)(3) does not automatically bar extinguishment as the Bank would like this Court to believe. Next, the presumption against preemption applies because 4617(j)(3) implicates Nevada property law, an area traditionally occupied by state law. The Bank cannot, however, overcome this presumption because they lack evidence that Congress had a "clear and manifest" intent to preempt state property law. McClellan, 776 F.3d at 1039. Further, 4617(j)(3) should be construed narrowly, something The Bank refuses to do. Finally, because 4617(j)(3) could be read in more than one way, this Court should adopt the construction that avoids preemption. McClellan, 776 F.3d at 1039. While the Bank contends 4617(j)(3) automatically bars extinguishment, SFR offers another reading. Based on the consent provision of 4617(j)(3), it is clear the legislature envisioned instances when FHFA consents to extinguishment, an interpretation that avoids preemption. Moreover, The Bank is simply wrong to describe 4617(j)(3) as an express preemption clause. A cursory comparison between 4617(j)(3) and true express preemption statutes demonstrates that 4617(j)(3) lacks the requisite specificity and definitiveness to be an express preemption clause. Nat'l Meat Ass'n v. Harris, 565 U.S. ___, 132 S.Ct. 965, 969 (2012) (21 U.S.C. § 678's statement that requirements "which are in addition to, or different from those made under [the Federal Meat Inspection Act] may not be imposed by any State."); Perez v. Nidek Co., Ltd., 711 F.3d 1109, 1117 (9th Cir. 2013) (21 U.S.C. § 360k(a)'s pronouncement that "[n]o State . . . may establish or continue in effect with respect to a device . . . any requirement which is different from, or in addition to, any requirement applicable under this chapter[.]").

2. Implied Preemption

While not directly addressed by the Bank, implied preemption cannot displace Nevada law. Impossibility preemption occurs when compliance with federal and state law is a physical

[10] McClellan, 776 F.3d at 1039.

impossibility. Greater Los Angeles Agency on Deafness, Inc. v. CNN, Inc., 742 F.3d 414, 429 (9th Cir. 2014). Any reliance on impossibility and obstacle preemption, fails because of 4617(j)(3)'s text, and the phrase "without the consent of the Agency[.]"In this case, and as the Bank acknowledges, FHFA can consent to extinguishment, removing any conflict with Nevada law. Bank's Mot., 15:28. This acknowledgement reveals that compliance with 4617(j)(3) and Nevada law is not a physical impossibility.

Next, obstacle preemption necessitates conflicts that "necessarily arise." Incalza v. Fendi N. Am., Inc., 479 F.3d 1005, 1010 (9th Cir. 2007). Mere tension is insufficient and the conflict must be "sharp" if the presumption against preemption applies. Chapman v. Westinghouse Elec. Corp., 911 F.2d 267, 269 (9th Cir. 1990). Here, conflict between 4617(j)(3) and Nevada law does not "necessarily arise" because of FHFA's ability to consent. At most, there is "tension" between Nevada law and 4617(j)(3) but this is not enough to trigger obstacle preemption. Incalza, 479 F.3d at 1010. This is especially so when the presumption against preemption applies, demanding The Bank to identify a "sharp" conflict, something they failed to do. In the end, 4617(j)(3) does not impliedly preempt Nevada law. In any case, the Bank has failed to prove 4617(j)(3) applies.

E. The Bank Received Actual Notice; It Lacks Standing to Raise a Facial Challenge.

The Bank cannot dispute notice because the Bank fails to bring any evidence that the Association foreclosure notices were not sent to it as required by statute. The evidence shows the notices were sent and the Bank has not presented evidence rebutting that the receipt of the notice of sale was not sent. See SFR's Mot. Exhibit A-10 (Proof of Mailings of Notice of Default); and Exhibit A-13 (Proof of Mailing of Notice of Sale). Thus, the Bank lacks standing to assert a facial challenge. Wiren v. Eide, 542 F.2d 757, 762 (9th Cir. 1976) ("receipt of actual notice deprives [appellant] of standing to raise the claim" that the statutory notice scheme violated due process); Green Tree Servicing, LLC v. Random Antics, LLC, 869 N.E.2d 464, 470-71 (Ind. Ct. App. 2007) (where one receives actual notice cannot claim that the noticing provisions of the statute are unconstitutional). Any irregularity in notice does not violate due process where one has actual notice of the action to be taken. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260,

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272 (2010) (debtor's failure to serve a summons and complaint does not violate due process where creditor received "actual notice of the filing and contents of [debtor's Chapter 13] plan."); see also In re Medaglia, 52 F.3d 451, 455-56 (2nd Cir. 1995) ("[D]ue process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence and take necessary steps to preserve that right.") (cited with favor in SFR, 334 P.3d at 418.)

Yet, even if the Bank failed to get actual notice for whatever reason, the notice the Bank received satisfied due process because it was "reasonably calculated…to apprise [the Bank] of" the pendency of the Association's foreclosure. Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Mullane does not require actual notice. The plethora of First Class mailings and Certified Mailings sent to the Bank and its predecessors in interest is proof that the statutes worked just as recognized by the Nevada Supreme Court in the SFR decision, where both the majority and dissent recognized that notices of default and sale were required to be sent to junior lienholders like the Bank. SFR, 334 P.3d at 411, 417-418, 422 (noting the incorporation of NRS 107.090(3)(b) and (4) through NRS 116.31168). The Bank's (in)action caused its loss - not the statute, the Association, and certainly not SFR.

F. The Noticing Statutes are Constitutional.

a. ***Standard for a Constitutional Challenge.***

Even if the Bank had standing to make its challenge, it cannot meet the high standard of showing that NRS 116's non-judicial foreclosure noticing provisions are unconstitutional. Whether a statute is constitutional is a question of law. Flamingo Paradise Gaming, LLC v. Chanos, 217 P.3d 546, 551 (Nev. 2009). "'Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional.'" Id. (quoting Silvar v. Dist. Ct., 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)). In reasonably interpreting the statute, the court should construe the words "'in light of public policy and the spirit of the law[,]'" giving it its plain meaning and giving meaning to all words or phrases. Id. (quoting Desert Valley Water Co. v. State, Engineer, 104 Nev. 718, 720, 766 P.2d 886, 886-87 (1988)).

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The Bank must show there is "no set of circumstances under which the statute would be valid." Déjà vu Showgirls v. State, Dept. of Tax., 334 P.3d 392, 398 (Nev. 2014); see Flamingo Paradise Gaming, 217 P.3d at 552 (citing Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 449, 128 S.Ct. 1184, 1190 (2008) (noting reaffirmance of the requirement that a statute be void in all its applications to be successful, when civil statutes are at issue). Courts disfavor facial challenges because they rest on speculation, and "run contrary to the fundamental principle of judicial restraint that courts should neither "'anticipate a question of constitutional law in advance of the necessity of deciding it'" nor "'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" Washington State Grange, 552 U.S. at 450-51.

"The most fundamental principle of constitutional adjudication" is the constitutional avoidance doctrine. U.S. v. Lovett, 328 U.S. 303, 320 (1946) (Frankfurter, J., concurring); Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 341, 346-48 (1936) (Brandeis, J., concurring). Courts "will not decide the constitutionality of a statute based upon a supposed or hypothetical case which might arise thereunder." Carlisle v. State, 642 P.2d 596, 598 (Nev. 1982). Thus, courts must "avoid considering the constitutionality of a statute unless it is absolutely necessary to do so." Sheriff v. Andrews, 286 P.3d 262, 263 (Nev. 2012).

b. ***The Nevada Supreme Court Already Decided the Issue.***

The Bank acts as if the Nevada Supreme Court never issued the SFR opinion. SFR demonstrated at least one circumstance in which the statute was valid, and therefore their facial challenge cannot stand. Washington State Grange, 552 U.S. at 449. The inquiry should stop here.

Second, the Nevada Supreme Court did both a facial and as applied analysis, rejecting both. Both the majority and dissent recognized that notice must be sent to all junior lienholders, noting the incorporation of NRS 107.090(3)(b), (4) which, in the case of a bank foreclosure sale, requires notice of sale to "[e]ach other person with an interest whose interest or claimed interest is subordinate to the deed of trust." SFR, 334 P.3d at 411, 422. In an association foreclosure sale those words must be read as notice to those with liens subordinate to the association's lien.

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Further, the majority rejected the lender's due process arguments as "protean," and non-starters, noting that since Chapter 116 was adopted in 1991, the lender "was on notice that by operation of the statute, the [earlier recorded] CC&R's might entitle the HOA to a super priority lien at some future date which would take priority over a [later recorded] first deed of trust." Id. at 418 (quoting with approval 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A., 979 F.Supp.2d 1142, 1152 (D. Nev. 2013) (rejecting a due process challenge to a nonjudicial foreclosure of a superpriority lien)).[11] "To the extent U.S. Bank argues that a statutory scheme that gives an HOA a superpriority lien that can be foreclosed nonjudicially thereby extinguishing an earlier filed deed of trust, offends due process, the argument is a nonstarter."[12] Id. at 418. The Bank's motion should be denied with prejudice.

c. There is No State Actor Involved; NRS 116 Does Not Invoke Due Process Considerations.

Even if this Court opts to do a constitutional analysis, in derogation of the constitutional avoidance doctrine, it must begin with finding that the Bank's deprivation was caused by state action **and** a state actor. Their Motion ignores these requirements entirely. This is so because in order for due process to be implicated, there must be a state actor. Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001). If there is no state actor, then due process—including concerns about "notice" — is inapplicable. Id.; Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982) ("If the action of the respondent school is not state action, our inquiry ends.").

Unlike mechanics liens, which are not only creatures only of statute but require the use of the judicial system to enforce, there is no state actor enforcing an association lien. A private party relying on a state-created procedural scheme is not sufficient to invoke due process:

> While private misuse of a statute does not describe conduct that can be attributed to the State, the procedural scheme created by the statute obviously is the product of state action. This is subject to constitutional restraints and properly may be

---

[11] Limbwood recognized the notices as "statutorily required" to be sent to the lender. Limbwood, 979 F.Supp.2d at 1152 ("To the extent [the Bank] contends [the Association] failed to provide the required notices. . . .").

[12] In denying U.S. Bank's motion for reconsideration, the Court considered and rejected additional facial challenges made by amici in support of the motion. See SFR Investments Pool 1, LLC v. U.S. Bank, N.A., No. 63078, Order Denying Rehearing, at 2 n.1 (Nev. Oct. 16, 2014), available at http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=31261, document number 14-34519.

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> addressed in a § 1983 action, **if the second element of the state-action requirement is met as well.**

Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 941 (1982) (emphasis added).

The "second element of the state-action requirement" is "the party charged with the deprivation must be a person who may fairly be said to be **a state actor**." Id. at 937 (emphasis added). Due process' protections do not extend to private actor's private conduct. Am. Mfr. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50 (1999). Rather, the private actor must be performing functions that are **traditionally and exclusively performed by governments**. Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 158 (1978). As one federal district court noted, "the power to impose fines or enforce liens are not traditional and exclusive governmental functions." Snowdon v. Preferred RV Resort Owners Ass'n, No. 2:08-cv-01094-RCJ-PAL, at 14:14-15 (D.Nev. Apr. 1, 2009), aff'd, 379 Fed. Appx. 636 (9th Cir. 2010) ("[Association] did not perform the traditional and exclusive public function of municipal governance." (internal citation omitted)).

Further, a right's origins (i.e. statutory or common law) do not dictate whether a private entity is a state actor. S.F. Arts & Athletics, Inc. v. USOC, 483 U.S. 522, 547 (1987) ("Nor is the fact that Congress has granted the USOC exclusive use of the word 'Olympic' dispositive. All enforceable rights in trademarks are created by some governmental act, usually pursuant to a statute or the common law. The actions of the trademark owners nevertheless remain private."). Similarly, the enactment of a remedy does not transform a private entity into a state actor. Am. Mfr. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 53 (1999) ("We have never held that the mere availability of a remedy for wrongful conduct, even when the private use of that remedy serves important public interests, so significantly encourages the private activity as to make the State responsible for it.").

This was a private party, the Association, making a private decision to enforce its lien rights, by way of a private trustee, NAS, in a non-judicial manner without use of a sheriff or court. Due process is not implicated because there is no state actor. Even if it was, however, the constitutional avoidance doctrine and the SFR Court have already determined that due process is not offended by NRS 116 non-judicial foreclosure statutes.

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d. The Statutes Require Notice to All Junior Lienholders of Record.

NRS 116.3116-NRS 116.31168 are not "opt in" only statutes.[13] The Bank impliedly asks this Court to ignore the constitutional avoidance doctrine and limit the meaning of the plain words. As recognized in the SFR decision, the 1991 Legislature included specific language in NRS 116 stating that the noticing requirements of NRS 107.090 also apply to an association foreclosure: **"The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed." NRS 116.31168(1)**.[14] Indeed, NRS 107.090 requires notice to all subordinate claim holders:

> 3. The trustee or person authorized to record the notice of default shall, . . ., cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:
>
> (a) Each person who has recorded a request for a copy of the notice; and
>
> **(b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.**
>
> 4. The trustee or person authorized to make the sale shall . . . cause to be deposited in the United States mail an envelope . . . containing a copy of the **notice of time and place of sale**, addressed **to each person described in subsection 3**.

NRS 107.090(3) – (4) (emphasis added); SFR, 334 P.3d at 411, 422. One must simply change the words "deed of trust" to "Association Lien." The second sentence of 116.31168, "[t]he request must identify the lien by stating the names of the unit's owner and the common-interest community[]" is meant to replace the structurally similar final sentence in 107.090(2), "[t]he request must . . . identify the deed of trust by stating the names of the parties thereto, the date of recordation, and the book and page where it is recorded."

Pursuant to NRS 111.315, recording a document is notice to third persons; while NRS 111.320 provides that recording of an instrument impart(s) notice to all persons of the contents thereof. Since NRS 116.31168 incorporates NRS 107.090(3) and (4), which require notice to all

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[13] The Bank's citation to non-binding unpublished lower court cases is unpersuasive. Bank's Mot., p. 25, fn. 15. In fact, courts in the United States District Court, District of Nevada have weighed in on this issue and found that the statutes did not violate due process. See Nationstar Mortgage, LLC v. Rob and Robbie, LLC, Case No. 2:13-cv-01241-RCJ-PAL, 2014 WL 3661398 *3 (D.Nev. July 23, 2014).

[14] The Legislature amended 116.31168 in 1993, by deleting the sentence "The association must also give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it." 1993 Nev. Stat., ch. 573, § 40, at 2373. At the same time it deleted this section, the Legislature added 116.31163 and 116.311635 which, as is discussed in text on this page and the next, require notice to all lienholders of record. 1991 Nev. Stat., ch. 573, §§ 6-7, at 2355.

subordinate claim holders, associations have an affirmative duty to check the county property records for all subordinate liens.

NRS 116.31163 and 116.311635 require the notice of default be recorded and mailed to (1) those who request notice and "2. Any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest[.]" NRS 116.31163(1)-(2), 116.311635(1)(b)(1)-(2). Because the term "has notified" is not defined by the statute, the court should look to the plain meaning of "notify," which is "to provide notice." BLACK'S LAW DICTIONARY 1090 (7th ed. 1999). Notice is the "[l]egal notification required by law or agreement, or imparted by operation of law as a result of some fact (such as the recording of an instrument); definite legal cognizance, actual or constructive, of an existing right or title[.]" Id. at 1087. The act of recording, therefore, satisfies the requirement to notify the association, and therefore obligates the association to provide notices of default and sale. The language "has notified" in the statutes is broad enough to allow for those persons who are holders of recorded interests or other parties in interest, such as assignees or loan servicers, who for their own reasons have not yet recorded their interests to notify the Association directly so as to receive the foreclosure notices. The Legislature included almost the same requirements for an association non-judicial foreclosure sale as it did for non-judicial foreclosure sales by banks before banks were perceived to be abusing the system.[15]

Finally, the Small Engine court, out of adherence to the constitutional avoidance doctrine, articulated a way for courts to read "request-notice" statutes constitutionally. Small Engine Shop, Inc. v. Cascio, 878 F.2d 883, 890 (5th Cir. 1980). And in Small Engine, the court did not have the benefit of a provision like NRS 107.090 incorporated. Here, under Small Engine, NRS 116's request-notice provisions are constitutional, especially when construed in conjunction with

[15] NRS 116.31162-116.31168 closely tracks NRS 107.080 in place at the time NRS 116 was enacted and through 2005 when the Legislature began making significant changes to the requirements to address predatory lending and robo-signing by the banks. The changes to NRS 107.080 since then include the implementation of the foreclosure mediation program, special requirements designed to give extra information to those in owner-occupied properties, and provisions to address concerns about which bank owns the note underlying the deed of trust being foreclosed.

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Nevada's recording laws, (NRS Chapter 111),[16] and with the requirements of NRS 116.31168 and NRS 107.090.

Simply put, the non-judicial noticing requirements of NRS 116 require notice to lenders. The Bank simply refuses to acknowledge that its own actions caused its loss. The Bank's motion should be denied. Conversely, SFR's motion for summary judgment should be granted.

G. The Bank's Other Arguments.

The Bank raises three other arguments to which SFR responds by incorporating its Motion for Summary Judgment and Reply in Support. These arguments are as follows:

1) Commercial Reasonableness of the Sale. See SFR's Mot. at 13-17; SFR's Reply in Support at 15-19.

2) SFR's Bona Fide Purchaser Status. See SFR's Mot. at 17-20; SFR's Reply in Support at 21-24.

3) Retroactive application of NRS 116. See SFR's Reply in Support at 10.

III. CONCLUSION

Based on the above, the Court should deny the Bank's motion for summary judgment and instead, grant summary judgment in favor of SFR as requested in its Motion.

DATED this 12th day of August, 2016.

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[16] The Bank insists that Small Engine struck down a "request-notice" statute as unconstitutional; this disregards that case's admonition that "[b]ecause Small Engine did not request notice under La.Rev.Stat.Ann. 13:3886, we do not decide whether the provisions of the statute are constitutional in their entirety." Small Engine, 878 F.2d at 893 n.9.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of August, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC'S OPPOSITON TO JPMORGAN CHASE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT** to the following parties.

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive,

Defendants.

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

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive,

Counter-Defendant/Cross-Defendants

Case No. A-13-692304-C

Dept. No. XXIV

ORDER GRANTING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Court on SFR Investments Pool 1, LLC ("SFR") Motion for Summary Judgment ("SFR MSJ"), filed on July 7, 2016, seeking judgment on its claims against JPMorgan Chase Bank, National Association ("Chase") for quiet title/declaratory relief and on Chase's claims against SFR for quiet title/declaratory relief and unjust enrichment. Chase filed

its opposition to SFR's MSJ on July 26, 2016, and SFR filed its reply on August 1, 2016. Karen L. Hanks, Esq. of Kim Gilbert Ebron appeared on behalf of SFR and Abran E. Vigil, Esq. of Ballard Spahr LLP appeared on behalf of Chase. No other parties or counsel appeared.

Having reviewed and considered the full briefing and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the following findings of fact and conclusions of law.[1]

FINDINGS OF FACT

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

2. On November 8, 1991, Pebble Canyon Homeowners Association (the "Association"), recorded in the Official Records of the Clark County Recorder, its Declaration of Covenants, Conditions and Restrictions ("CC&Rs") as Instrument No. 01962 in Book 911108 of the Official Records of the Clark County Recorder.[3]

3. The Hawkinses took title to the real property commonly known as 3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-514-043 (the "Property"), by way of a Grant, Bargain, sale Deed recorded as Instrument No. 01962 in Book 911108 on June 12, 2006.

4. On June 12, 2006, a Deed of Trust was recorded against the Property in favor of GreenPoint Mortgage Funding, Inc. as Instrument No. 20060612003526 ("Deed of Trust"). The Deed of Trust was executed by the Hawkinses to secure a promissory note in the amount of $240,000.00. The Deed of Trust designated Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary in a nominee capacity for the lender and the lender's successors and assigns.

5. As part of the loan transaction, the lender prepared and the Hawkinses signed, a

---

[1] Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.

[2] Unless otherwise noted, the findings set forth herein are undisputed.

[3] When a document is stated to have been recorded, it refers to being recorded in the Official records of the Clark County Recorder.

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Planned United Development Rider ("PUD Rider") a rider to the Deed of Trust, recognizing that the Property was located in a sub-common interest community within the Association.

6. On October 27, 2009, an Assignment of Deed of Trust was recorded as Instrument No. 20091027000618, stating that the MERS was assigning the Deed of Trust to Chase, together with underlying promissory note.

7. On October 27, 2009, California Reconveyance Company ("CRC") as trustee, recorded a Notice of Default and Election to Sell Under Deed of Trust, stating the Hawkinses had become delinquent on their payments under the note as of July 1, 2009.

8. On August 3, 2012, Nevada Association Services ("NAS") recorded on behalf of the Association a Notice of Delinquent Assessment Lien as Instrument No. 20120803000297 2 ("NODA"). The NODA was mailed to the Hawkinses.

9. On September 20, 2012, NAS recorded on behalf of the Association a Notice of Default and Election to Sell Under Homeowners Association Lien as Instrument No. 20120920000144 6 ("NOD"). The NOD was mailed to Chase and CRC, and Chase admits receipt of the NOD.

10. On February 7, 2013, NAS recorded on behalf of the Association a Notice of Trustee's Sale as Instrument No. 20110929000267 2 stating a sale date of March 1, 2013 ("NOS"). The NOS was mailed to Chase, CRC, MERS, and GreenPoint. Chase admits receipt of the NOS. The NOS was posted and published pursuant to statutory requirements.

11. On March 1, 2013, NAS held the Association foreclosure sale at which SFR placed the highest bid of $3,700.00 ("Association foreclosure sale").

12. The Trustee's Deed Upon Sale vesting title in SFR was recorded on March 6, 2013 as Instrument No. 20130306000164 8. The Trustee's Deed included the following recitals:

> This conveyance is made pursuant to the powers conferred upon [NAS] by Nevada Revised Statutes, the Pebble Canyon HOA governing documents (CC&Rs) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election, recorded on 9/20/2012. . . . Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of [NODA] and [NOD] and the posting and publication of the Notice of Sale.

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13. Chase is charged with knowledge of NRS 116 since its adoption in 1991.

14. Despite being fully aware of the Association's foreclosure sale, neither Chase, its predecessors in interest, nor their agents attempted to pay any amount of the Association's lien. Neither did they take any action to enjoin the sale or seek some intervention to determine an amount to pay.

15. In the Nevada Supreme Court's SFR Investments Pool 1, LLC v. U.S. Bank, N.A., decision, the Court was unanimous in its interpretation that a homeowners association foreclosure sale could extinguish a first deed of trust, and the only disagreement being in whether the foreclosure could be non-judicial or must be judicial. 130 Nev. ___, 332 P.3d 408, 419 (2014) (majority holding and first paragraph of the concurring in part, dissenting in part by C.J. Gibbons).

16. There is no suggestion of fraud, oppression or unfairness in the conduct of the sale. Thus, whether the price was inadequate or grossly inadequate, is immaterial.

17. In its opposition, Chase argued the loan was FHA insured through the Department of Housing and Urban Development ("HUD") and, therefore, this Court should use the Supremacy Clause to preempt NRS 116 and declare that the Association's foreclosure sale did not extinguish Chase's FDOT. This Court finds that an insurer does not have an interest in the Property that is protected under the Property Clause or Supremacy Clause until title is transferred to HUD.

18. Chase also argued that the SFR Decision should not be applied retroactively.

19. Chase provided no evidence that its alleged payments for taxes or insurance were made in defense of property. There was no evidence that SFR was a named additional insured on any insurance policy on the Property obtained by Chase, nor did Chase provide evidence that the Property was in danger of being sold for delinquent taxes.

CONCLUSIONS OF LAW

A. Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, 121 Nev. 724, 729, 121 P.3d

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1026, 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law.'" McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting Coray v. Home, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against [it]." Wood, 121 Nev. at 32, 121 P.3d at 1031. The non-moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." Id. Rather, the non-moving party must demonstrate specific facts as opposed to general allegations and conclusions. LaMantia v. Redisi, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); Wayment v. Holmes, 112 Nev. 232,237,912 P.2d 816, 819 (1996). Though inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment, must show that it can produce evidence at trial to support its claim or defense. Van Cleave v. Kietz-Mill Minit Mart, 97 Nev. 414,417,633 P.2d 1220, 222 (1981).

B. While the moving party generally bears the burden of proving there is no genuine issue of material fact, in this case there are a number of presumptions that this Court must consider in deciding the issues, including:

1. That foreclosure sales and the resulting deeds are presumed valid. NRS 47.250(16)-(18) (stating that there are disputable presumptions "[t]hat the law has been obeyed[]"; "[t]hat a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to that person, when such presumption is necessary to perfect the title of such person or a successor in interest[]"; "[t]hat private transactions have been fair and regular"; and "[t]hat the ordinary course of business has been followed.").

2. That a foreclosure deed "reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns and all other persons." SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d at 411-12.

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3. That "[i]f the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser." Moeller v. Lien, 30 Cal.Rptr.2d 777, 783 (Ct. App. 1994); see also, 4 Miller & Starr, Cal. Real Estate (3d ed. 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2 Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59, pp. 476-477).

C. "A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." Yeager v. Harrah's Club, Inc., 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995)(citing Vancheri v. GNLV Corp., 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)). "These presumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence." Id. (citing NRS 47.180).

D. Thus, Chase bore the burden of proving it was more probable than not that the Association Foreclosure Sale and the resulting Foreclosure Deed were invalid.

E. Chase has the burden to overcome the conclusive presumption of the foreclosure deed recitals with evidence of fraud, unfairness and oppression.

F. Pursuant to the SFR Decision, NRS 116.3116(2) gives associations a true super-priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. SFR, 334 P.3d at 419.

G. According to the SFR Decision, "together, NRS 116.3116(1) and NRS 116.31162 provide for the nonjudicial foreclosure of the whole of the HOA's lien, not just the subpriority piece of it." SFR, 334 P.3d at 414-15.

H. The Association foreclosure sale vested title in SFR "without equity or right of redemption." SFR, 334 P.3d at 419 (citing NRS 116.31166(3)).

I. "If the sale is properly, lawfully and fairly carried out, [the bank] cannot unilaterally create a right of redemption in [itself]." Golden v. Tomiyasu, 387 P.2d 989, 997 (Nev. 1963).

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J. As the SFR Decision did not announce a new rule of law but merely interpreted the provisions set forth in NRS 116 *et seq.*, it does not raise an issue of retroactivity. The SFR Decision provided "'an authoritative statement of what the statute mean before as well as after the decision of the case giving rise to that construction.'" Morales-Izquierdo v. Dep't of Homeland Sec., 600 F.3d 1076, 1087 (9th Cir. 2010), overruled in part on other grounds by Garfias-Rodriguez v. Holder, 702 F.3d 504, 516 (9th Cir. 2010), quoting Rivers v. Roadway Express, Inc., 511 U.S. 298, 312-313 (1994). Thus, this Court rejects Chase's retroactivity argument.

K. NRS 116 does not require a purchaser at an association foreclosure sale be a bona fide purchaser, but in any case, without evidence to the contrary, when an association's foreclosure sale complies with the statutory foreclosure rules, as evident by the recorded notices and with the admission of knowledge of the sale, and without any facts to the contrary, knowledge of a FDOT and that Chase retained the ability to bring an equitable claim to challenge the foreclosure sale is not enough in itself to demonstrate that SFR took the property with notice of a potential dispute to title, the basis of which is unknown to SFR, and therefore, does is not sufficient to defeat SFR's ability to claim BFP status. Shadow Wood HOA v. N.Y. Cmty Bancorp, 132 Nev. ___, 366 P.3d 1105, 1116 (2016).

L. Shadow Wood reaffirmed Nevada's adoption of the California rule that "inadequacy of price, **however gross**, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness or oppression **as accounts for and brings about the inadequacy of price**[.]" Shadow Wood, 2016 WL 347979 at*5 (quoting Golden, 79 Nev. at 504 (internal citations omitted) (emphasis added)).

M. Because there is no suggestion of fraud, oppression or unfairness in the sale process or that SFR knowingly participated in fraud, oppression or unfairness in the sale, even if the purchase price paid by SFR was seen as inadequate or grossly inadequate, price alone is insufficient to invalidate the sale.

N. Chase admits it received the required notices and knew the sale had been

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scheduled, yet it did nothing to protect its interest in the Property. Furthermore, as a mere lienholder, as opposed to homeowner like the bank in Shadow Wood, Chase is not entitled to equitable relief as it has an adequate remedy at law for damages against any party that may have injured it. Las Vegas Valley Water Dist. V. Curtis Park Manor Water Users Ass'n, 646 P.2d 549, 551 (Nev. 1982) ("courts lack authority to grant equitable relief when an adequate remedy at law exists."). Thus, even if this Court had found some facts suggesting fraud, unfairness or oppression, it would not need to weigh the equities. However, because Chase has presented no evidence, other than the alleged "low price" paid by SFR, suggesting that the sale was anything other than properly conducted, the Court would not need to weigh the equities in this case.

O. The Court rejects Chase's arguments on the Supremacy Clause because Chase, a private litigant, cannot use the Supremacy Clause to displace state law under Armstrong v. Exceptional Child Care Ctr., Inc., 575 U.S. ___, 135 S.Ct. 1378, 1383-85 (2015). Furthermore, Chase lacks standing to enforce the National Housing Act. Finally, HUD's insurance interest is too attenuated to raise a supremacy clause issue, where the FDOT has not been assigned to HUD.

P. The Court rejects Chase's argument that an association must have accumulated either six or nine months of delinquent assessments before it can begin the foreclosure process. Nothing in NRS 116.3116 requires such, and the reference to six or nine months in NRS 116.3116 refers only to the amount that would be prior to a first security interest. NRS 116.31162(4) provides that the notice of delinquent assessments can be sent as early as ninety (90) days of a delinquency.

Q. Chase failed to demonstrate an exception to the voluntary payment doctrine: (a) coercion or duress caused by a business necessity, or (2) payment in defense of property. Nevada Association Services, Inc. v. The Eighth Judicial District, 130 Nev. ___, ___, 338 P.3d 1250 (2014). Without showing one of these exceptions applies, one cannot recover voluntary payments. Best Buy Stores v. Benderson-Wainberg Assocs., 668 F.3d 1019, 1030 (8th Cir. 2012) ("one who makes a payment voluntarily, cannot recover it on the ground that he was under no legal obligation to make the payment."). Here, Chase failed to provide any facts

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raising a material question as to whether any alleged payments were made under one of the exceptions.

R. The Deed of Trust was extinguished by the Association's foreclosure sale.

S. SFR is entitled to quiet title in its name free and clear of the Deed of Trust.

T. SFR is entitled to a permanent injunction enjoining Chase, its successors and assigns from taking any action on the extinguished

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the SFR MSJ is **GRANTED.**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Deed of Trust recorded against the real property commonly known as 3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-514-043, was extinguished by the Association Foreclosure Sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Chase, its predecessors in interest and its successors, agents, and assigns, have no further interest in real property located at 3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-514-043 and are hereby permanently enjoined from taking any further action to enforce the now extinguished Deed of Trust.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that title to real property located 3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-514-043 is hereby quieted in favor of SFR.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SFR is entitled to summary judgment on Chase's claim for unjust enrichment and that Chase is not entitled to relief as to that claim.

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Order shall resolve all claims as to all parties.[4]

DATED this 23 day of August, 2016.

DISTRICT COURT JUDGE

Respectfully Submitted By:

KIM GILBERT EBRON

SBN 13464 for
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Approved as to Form but Not Content By:

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[4] SFR dismissed its claims against the Hawkinses by way of Stipulation and Order entered on April 23, 2014, notice of entry of which was served on April 24, 2014.

TAB 21

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Attorneys for Plaintiff/Counter-Defendant JPMorgan Chase Bank, National Association

DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada Limited Liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive; Defendants.	CASE NO. A-13-692304-C DEPT. NO. XXIV
SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Counter-Claimant, vs. JPMORGAN CHASE BANK N.A., NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive; Counter-Defendant.	

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NOTICE OF APPEAL

Plaintiff/Counter-Defendant JPMorgan Chase Bank, National Association hereby appeals to the Nevada Supreme Court from the *Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment* entered August 23, 2016 and from all interlocutory judgments and orders made appealable thereby.

Dated: September 16, 2016.

BALLARD SPAHR LLP

By: /s/ Matthew D. Lamb
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 16, 2016, I filed a copy of the foregoing NOTICE OF APPEAL. The following parties will be served by the Eighth Judicial District Court's E-Filing system:

KIM GILBERT EBRON

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E-Service for Kim Gilbert Ebron, eservice@hkimlaw.com
Michael L. Sturm, mike@kgelegal.com
Tomas Valerio, staff@kgelegal.com

Attorneys for SFR Investments Pool 1, LLC

/s/ Sarah Walton
An employee of BALLARD SPAHR LLP

TAB 22

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DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company Defendants.	CASE NO. A-13-692304-C DEPT NO. XXIV
SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Counter-Claimant, vs. JPMORGAN CHASE BANK NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1-10 and ROE BUSINESS ENTITIES 1 through 10, inclusive, Counter-Defendant/Cross-Defendants.	

MOTION TO EXTEND DISCOVERY DEADLINES AND TO RE-SET TRIAL DATE (SECOND REQUEST)

Pursuant to EDCR 2.25 and 2.35, plaintiff JPMorgan Chase Bank, N.A. ("Chase") hereby moves to extend discovery deadlines and re-set trial date pursuant to the December 12, 2017 and January 9, 2018 status checks before the Honorable Jim Crockett.

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NOTICE OF MOTION

Please take notice that the undersigned will bring **MOTION TO EXTEND DISCOVERY DEADLINES AND RE-SET TRIAL DATE (SECOND REQUEST)** on for hearing before the above-entitled Court on the 13th day of February at 9:00 a.m.

Dated: January 23, 2018

BALLARD SPAHR LLP

By: /s/ Abran E. Vigil
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MEMORANDUM OF POINTS AND AUTHORITIES

Chase seeks a further extension of discovery in this matter to permit Chase to disclose additional documents. This case arises from a foreclosure sale under NRS Chapter 116. Chase claims that a deed of trust recorded against the subject property survived the sale. Defendant SFR Investments Pool 1, LLC ("SFR") claims the deed of trust was extinguished. Chase argues, among other things, that it was servicing the loan secured by the deed of trust on behalf of the Federal Home Loan Mortgage Corporation ("Freddie Mac"), which owned the loan. Chase further argues that 12 U.S.C. § 4617(j)(3) preempts Nevada law to the extent that Nevada law would permit the sale to extinguish the deed of trust.

On June 22, 2017, the Nevada Supreme Court issued an opinion in the Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC, No. 69400, 133 Nev. Adv. Op. 34 (2017). Nationstar held that the servicer of a loan owned by Fannie Mae or Freddie Mac has standing to argue that 12 U.S.C. § 4617(j)(3) bars a foreclosure sale under NRS Chapter 116 from extinguishing a deed of trust securing the loan. Because this Court granted summary judgment before the Nationstar was issued, this Court did not consider and address the relevant facts of this case as clarified in the Nationstar decision. Chase's request to extend discovery is not a result of excusable neglect. Rather, there are compelling circumstances for Chase's request because the parties completed discovery and briefed dispositive motions before the Nevada Supreme Court issued its opinion in Nationstar. Accordingly, there may be additional documents that will assist the court in addressing the issues on remand.[1]

Proposed Amendment of Scheduling Order

Chase hereby requests an extension of the current plan and schedule as follows:

[1] Chase reserves the right to withdraw this Motion in the event it can reach an agreement with opposing counsel or otherwise determines the motion is no longer necessary.

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1. Statement of Discovery Completed

On June 29, 2015, the Court filed a Scheduling Order, which set the following deadlines:

(a) Close of discovery: May 2, 2016

(b) Motions to amend pleadings or add parties: February 2, 2016

(c) Initial expert disclosures: February 2, 2016

(d) Rebuttal expert disclosures: March 3, 2016

(e) Filing of dispositive motions: June 1, 2016

The parties have provided initial disclosures of documents and witnesses pursuant to N.R.C.P. 16.1. The parties have served discovery and responded to discovery. Chase designated and served its initial expert disclosure on February 2, 2016 and SFR designated its rebuttal expert on March 3, 2016. The deposition of Chase's expert occurred on March 9, 2016. Chase also conducted the depositions of third parties Nevada Association Services, Inc. and Pebble Canyon Homeowners Association. The deposition of Chase occurred on April 21, 2016. The deposition of SFR occurred on June 24, 2016.

2. Discovery that Remains to be Completed

(a) Supplement to N.R.C.P. 16.1 disclosures

3. The Reasons Why Remaining Discovery Was Not Completed

This matter was recently remanded from the Nevada Supreme Court to allow for this Court to determine whether 12 U.S.C. § 4617(j)(3) preempts Nevada law, whether Freddie Mac owned the loan at the time of the sale, or whether Chase was servicing the loan at the time of the sale. The issues to be addressed may be further clarified by additional discovery.

4. Proposed Discovery Schedule

Chase proposes an extension of 45-days from the date of the February 13, 2018 hearing on the instant Motion and proposes as follows:

A. Close of discovery: Friday, March 30, 2018

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B. Deadline to file dispositive motions: Monday, April 30, 2018.

5. Trial

Consistent with the deadlines requested above, Chase requests that a bench trial be set for a five-week trial stack to begin no early than the June 25, 2018 trial stack.

Dated: January 23, 2018

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on January 23, 2018, an electronic copy of the foregoing MOTION TO EXTEND DISCOVERY DEADLINES AND TO RE-SET TRIAL DATE (SECOND REQUEST) was filed and served on the following via the Court's electronic service system:

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Jacqueline A. Gilbert
Karen L. Hanks
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Attorneys for SFR Investments Pool, LLC

/s/ Ellen Phillipson
An employee of BALLARD SPAHR LLP

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TAB 23

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Defendants. AND ALL RELATED CLAIMS.	Case No. A-13-692304-C Dept. No. XXIV **SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO EXTEND** **Hearing Date: February 13, 2018** **Hearing Time: 9:00 a.m.**

SFR Investments Pool 1, LLC ("SFR") hereby files its Opposition to JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("the Bank") Motion to Extend Discovery Deadlines and to Re-Set Trial Date. This Opposition is based on the papers and pleadings on file herein, the following memorandum of points and authorities, the Declaration of Jacqueline A. Gilbert, Esq., and any oral argument this Court may entertain.

…

…

…

…

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DECLARATION OF JACQUELINE A. GILBERT

I, Jacqueline A. Gilbert, hereby declare as follows:

1. I am over the age of 18, a resident of Clark County, Nevada, and am an attorney admitted to practice in all courts in the State of Nevada.

2. I am a named member of Kim Gilbert Ebron, and represent defendant/counter-claimant/cross-claimant SFR Investments Pool 1, LLC ("SFR") in the above-captioned action. I also represented SFR in Plaintiff JPMorgan Chase Bank, N.A.'s ("Chase") appeal following this Court's Order Granting SFR's Motion for Summary Judgment, entered on October 26, 2016.

3. I make this Declaration in support of SFR's Opposition to Chase's motion to reopen discovery. I have personal knowledge of the facts set forth herein and for those made on information and belief I have no reason to doubt the veracity of the statement.

4. Discovery closed in this case on May 6, 2016.

5. In the parties' motions for summary judgment, Chase raised 12 U.S.C. § 4617(j)(3) as a defense, asserting that the loan in question and its resulting deed of trust were "owned" by Fannie Mae. It also asserted that it, as the servicer of the loan, was entitled raise § 4617(j)(3). In support of its position, Chase attached a number of documents to its Motion that it claimed showed Fannie's ownership and Chase's position as servicer.

6. SFR disputed not only standing to raise §4617(j)(3), but whether Fannie owned or had ever owned the loan or had an interest in the deed of trust, and Chase's position as servicer for Fannie. In support of its position, SFR attached a number of documents it believes calls into question the credibility of the evidence presented by Chase. Additionally, SFR objected to a number of Chase's documents based on Chase's failure to produce the documents during the discovery period.

7. This Court granted SFR's motion for summary judgment, in part on Chase's lack of standing to raise 12 U.S.C. § 4617(j)(3) as a defense. Therefore, this Court made no findings on Fannie's ownership.

8. It also adjudicated the remaining claims in SFR's favor, because it found (a) SFR a bona fide purchaser; (b) Chase failed to meet its burden to show fraud, unfairness or oppression

and low price alone is insufficient to set aside a sale; (c) the sale was properly conducted and with the lack of evidence of fraud, unfairness or oppression there was no need to weigh equities in this case; (d) that there need not be six or nine months of delinquency before an association can begin the foreclosure process; and (e) Chase's unjust enrichment claim was barred by the voluntary payment doctrine.

9. The Nevada Supreme Court's opinion in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Nev. Adv. Op. 34, 396 P.3d 754 (2017), held that a servicer of a loan owned by Fannie or Freddie Mac had standing to raise § 4617(j)(3) as a defense. However, in order to do so, it would have to prove ownership by the GSE and a contractual relationship with the GSE. *Id.* at 758.

10. Chase appealed.

11. Following the *Nationstar* decision, Chase's appellate counsel, Matthew Lamb, contacted me regarding seeking certification from this Court to vacate its prior orders in this case (referred to as Morning Springs/Hawkins) and in DC Case No. A-13-692202-C (referred to as Begonia/Bell) and get remand from the Nevada Supreme Court to save resources. See email chain regarding remand, at p. 11-12. A true and correct copy of this email chain is attached hereto as **Exhibit A**.

12. In response, I set forth very clearly that SFR would be willing to come before this Court to have the order amended on the § 4617(j)(3) issue but not the other issues and that we would do so filing motions for summary judgment without reopening discovery:

> I am willing to agree to go before the DC to have the order amended on the HERA issue but not to reopen discovery or any other of the DC finding and conclusions as to the sales. So the DC would grant partial summary judgment on the other issues leaving on the issue of HERA/ownership/contract per the Nationstar case and we both file motions for summary judgment **without reopening discovery**. Would that be acceptable?

See Exhibit A at p. 10 (emphasis added). In addition to Mr. Lamb and myself, a number of other attorneys at both firms were copied on the exchanges.

13. Mr. Lamb agreed, so long as the other issues were preserved for appeal. *Id.* at p. 9-10. I agreed. *Id.* at p. 9.

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14. Following this exchange, the parties moved in this Court for certification and following this Court's grant, the parties moved for remand in the Nevada Supreme Court.

15. Upon remand, this Court set a hearing regarding further proceedings on remand.

16. Neither Mr. Lamb nor I attended the December 12, 2017 hearing. In fact, both firms sent counsel that had not been copied on the prior emails: Mr. Shiroff for Chase and Mr. Clayton for SFR.

17. Upon information and belief, at the December 12, 2017 hearing, Chase asked to reopen discovery to provide additional documents to support its claims as to Fannie ownership and Chase's contractual relationship. SFR opposed reopening discovery but represented that if the Court were so inclined, SFR would need to depose Fannie or whomever else was necessary based on the newly, late disclosed documents.

18. SFR did not request the hearing be transcribed so no transcript is available. The minutes simply state that there was a colloquy following discovery after Mr. Shiroff advised they would be filing a motion and requested sixty days for discovery. Nothing in the minutes suggests SFR agreed to stipulate, but that the Court ordered a stipulation be filed, or that the Court would be inclined to grant a motion to reopen.

19. Upon information and belief, the Court's decision to reopen was based on the Court's wanting a "complete record."

20. Following the December 12, 2017 hearing, Karen Hanks, another attorney in our office who was copied on the original email chain, contacted counsel for Chase regarding Chase's request to reopen discovery and providing the same email chain I have attached as Exhibit A. I was copied on this email and all emails subsequent regarding this issue. The email from Ms. Hanks suggested simply stipulating to a dispositive motion deadline, as was agreed upon by the parties. See email chain, beginning December 13, 2017, at p. 4, a true and correct copy of which is attached hereto as **Exhibit B**.

21. Chase's counsel responded that they only wanted to reopen to "supplement our 2016 disclosures." Counsel seemed to think that it could do these disclosures without depositions and accused SFR of objecting as an "evidentiary tactic rather than having the case heard on the

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merits." *See* Ex. B at p. 2. Counsel did not address the agreement between SFR and Chase in seeking remand.

22. Ms. Hanks responded that SFR would not stipulate to reopen, and that SFR would be reserving its rights to depose Fannie and Freddie (based on the case), and any other witnesses deemed necessary regarding the issues raised in the *Nationstar* case.

23. I am fully cognizant that this Court may determine on its own accord what, if any, need there is to reopen discovery and is not bound by the parties' agreement.

24. Notwithstanding the above, I would not have agreed to seek remand without the agreement from opposing counsel and would have allowed the appeal to take its course. I believed I could rely on Counsel's agreement, made in writing.

25. SFR's position is that a complete record is determined by the evidence provided by the parties during discovery and that at the time of the original motions for summary judgment Chase would have had to prove the same things it seeks to prove now: ownership by Fannie and Chase's relationship to Fannie. There is no new evidentiary standard introduced by the *Nationstar* case. Additionally, any evidence that Chase may provide, if FHFA and Fannie were relying on it to represent their interests, should have been provided to Chase and been within its possession, custody and control. To the extent those entities failed to provide the information, they should not be rewarded for withholding evidence from their agent.

26. At the January 8, 2018 hearing I appeared on behalf of SFR and Sylvia Semper appeared on behalf of Chase. At the hearing, Ms. Semper represented to this Court that it would stipulate not to reopen discovery in the above-captioned case.

27. After the hearing on January 8, 2018, I had multiple conversations with Ms. Semper but we could not agree on a resolution. In fact, I was presented with a stipulation not to reopen discovery in the Begonia/Bell case but Ms. Semper would not include any language stating that Chase would not supplement or try to disclose further documents.

28. I also contacted Abran Vigil, a partner at the firm representing Chase, to discuss this further. We were unable to reach an agreement. My understanding of the conversation is that Chase's position is that documents disclosed after the close of discovery are merely supplements

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to disclosures and are not violating the discovery deadline, and that a party may disclose anything prior to trial, despite a discovery order. Obviously, my position differs.

29. If this Court is not inclined to deny Chase's motion and allow the case to proceed on the evidence proffered during discovery, then I believe SFR will need unfettered discovery on the following issues in addition to whatever documents Chase opts to disclose: ownership by Fannie, transfer to a trust by Fannie, consent to foreclosure, Chase's agency relationship.

30. Such discovery would include, but is not limited to depositions of Fannie and any other person or entity that Chase deems necessary to prove its case with Chase being required to produce such witnesses in Las Vegas without SFR needing to subpoena the entities, without extended discovery fights and without a limitation on the time of depositions other than that set by the rules. Discovery could also include additional written discovery.

I hereby declare under penalty of perjury and the laws of the State of Nevada that the foregoing is true and accurate.

DATED this 30th day of January, 2018.

/s/Jacqueline A. Gilbert
Jacqueline A. Gilbert, Esq.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STANDARD OF REVIEW

The Nevada Rules of Civil Procedure "shall be construed and administered to secure the *just, speedy, and inexpensive determination of every action*." NRCP 1 (emphasis added). Allowing the Bank to reopen discovery at this late date to make a disclosure it had every opportunity to make—and was required to make—during the original discovery period is prejudicial. Further it would encourage the Bank to continue to cause delay and added expense in similar cases.

The Bank moves to extend discovery pursuant to EDCR 2.35, which states that request to extend a discovery deadline less than 20 days prior to the deadline "shall not be granted unless the moving party, attorney or other person demonstrates the failure to act was the result of excusable neglect." But the Bank does not explain in its motion how its failure to timely move to extend the discovery deadline constitutes excusable neglect in this case.

"Excusable neglect" has been defined as follows:

> A failure—which the law will excuse—to take some proper step at the proper time (esp. in neglecting to answer a lawsuit) **not because of the party's own carelessness, inattention, or willful disregard of the court's process,** but because of some unexpected or unavoidable hindrance or accident or because of reliance on the care and vigilance of the party's counsel or on a promise made by the adverse party.

Clark v. Coast Hotels & Casinos, Inc., No. 62603, 2014 WL 3784262, at *3–4 (Nev. July 30, 2014)(unpublished) (citing *Black's Law Dictionary* 1133 (9th ed.2009).)(emphasis added).

Nationstar's sole explanation appears to be that the Nevada Supreme Court's decision in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Nev. Adv. Op. 34, 396 P.3d 754 (2017) somehow created a new evidentiary requirement. As discussed further below, the *Nationstar* case did not establish a new evidentiary requirement, nor does it constitute excusable neglect, even if that were the standard for granting the Bank's motion. The Bank actually admits that its request is not a result of excusable neglect. *See* Bank's Mot. at 4:18. Instead, the standard is found under NRCP 16(b), which would apply even if the motion were timely under EDCR 2.35, which it is not. Pursuant to NRCP 16(b),

> the judge, or a discovery commissioner shall . . . enter a scheduling order that limits

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LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

> the time: (1) To join other parties and to amend the pleadings; (2) To file and hear motions; and (3) To complete discovery.
>
> . . .
>
> A schedule shall not be modified except by leave of the judge or a discovery commissioner ***upon a showing of good cause*.**

(emphasis added).

In *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 972 (Nev. App. 2015), the Court of Appeals of Nevada noted there is a non-exclusive four-factor test to determine whether good cause exists: "(1) the explanation for the untimely conduct; (2) the importance of the requested untimely action; (3) the potential prejudice in allowing the untimely conduct; and (4) the availability of a continuance to cure such prejudice." *citing S&W Enters., LLC v. SouthTrust Bank of Ala, N.A.*, 315 F.3d 533, 536 (5th Cir. 2003). However, because the factors are non-exclusive, "**ultimately, if the moving party was not diligent in at least attempting to comply with the deadline, 'the inquiry should end**.'" *Id.* (emphasis added), *citing Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609, (9th Cir. 1992) and *Perfect Pearl Co. v. Majestic Pearl & Stone, Inc.*, 889 F.Supp.2d 453, 457 (S.D.N.Y. 2012) ("A party fails to show good cause when the proposed amendment rests on information that the party knew, or should have known, in advance of the deadline."). Additionally, "**carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief.**" *Id.* (emphasis added).

II. THE *NATIONSTAR* CASE SIMPLY CONFIRMED THE PRIOR EVIDENTIARY BURDEN

The Nevada Supreme Court's opinion in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Nev. Adv. Op. 34, 396 P.3d 754 (2017), held that a servicer of a loan owned by Fannie or Freddie Mac had standing to raise § 4617(j)(3) as a defense. However, in order to support its defense, it would have to prove ownership by the GSE and a contractual relationship with the GSE. *Id.* at 758. The *Nationstar* decision did not create a new evidentiary burden as to the applicability of the defense, as suggested by the Bank. Instead, it held that a servicer can raise § 4617(j)(3) as a defense, upon the appropriate showing of a contractual relationship with the GSE, and that the defense is only applicable if the servicer provides sufficient evidence of GSE ownership. Previously, the Bank asserted it had standing to assert the purportedly applicable defense under § 4617(j)(3). This is the exact same evidentiary burden the Bank faced prior to

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Nationstar. In fact, the Bank has failed to articulate what changed in its evidentiary burden. Furthermore, any evidence it would seek to disclose to support a defense under § 4617(j)(3) would be in the custody and control of the Bank during the prior discovery period. Therefore, even if the analysis went further, the Bank has no valid excuse for withholding the information previously, nor the necessity to produce it now. As such, the Bank should be held to the evidence previously produced, which the Bank deemed sufficient to support its defense, and its request should be denied.

III. THE BANK FAILED TO MEET ITS BURDEN

To the extent the analysis goes further, which it should not, the Bank failed to provide any evidence of good cause. In support of its motion, the Bank provides no explanation, nor justification for failing to produce sufficient evidence to support its alleged defense the first time around. As the *Nationstar* case did not establish a new evidentiary burden-it merely allows use of a defense based on the prior evidentiary burden. As discussed above, any documents regarding the Bank's contractual relationship with any GSE, and any documentation regarding GSE ownership that the Bank deemed sufficient to support the Bank's purported defense prior to *Nationstar* were in the custody and control of the Bank. Failure to produce them previously was due to a lack of diligence or a tactical decision that such documents were unnecesary, not a change in evidentiary burden. **The Bank was not diligent, so the inquiry should end**.

Even if the Court looks beyond the Bank's failure to be diligent, which it should not, the Bank does not meet any of the factors for good cause. **First**, the Bank has failed to provide any credible explanation for its need to reopen discovery. **Second**, the Bank has not explained the importance of any additional discovery that is necessary. **Third**, allowing the Bank to supplement their disclosures after discovery has closed and summary judgment briefing on the one issue this is complete and previously decided, prejudices SFR. Although this case is back on remand, it does not change the fact that this Court can decide the issues based on the briefing that was before it prior to the appeal and the *Nationstar* decision. As this Court noted, it did not make a decision on Fannie ownership. That does not mean it could not have, simply that, at the time, it was unnecessary. It was the Bank's burden to produce sufficient evidence to establish its defense under

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§ 4617(j)(3)—they do not get a second bite at the apple without good cause. **Fourth**, a continuance would not cure the prejudice caused by granting the Bank's request to reopen discovery to provide supplemental disclosure—it just benefits the Bank for its prior purported failure. The Bank has not, and cannot meet any of the factors required to show good cause. The Bank's motion should be denied in its entirety.

IV. THE BANK ACTED IN BAD FAITH

In addition to its failure to show good cause, the Bank's bad faith is apparent as laid out within the Gilbert Declaration. The timeline of events in this matter is demonstrative, wherein the Bank and SFR come to an agreement as to remand, SFR complies with its end of the deal, and the Bank simply backs out. The Bank failed to honor its agreement regarding the stipulated remand of this matter from the Nevada Supreme Court, and now it seeks to validate its bad acts, and complete disregard for the order governing discovery deadlines, through the instant motion. If it truly believed that disclosing the documents was not the same as extending discovery, it would have done so and SFR would have been filing a motion to exclude. But the Bank, despite its representation that "supplementing" is not the same as reopening discovery, filed the instant motion and sought this Court's blessing.

As the Nevada Court of Appeals explained, "[d]isregard of the [scheduling] order would undermine the court's ability to control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the cavalier." *Nutton v. Sunset Station, Inc.,* 131 Nev. Adv. Op. 34, 357 P.3d 966, 971 (Nev. App. 2015) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir.1992).) In this case, as outlined within, the Bank has already produced the evidence **it deemed sufficient** to support its defense under § 4617(j)(3). As no new evidentiary burden was created as a result of the *Nationstar* case, the Bank can only be requesting an extension to correct its initial failure. However, granting the Bank's instant motion would "reward the indolent and cavalier." The Bank's motion should be denied.

///

///

///

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V. CONCLUSION

For the reasons stated above, this Court should enter an order denying the Bank's motion.

DATED this 30th day of January, 2018.

KIM GILBERT EBRON

*/s/Jacqueline A. Gilbert*_____
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorneys for SFR Investments Pool 1, LLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO EXTEND**, to the following parties:

Abran Vigil – vigila@ballardspahr.com

Holly Priest – priesth@ballardspahr.com

Las Vegas Docketing – lvdocket@ballardspahr.com

Lindsay Demaree – demareel@ballardspahr.com

LV Intake – LVCTIntake@ballardspahr.com

Matthew Lamb – lambm@ballardspahr.com

Sylvia O. Semper – sempers@ballardspahr.com

Russell J. Burke – burker@ballardspahr.com

/s/ Jacqueline A. Gilbert
An employee of Kim Gilbert Ebron

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EXHIBIT A

Jackie Gilbert

From: Jackie Gilbert
Sent: Tuesday, September 19, 2017 9:49 AM
To: Lamb, Matthew D
Cc: Vigil, Abran E.; Tasca, Joel; Clegg, Tracy; Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com); Priest, Holly A.
Subject: Re: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

Thanks, Matt

Sent from Jackie's iPhone

On Sep 19, 2017, at 9:45 AM, Lamb, Matthew D <LambM@ballardspahr.com> wrote:

> Thanks, we'll add a line saying that each party will bear its own fees and costs for the appeal and we'll file.
>
> ---
>
> **From:** Jackie Gilbert [mailto:jackie@kgelegal.com]
> **Sent:** Tuesday, September 19, 2017 12:15 PM
> **To:** Lamb, Matthew D (DC)
> **Cc:** Vigil, Abran E. (LV); Tasca, Joel (LV); Clegg, Tracy (LV); Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com); Priest, Holly A. (LV)
> **Subject:** Re: NSC HERA Appeals (morning springs/hawkins and begonia/bell)
>
> Thank you, Matt. I think we need to say each party to bear its own fees and costs in the stops. With that addition You may insert my esignature
>
> Sent from Jackie's iPhone
>
> On Sep 19, 2017, at 8:33 AM, Lamb, Matthew D <LambM@ballardspahr.com> wrote:
>
> > Here you go.
> >
> > ---
> >
> > **From:** Jackie Gilbert [mailto:jackie@kgelegal.com]
> > **Sent:** Tuesday, September 19, 2017 11:29 AM
> > **To:** Lamb, Matthew D (DC)
> > **Cc:** Vigil, Abran E. (LV); Tasca, Joel (LV); Clegg, Tracy (LV); Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com); Priest, Holly A. (LV)
> > **Subject:** RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)
> >
> > Matt, will you please send me the file stamped copies of the intent to certify filed in the district court. I am having a hard time finding them.
> > Thanks.
> > Jackie

Jacqueline A. Gilbert, Esq.
(702) 485-3300 - telephone
(702) 485-3301- facsimile

From: Lamb, Matthew D [mailto:LambM@ballardspahr.com]
Sent: Tuesday, September 19, 2017 8:10 AM
To: Jackie Gilbert <jackie@kgelegal.com>
Cc: Vigil, Abran E. <VigilA@ballardspahr.com>; Tasca, Joel <TASCA@ballardspahr.com>; Clegg, Tracy <CleggT@ballardspahr.com>; Diana Ebron <diana@kgelegal.com>; Howard Kim <howard@kgelegal.com>; Karen Hanks <karen@kgelegal.com>; morning springs (de715b910+matter1022208796@maildrop.goclio.com) <de715b910+matter1022208796@maildrop.goclio.com>; begonia court (de715b910+matter1021154456@maildrop.goclio.com) <de715b910+matter1021154456@maildrop.goclio.com>; Priest, Holly A. <PriestH@ballardspahr.com>
Subject: RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

Jackie—

Now that the district court has signed the certification orders, we drafted the attached stipulations to formally remand the two cases back to the district court. We'll need to file them by Thursday since that is the opening brief deadline in # 71337. Please let us know if these are acceptable and if we may insert your e-signature and file.

Thanks,
Matt

Matthew D. Lamb

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Washington, DC 20006-1157

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202.661.2299 FAX

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From: Jackie Gilbert [mailto:jackie@kgelegal.com]
Sent: Friday, September 08, 2017 12:16 PM
To: Lamb, Matthew D (DC)
Cc: Vigil, Abran E. (LV); Tasca, Joel (LV); Clegg, Tracy (LV); Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com); Priest, Holly A. (LV)
Subject: RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

I have signed and the two docs are available for pick-up.
Jackie

Jacqueline A. Gilbert, Esq.
(702) 485-3300 - telephone
(702) 485-3301- facsimile

From: Lamb, Matthew D [mailto:LambM@ballardspahr.com]
Sent: Friday, September 08, 2017 9:12 AM
To: Jackie Gilbert <jackie@kgelegal.com>
Cc: Vigil, Abran E. <VigilA@ballardspahr.com>; Tasca, Joel <TASCA@ballardspahr.com>; Clegg, Tracy <CleggT@ballardspahr.com>; Diana Ebron <diana@kgelegal.com>; Howard Kim <howard@kgelegal.com>; Karen Hanks <karen@kgelegal.com>; morning springs (de715b910+matter1022208796@maildrop.goclio.com) <de715b910+matter1022208796@maildrop.goclio.com>; begonia court (de715b910+matter1021154456@maildrop.goclio.com) <de715b910+matter1021154456@maildrop.goclio.com>; Priest, Holly A. <PriestH@ballardspahr.com>
Subject: RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

Here are the revised versions—if this looks good please sign and we will send a runner.

Matthew D. Lamb

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From: Jackie Gilbert [mailto:jackie@kgelegal.com]
Sent: Friday, September 08, 2017 11:41 AM
To: Lamb, Matthew D (DC)
Cc: Vigil, Abran E. (LV); Tasca, Joel (LV); Clegg, Tracy (LV); Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com); Priest, Holly A. (LV)
Subject: RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

That works. Thank you, Matt.

Jacqueline A. Gilbert, Esq.
(702) 485-3300 - telephone
(702) 485-3301- facsimile

From: Lamb, Matthew D [mailto:LambM@ballardspahr.com]
Sent: Friday, September 08, 2017 8:38 AM
To: Jackie Gilbert <jackie@kgelegal.com>
Cc: Vigil, Abran E. <VigilA@ballardspahr.com>; Tasca, Joel <TASCA@ballardspahr.com>; Clegg, Tracy <CleggT@ballardspahr.com>; Diana Ebron <diana@kgelegal.com>; Howard Kim <howard@kgelegal.com>; Karen Hanks <karen@kgelegal.com>; morning springs

(de715b910+matter1022208796@maildrop.goclio.com) <de715b910+matter1022208796@maildrop.goclio.com>; begonia court (de715b910+matter1021154456@maildrop.goclio.com) <de715b910+matter1021154456@maildrop.goclio.com>; Priest, Holly A. <PriestH@ballardspahr.com>
Subject: RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

We can agree to phrase issue 2 this way: "Whether, at the time of the HOA foreclosure sale, Freddie Mac had a valid and enforceable property interest." If that works we will revise the stipulation.

From: Jackie Gilbert [mailto:jackie@kgelegal.com]
Sent: Monday, August 28, 2017 12:20 PM
To: Lamb, Matthew D (DC)
Cc: Vigil, Abran E. (LV); Tasca, Joel (LV); Clegg, Tracy (LV); Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com); Priest, Holly A. (LV)
Subject: RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

Hi, Matt,
Based on the Nationstar case and the recent 9th circuit decision, I think "enforceable interest" is appropriate.
Call me if you would like to discuss.
Jackie

Jacqueline A. Gilbert, Esq.
(702) 485-3300 - telephone
(702) 485-3301- facsimile

From: Lamb, Matthew D [mailto:LambM@ballardspahr.com]
Sent: Thursday, August 24, 2017 12:57 PM
To: Jackie Gilbert <jackie@kgelegal.com>
Cc: Vigil, Abran E. <VigilA@ballardspahr.com>; Tasca, Joel <TASCA@ballardspahr.com>; Clegg, Tracy <CleggT@ballardspahr.com>; Diana Ebron <diana@kgelegal.com>; Howard

Kim <howard@kgelegal.com>; Karen Hanks <karen@kgelegal.com>; morning springs (de715b910+matter1022208796@maildrop.goclio.com) <de715b910+matter1022208796@maildrop.goclio.com>; begonia court (de715b910+matter1021154456@maildrop.goclio.com) <de715b910+matter1021154456@maildrop.goclio.com>; Priest, Holly A. <PriestH@ballardspahr.com>
Subject: RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

Jackie—

Were you okay with the latest drafts of the district court stipulations?

Thanks,

Matthew D. Lamb

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From: Jackie Gilbert [mailto:jackie@kgelegal.com]
Sent: Friday, August 18, 2017 5:52 PM
To: Lamb, Matthew D (DC)
Cc: Vigil, Abran E. (LV); Tasca, Joel (LV); Clegg, Tracy (LV); Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com); Priest, Holly A. (LV)
Subject: Re: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

I am out til Tues- will get back to you when I return

Sent from Jackie's iPhone

On Aug 18, 2017, at 2:34 PM, Lamb, Matthew D <LambM@ballardspahr.com> wrote:

> Thanks—it's the second extension for each, so we'll file unopposed motions next week. Just let us know about the stipulation requesting certification/reconsideration whenever you have a chance.
>
> **Matthew D. Lamb**
>
> 1909 K Street, NW, 12th Floor
> Washington, DC 20006-1157

202.661.7617 DIRECT
202.661.2299 FAX

lambm@ballardspahr.com
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From: Jackie Gilbert [mailto:jackie@kgelegal.com]
Sent: Friday, August 18, 2017 5:23 PM
To: Lamb, Matthew D (DC)
Cc: Vigil, Abran E. (LV); Tasca, Joel (LV); Clegg, Tracy (LV); Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com); Priest, Holly A. (LV)
Subject: Re: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

Is this first extensions. Then yes on stips - if second- then unopposed man ok

Sent from Jackie's iPhone

On Aug 18, 2017, at 2:03 PM, Lamb, Matthew D <LambM@ballardspahr.com> wrote:

> Jackie—
>
> While we figure this out, are you okay with extending next week's briefing deadlines by 30 days? The opening brief deadline in Hawkins would go from August 22 to September 21, and the reply brief deadline in Bell would go from August 23 to September 22. I think that will be enough time to get the district court stipulations approved and then file stipulations to remand with the NSC.
>
> Thanks,
> Matt

> **From:** Lamb, Matthew D (DC)
> **Sent:** Thursday, August 17, 2017 10:32 AM
> **To:** 'Jackie Gilbert'
> **Cc:** Vigil, Abran E. (LV); Tasca, Joel (LV); Clegg, Tracy (LV); Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com); Priest, Holly A. (LV)
> **Subject:** RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

Jackie—

Attached please find new versions of the stipulations that accept your changes and make further changes. We are fine with describing the three issues on remand in more detail as long as the description is consistent with Nationstar. The attached version is based on page 8 of the Nationstar opinion. Please let us know if these changes work.

Thanks,
Matt

From: Jackie Gilbert [mailto:jackie@kgelegal.com]
Sent: Tuesday, August 15, 2017 5:05 PM
To: Lamb, Matthew D (DC)
Cc: Vigil, Abran E. (LV); Tasca, Joel (LV); Clegg, Tracy (LV); Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com)
Subject: RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

Hi, Matt,
Please see my edits to the proposed SAO's.
If you are okay with my changes, I will accept them and sign.
If you would like to discuss, please feel free to contact me.
Jackie

Jacqueline A. Gilbert, Esq.
(702) 485-3300 - telephone
(702) 485-3301- facsimile

written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.

From: Lamb, Matthew D [mailto:LambM@ballardspahr.com]
Sent: Monday, August 14, 2017 8:32 AM
To: Jackie Gilbert <jackie@kgelegal.com>
Cc: Vigil, Abran E. <VigilA@ballardspahr.com>; Tasca, Joel <TASCA@ballardspahr.com>; Clegg, Tracy <CleggT@ballardspahr.com>; Diana Ebron <diana@kgelegal.com>; Howard Kim <howard@kgelegal.com>; Karen Hanks <karen@kgelegal.com>; morning springs (de715b910+matter1022208796@maildrop.goclio.com) <de715b910+matter1022208796@maildrop.goclio.com>; begonia court (de715b910+matter1021154456@maildrop.goclio.com) <de715b910+matter1021154456@maildrop.goclio.com>
Subject: RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

Jackie—

Here are the two stipulations. If these look okay, we can send a runner to pick up the signed copies.

Thanks,
Matt

From: Jackie Gilbert [mailto:jackie@kgelegal.com]
Sent: Friday, August 04, 2017 3:51 PM
To: Lamb, Matthew D (DC)
Cc: Vigil, Abran E. (LV); Tasca, Joel (LV); Clegg, Tracy (LV); Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com)
Subject: Re: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

Yes- they would be preserved. Thanks Matt

Sent from Jackie's iPhone

On Aug 4, 2017, at 2:25 PM, Lamb, Matthew D <LambM@ballardspahr.com> wrote:

We are fine with that, as long as the other issues that were previously litigated in the district court (like the validity of the sale under Shadow Wood) are preserved for any future appeal. We will put together stipulations for the two cases.

Matthew D. Lamb

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202.661.2299 FAX

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From: Jackie Gilbert [mailto:jackie@kgelegal.com]
Sent: Thursday, August 03, 2017 4:52 PM
To: Lamb, Matthew D (DC)
Cc: Vigil, Abran E. (LV); Tasca, Joel (LV); Clegg, Tracy (LV); Diana Ebron; Howard Kim; Karen Hanks; morning springs (de715b910+matter1022208796@maildrop.goclio.com); begonia court (de715b910+matter1021154456@maildrop.goclio.com)
Subject: RE: NSC HERA Appeals (morning springs/hawkins and begonia/bell)

Matt,
I am willing to agree to go before the DC to have the order amended on the HERA issue but not to reopen discovery or any other of the DC findings and conclusions as to the sales. So the DC would grant partial summary judgment on the other issues leaving only the issue of HERA/ownership/contract per the Nationstar case and we both file motions for summary judgment without reopening discovery.
Would that be acceptable?
Jackie

Jacqueline A. Gilbert, Esq.

(702) 485-3300 - telephone
(702) 485-3301- facsimile

From: Lamb, Matthew D [mailto:LambM@ballardspahr.com]
Sent: Wednesday, August 02, 2017 3:14 PM
To: Jackie Gilbert <jackie@kgelegal.com>
Cc: Vigil, Abran E. <VigilA@ballardspahr.com>; Tasca, Joel <TASCA@ballardspahr.com>; Clegg, Tracy <CleggT@ballardspahr.com>
Subject: NSC HERA Appeals

Jackie—

We have two appeals pending in the Nevada Supreme Court where the district court held that servicers lack standing to raise HERA as a defense:

JPMorgan Chase v. SFR, No. 71337
(Hawkins/3263 Morning Springs Drive)
JPMorgan Chase v. SFR, No. 71822
(Bell/2824 Begonia Court)

In both cases the district court did not address whether HERA preempts NRS 116.3116 or whether Freddie Mac owns the loan. Since the district court rejected the HERA argument based solely on standing, I am guessing the Supreme Court will vacate the summary judgments in these two cases pursuant to Nationstar Mortgage and remand them for proceedings on the preemption and ownership issues. Or at least that is what the Supreme Court did with the judgment in Nationstar Mortgage.

Would you be open to vacating the summary judgments in these two cases and remanding so the district court can decide the preemption and ownership issues? If so we can draft a stipulation asking the district court to certify its intent to vacate the judgment and to decide the other two issues.

Thanks,
Matt

Matthew D. Lamb

1909 K Street, NW, 12th Floor
Washington, DC 20006-1157
202.661.7617 DIRECT
202.661.2299 FAX

lambm@ballardspahr.com
VCARD

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<(2017-09-18 Filed) Stipulation Requesting Reconsideration and Certification DMWEST_17043404(1).PDF>

<(2017-09-18 Filed) Stipulation Requesting Reconsideration and Certification DMWEST_17043394(1).PDF>

EXHIBIT B

Ex. B

Jackie Gilbert

From: Karen Hanks
Sent: Monday, January 08, 2018 2:11 PM
To: Semper, Sylvia O.
Cc: Jackie Gilbert; Diana Ebron; Zachary Clayton; Tasca, Joel; Bowman, Charlene
Subject: RE: Begonia/Morning Springs - Bell/Hawkins

Sylvia,

We will not be able to agree. As indicated in the email and the Stipulation that was filed with the Supreme Court, our agreement to allow you guys to dismiss your appeal was conditioned on there being no additional discovery in these matters. You agreed to this condition.

Jackie will be attending the status check tomorrow to put this issue before the Court.

As a point of clarification to your email below, if after tomorrow, the Court still allows discovery, we fully intend to depose Freddie Mac and Fannie Mae as well as any other witnesses we deem necessary for the FHFA issue, which may include FHFA.

Karen L. Hanks, Esq.
Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Telephone: 702-485-3300
Facsimile: 702-485-3301

From: Semper, Sylvia O. [mailto:SemperS@ballardspahr.com]
Sent: Friday, January 05, 2018 9:28 AM
To: Karen Hanks <karen@kgelegal.com>
Cc: Jackie Gilbert <jackie@kgelegal.com>; Diana Ebron <diana@kgelegal.com>; Zachary Clayton <zachary@kgelegal.com>; Tasca, Joel <TASCA@ballardspahr.com>; Bowman, Charlene <BowmanC@ballardspahr.com>
Subject: RE: Begonia/Morning Springs - Bell/Hawkins

Hello Karen,

Following up on these two matters as the status checks are scheduled for next Tuesday. I would like to submit the SAOs today.

Thanks,
Sylvia

Sylvia O. Semper

Ballard Spahr LLP

One Summerlin, 1980 Festival Plaza Drive, Suite 900
Las Vegas, NV 89135-2958
702.868.7528 DIRECT
702.471.7070 FAX

sempers@ballardspahr.com
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---

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From: Semper, Sylvia O. (LV)
Sent: Wednesday, January 03, 2018 4:01 PM
To: Karen Hanks
Cc: Jackie Gilbert; Diana Ebron; Zachary Clayton; Tasca, Joel (LV); Bowman, Charlene (LV)
Subject: RE: Begonia/Morning Springs - Bell/Hawkins

Hi Karen,

As I mentioned when we spoke, we are seeking to re-open discovery in the Morning Springs/Hawkins matter for the limited purpose of supplementing our 2016 disclosures. We are in agreement that the parties will not take depositions. It appears that you are simply objecting to re-opening discovery as an evidentiary tactic rather than having the case heard on the merits. Furthermore, SFR's counsel agreed to re-open discovery at the last hearing and in the interest of having a complete record, Judge Crockett ordered the parties to submit a proposed stipulation and order. Accordingly, please find attached the proposed stipulation and order.

In addition, I am also attaching the proposed stipulation and order for the Begonia/Bell matter.

Thanks,
Sylvia

Sylvia O. Semper

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---

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From: Semper, Sylvia O. (LV)
Sent: Tuesday, December 19, 2017 9:51 PM
To: Karen Hanks
Cc: Jackie Gilbert; Diana Ebron; Zachary Clayton; Priest, Holly A. (LV); Vigil, Abran E. (LV); Lamb, Matthew D (DC); de715b910+matter1021154456@maildrop.clio.com; de715b910+matter1022208796@maildrop.clio.com
Subject: Re: Begonia/Morning Springs - Bell/Hawkins

Great, thanks. My direct line is 702-868-7528.

Sent from my iPhone

On Dec 19, 2017, at 9:40 PM, Karen Hanks <karen@kgelegal.com> wrote:

I'll try to call tmw as I don't start until 1 p.m.

Sent from Mail for Windows 10

From: Semper, Sylvia O. <SemperS@ballardspahr.com>
Sent: Tuesday, December 19, 2017 11:40:13 AM
To: Karen Hanks
Cc: Jackie Gilbert; Diana Ebron; Zachary Clayton; Priest, Holly A.; Vigil, Abran E.; Lamb, Matthew D; de715b910+matter1021154456@maildrop.clio.com; de715b910+matter1022208796@maildrop.clio.com
Subject: RE: Begonia/Morning Springs - Bell/Hawkins

Hello Karen,

I understand you are in trial this week. Please give me a call at your earliest convenience to discuss these two matters.

Thanks!
Sylvia

Sylvia O. Semper

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From: Karen Hanks [mailto:karen@kgelegal.com]
Sent: Wednesday, December 13, 2017 3:08 PM
To: Semper, Sylvia O. (LV)
Cc: Jackie Gilbert; Diana Ebron; Zachary Clayton; Priest, Holly A. (LV); Vigil, Abran E. (LV); Lamb, Matthew D (DC); de715b910+matter1021154456@maildrop.clio.com; de715b910+matter1022208796@maildrop.clio.com
Subject: Begonia/Morning Springs - Bell/Hawkins

Sylvia,

I understand a status check on these matters took place yesterday, and the issue of re-opening discovery was addressed. The problem is we specifically conditioned our agreement to the remand on the fact that discovery would **NOT** be re-opened and that instead, dispositive motions would be re-filed on the FHFA issue only. Matt Lamb agreed and then we proceeded to put together the stipulation to reflect this. The email string detailing this agreement is attached. I have also cc'd Matt, Holly and Ab who were part of that original discussion.

Obviously, both of our offices dropped the ball a bit and failed to properly educate you and Zach on this history. But fortunately, we can easily rectify this. I don't really think we need to address the issue with the Court because we have to submit an SAO anyway. So I think the best course of action is simply drafting the SAOs so as to only set a dispositive motion deadline for each case.

Karen L. Hanks, Esq.
Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Telephone: 702-485-3300
Facsimile: 702-485-3301

Jackie Gilbert

From: Karen Hanks
Sent: Wednesday, December 13, 2017 3:08 PM
To: Semper, Sylvia O.
Cc: Jackie Gilbert; Diana Ebron; Zachary Clayton; Priest, Holly A.; Vigil, Abran E.; Lamb, Matthew D; de715b910+matter1021154456@maildrop.clio.com; de715b910+matter1022208796@maildrop.clio.com
Subject: Begonia/Morning Springs - Bell/Hawkins
Attachments: Email re certification.pdf

Sylvia,

I understand a status check on these matters took place yesterday, and the issue of re-opening discovery was addressed. The problem is we specifically conditioned our agreement to the remand on the fact that discovery would **NOT** be re-opened and that instead, dispositive motions would be re-filed on the FHFA issue only. Matt Lamb agreed and then we proceeded to put together the stipulation to reflect this. The email string detailing this agreement is attached. I have also cc'd Matt, Holly and Ab who were part of that original discussion.

Obviously, both of our offices dropped the ball a bit and failed to properly educate you and Zach on this history. But fortunately, we can easily rectify this. I don't really think we need to address the issue with the Court because we have to submit an SAO anyway. So I think the best course of action is simply drafting the SAOs so as to only set a dispositive motion deadline for each case.

Karen L. Hanks, Esq.
Kim Gilbert Ebron
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TAB 24

NWM
Joel T. Tasca
Nevada Bar No. 14124
Sylvia O. Semper
Nevada Bar No. 12863
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Attorneys for Plaintiff and Counter-Defendant/Cross Defendant JPMorgan Chase Bank N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company Defendants.	CASE NO. A-13-692304-C DEPT NO. XXIV
SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Counter-Claimant, vs. JPMORGAN CHASE BANK NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1-10 and ROE BUSINESS ENTITIES 1 through 10, inclusive, Counter-Defendant/Cross-Defendants.	

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NOTICE OF WITHDRAWAL OF MOTION TO EXTEND DISCOVERY DEADLINES AND TO RE-SET TRIAL DATE

On January 23 2018, Plaintiff JPMorgan Chase Bank, N.A. ("Chase"), by and through its counsel of record, Ballard Spahr LLP, filed a Motion to Extend Discovery Deadlines and Re-Set Trial Date ("Motion"). By way of this Notice, the Court, Defendant and Counter-Defendants are notified that the Motion is withdrawn and the hearing set for February 13, 2018 can be vacated.

Respectfully submitted this February 1, 2018

BALLARD SPAHR LLP

By: /s/ Joel E. Tasca
Joel E. Tasca
Nevada Bar No. 7548
Sylvia O. Semper
Nevada Bar No. 12863
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Plaintiff and Counter-Defendant/Cross Defendant JPMorgan Chase Bank N.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of February, 2018, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing NOTICE OF WITHDRAWAL OF MOTION TO EXTEND DISCOVERY DEADLINES AND TO RE-SET TRIAL DATE was served on the parties in the manner set forth below:

[XX] Via the Court's electronic service system upon all counsel set up to receive notice via electronic service in this matter.

KIM GILBERT EBRON
Howard C. Kim
Diana S. Ebron
Karen Hanks
7625 Dean Martin Dr., Suite 110
Las Vegas, Nevada 89014

Attorneys for Plaintiff SFR Investments Pool 1, LLC

[ ] HAND DELIVERY

[ ] E-MAIL TRANSMISSION

[ ] U.S. MAIL, POSTAGE PREPAID and/or

/s/ C. Bowman
An employee of BALLARD SPAHR LLP

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1980 FESTIVAL PLAZA DRIVE, SUITE 900
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TAB 25

ELECTRONICALLY SERVED
3/28/2018 9:42 AM

MSJD
DIANA S. EBRON, ESQ.
Nevada Bar No. 10580
E-mail: diana@kgelegal.com
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KAREN L. HANKS, ESQ.
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Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive, Defendants.	Case No. A-13-692304-C Dept. No. XXIV **SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter-Claimant, vs. JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association; ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, Counter-Defendant/Cross-Defendants	

SFR Investments Pool 1, LLC ("SFR") hereby files its Motion for Summary Judgment against JP MORGAN CHASE BANK, NATIONAL ASSOCIATION (the "Bank") pursuant to NRCP 56(c). This Motion is based on the papers and pleadings on file herein, the following memorandum of points and authorities, the Declaration of Jacqueline A. Gilbert, Esq. ("Gilbert

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Decl."), attached hereto as **Exhibit A**, and such evidence and oral argument as may be presented at the time of hearing on this matter.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on _____ day of _____, 2018, in Department XXIV of the above-entitled Court, at the hour of _____a.m./p.m., or as soon thereafter as counsel may be heard, the undersigned will bring SFR's Motion for Summary Judgment before this Court for hearing.

DATED this 27th day of March, 2018.

KIM GILBERT EBRON

*/s/Jacqueline A. Gilbert*__
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Attorneys for SFR Investments Pool 1, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Summary Judgment can be granted in SFR's favor for the following reasons: **(1)**; the Bank's claims under 12 U.S.C. § 4617(j)(3) is barred by statute of limitations; (**2)** the Bank has failed to prove that FHFA/Freddie has an ownership interest; and **(3)** the Bank has failed to establish that it is a servicer for the FHFA/Freddie. As such, summary judgment can be granted in favor of SFR.

This is a quiet title action arising from Pebble Canyon Homeowners Association (the "Association") foreclosure sale of residential property at **3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-514-043** (the "Property"). Specifically, on **March 1, 2013**, the Association held a public auction of the Property ("Foreclosure Sale") based on unpaid monthly assessments. Despite receiving the notice of default and notice of sale, the Bank did nothing to protect its interest in the Property.

Based on the underlying sale, **the Bank's first deed of trust was extinguished by the Association's non-judicial foreclosure sale.** *See SFR Investments Pool I, LLC v. U.S. Bank,*

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N.A., 130 Nev. ___, ___, 334 P.3d 408, 419 (2014).

SFR previously filed a Motion for Summary Judgment on or about July 7, 2016. The Bank filed an Opposition and SFR filed a Reply, and SFR prevailed on all issues. However, one of those issues was the standing of the Bank to raise 12 U.S.C. § 4617(j)(3) as a defense or claim. *See* Findings of Fact and Conclusions of Law filed on August 23, 2016. The Bank filed a Notice of Appeal ("NOA") on or about September 16, 2016. *See* NOA filed with this Court. Based on the Nevada Supreme Court's opinion in Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC, 133 Nev. Adv. Op. 34, The parties stipulated to remand back to District Court to argue the issues related to §4617(j)(3) before the District Court. *See* Stipulation and Order filed on September 18, 2017 attached hereto as **Exhibit D**. *See specifically*, pg. 3 ¶ 10. *See also*, Stipulation to Remand filed with Nevada Supreme Court attached hereto as **Exhibit C**. Specifically, the **only** issues before the court, which are stipulated by the parties and certified by this Court are: **(1)** whether 12 U.S.C. § 4617(j)(3) preempts Nevada law when the Federal Housing Finance Administration ("FHFA") is acting as conservator over Freddie Mac ("Freddie"); **(2)** whether at the time of the foreclosure sale, Freddie had a valid, enforceable property interest; **(3)** whether the Bank had a servicing agreement with Freddie or the FHFA. *See* Ex. D at pg. 3 ¶ 9-12.

II. ARGUMENT

III. STATEMENT OF UNDISPUTED FACTS REGARDING CLAIMS AND DEFENSES RELATED TO 12 U.S.C. § 4617(J)(3).

Undisputed Fact #1:

On or about June 12, 2006, a DOT was recorded, which purportedly states that the lender is GreenPoint Mortgage Funding, Inc. and MERS is the beneficiary under the security interest.[1]

Undisputed Fact #2:

On or about October 27, 2009, an Assignment was recorded, which states it transfers interest under the DOT from MERS to JP Morgan Chase Bank, National Association, due to the following language "assigns and transfers to [Chase] all beneficial interest under that certain

[1] *See* DOT attached to Gilbert Decl. as **Exhibit A-1**.

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Deed of Trust…" [2]

Undisputed Fact #3:

On or about October 27, 2009, a document titled Substitution of Trustee was recorded. This document states that "Marin Conveyancing Corp., was the original trustee… undersigned beneficiary, Chase, hereby substitutes California Reconveyance Company."[3]

Undisputed Fact#4:

On or about February 22, 2013, a document titled Substitution of Trustee was recorded. This document states that Chase was authorizing the substitution of National Default Servicing Corporation as the new trustee under the DOT *See* recorded Substitution of Trustee attached to Gilbert Decl. as **Exhibit A-5**.

Undisputed Fact #5:

On or about August 23, 2013, another document titled corporate assignment of DOT was recorded, in which MERS again was assigning its interest in the DOT to JP Morgan Chase Bank, National Association. *See* recorded corporate assignment attached to the Gilbert Decl. as **Exhibit A-6**.

Undisputed Fact #6:

None of the documents referenced in Facts # 1-5 make any reference to any interest of Freddie Mac or FHFA in the note or deed of trust.

Undisputed Fact #7:

The foreclosure sale at which SFR obtained its interest in the Property was held on March 1, 2013 and the resulting Foreclosure Deed was recorded on March 6, 2013.

Undisputed Fact # 8:

The Bank waited 30 months to allege any interest by Freddie Mac in the Property, deed of trust or note, something it knew or should have known at the time it filed its original complaint.

…

[2] *See* Assignment attached to Gilbert Decl. as **Exhibit A-2**.

[3] *See* Substitution of Trustee attached to Gilbert Decl. as **Exhibit A-3**.

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IV. LEGAL ARGUMENT

A. Motion for Summary Judgment Standard.

Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law.'" *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) *quoting Coray v. Home*, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against [it]." *Wood*, 121 Nev. at 32, 121 P.3d at 1031. The non-moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* Rather, the non-moving party must demonstrate specific facts as opposed to general allegations and conclusions. *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); *Wayment v. Holmes*, 112 Nev. 232,237,912 P.2d 816, 819 (1996). Though inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment must show that it can produce evidence at trial to support its claim or defense. *Van Cleave v. Kietz-Mill Minit Mart,* 97 Nev. 414, 417, 633 P.2d 1220, 222 (1981).

B. The Bank's Claims are Time-Barred.

The statute that governs the statute of limitations in this context is 12 U.S.C. 4617(12) which provides:

> **(12) Statute of limitations for actions brought by conservator or receiver**
>
> **(A) In general**. Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—
>
> (ii) in the case of any tort claim, the longer of—
>
> (I) the 3-year period beginning on the date on which the claim accrues; or
> (II) the period applicable under State law.

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12 U.S.C. 4617(12). The statute of limitations in Nevada for a wrongful foreclosure claim three years. NRS 11.190(3)(a).

By asserting § 4617(j)(3), the Bank is claiming the Association's foreclosure was wrongful because it occurred without the Federal Housing Finance Agency's ("FHFA") consent. A claim for wrongful foreclosure is a tort claim. *Collins v. Union Federal Sav. & Loan Ass'n*, 99 Nev. 284, 300, 662 P.2d 610, 620 (1983). This means under § 4617(j)(12), said claim carries a **three-year statute of limitations**. To that end, the Bank's claim accrued on the date of the sale i.e. March 1, 2013[4], which means that Bank had **until March 1, 2016**, to bring this claim. The Banks First Amended Complaint was filed on or about March 9, 2016, which is after the expiration of the statute of limitations. Thus, the Bank is time barred in bringing this claim. The amended complaint does not relate back to the original complaint. Nothing in the original complaint put SFR on notice of any claimed interest by Freddie Mac or that 12 U.S.C. § 4617(j)(3) was implicated. *See Wilson v. Fairchild Republic Co.*, 143 F.3d 733, 738 (2d Cir. 1998) ("The pertinent inquiry, in this respect, is whether the original complaint gave the defendant fair notice of the newly alleged claims." (*citing Baldwin County Welcome Center v. Brown*, 466 U.S. 147,149 n.3, 104 S. Ct 1723 (1984)). overruled on other grounds by *Slayton v. Am. Express Co.,* 460 F.3d 215, 227–28 (2d Cir.2006) (adopting *de novo* standard of review for Rule 15(c)). The Bank knew or should have known of the facts related to Freddie's alleged interest and made the allegations when filing its original complaint. The Bank cannot even assert 4617(j)(3) as a defense because this too is time barred. *City of Saint Paul, Alaska v. Evans*, 344 F.3d 1029, 1035-36 (9th Cir. 2003) (barring City's defense under statute of limitations because defenses were "mirror images of time-barred claims"). In *Evans*, the 9th Circuit, noted that a party cannot "engage in a subterfuge to characterize a claim as a defense in order to avoid a temporal bar." *Evans*, citing *Mobil Oil Corp. v. Dep't of Energy*, 728 F.2d 1477, 1488 (1983) (holding that laches barred a pre-enforcement declaratory judgment action alleging that a price regulation was invalid). *See also Gilbert v. City of Cambridge*, 932 F.2d 51, 58 (1st Cir. 1991)

[4] *See* Foreclosure Deed attached to Gilbert Decl. as **Exhibit A-4**.

(holding that temporal bar cannot be sidestepped by asserting a defensive declaratory judgment claim); *Clark v. Slack Steel & Supply Co.*, 611 P.2d 80, 83 (Alaska 1980) (dismissing, as barred by statute of limitations, plaintiff's affirmative claim that a contract be declared void because it was formed under duress). As the *Evans* Court noted, "statutes of limitations 'are aimed at lawsuits, not at the consideration of particular issues in lawsuits....'" 344 F.3d at 1035 (*citing Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 416 118 S.Ct. 1408 (1998)). At the end of the day, the statute of limitations applies regardless of whether the Bank couches its 4617(j)(3) assertion as a claim or defense. As the *Evans* Court put it, "[n]o matter what gloss [the Bank] puts on its defenses, they are simply time-barred claims masquerading as defenses and are likewise subject to the statute of limitations bar." *Evans*, at 1036.

In a recent decision, Judge Linda Marie Bell followed this same logic, holding that the three-year statute of limitations was applicable and that based thereon, "the allegation of a federal foreclosure bar action under 12 U.S.C. Sec. 4617(j)(3) is time barred." *See* Decision and Order in *River Glider Avenue Trust v. Citimortgage, Inc.*, District Court Case No. A-13-680532-C (January 29, 2018) attached hereto as **Exhibit B**.

Based thereon, the Bank's purported claim under 12 U.S.C. § 4617 is time-barred.

C. <u>The Federal Foreclosure Bar Does Not Apply in this Case.</u>

The Bank's argument that 4617(j)(3) applies in this case and preempts NRS 116 is flawed for the following reasons. **First**, there is no admissible evidence that Freddie Mac owned the loan in question at the time of the Association sale. **Second**, Freddie's application of 4617(j)(3) is unconstitutional.

1. Freddie Mac Did Not Own the Loan.

12 U.S.C. 4617(j)(3) reads as follows:

> **No property of the Agency** shall be subject to levy, attachment, garnishment, **foreclosure**, or sale **without the consent** of the Agency…
> (Emphasis added.)

The threshold question when dealing with 4617(j)(3) is "property of the agency." Because 4617(j)(3) **only applies** if "property of the agency" is involved, it stands to reason if "property of the agency" is not implicated then 4617(j)(3) has no application whatsoever. Here,

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the Bank has not proven that at the time of the Association sale that Freddie Mac owned an interest in the Property. The recorded documents reflect that Chase had an interest in the Deed of Trust and not Freddie.

a. Freddie Mac Had Zero Interest in the Deed of Trust.

At the time of origination, the recorded beneficiary of the Deed of Trust was MERS.[5] Based on the lender identified in the DOT, GreenPoint Mortgage Funding, Inc., was presumably the holder of the Promissory Note.[6] This means the Note and Deed of Trust were split at origination. *See Edelstein v. Bank of New York Mellon,* 128 Nev. Adv. Op. 48, 286 P.3d 249 (Nev. Sept. 27, 2012). But the Note is not an interest in real property; it is merely a contract entitling the person who holds it a right to repayment, and mere possession of the Note does not give a party any rights under the deed of trust. *Edelstein*, at 254 *citing Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039 (9th Cir. 2011). In other words, the document that gives a party an interest in the property is the deed of trust. *See 1597 Ashfield Valley Trust v. Federal National Mortgage Association*, No. 2:14-CV-2123 JCM, 2015 WL 4581220, at *8 (D. Nev. July 28, 2015) (noting that Fannie Mae's interest in the note did not qualify as an interest in property subject to protection under 4617(j)(3).)

Here, after origination, MERS assigned the DOT to Chase.[7] The Association sale took place on March 1, 2013.[8] At that time, the recorded beneficiary of the DOT was still Chase. Under NRS 47.240(2), it is a conclusive presumption that "[t]he truth of the fact recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title." This means the fact that the recorded assignments identified Chase as the beneficiary of the DOT, is now conclusive; i.e., it cannot be contradicted. There being no admissible evidence that Freddie Mac ever had an interest in the DOT, it is inconsequential that the Bank claims Freddie Mac purchased the Note. More importantly, discovery is closed and the

[5] *See* Ex. A-1.
[6] *Id.*
[7] *See* Ex. A-2.
[8] Ex. A-4.

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Bank has failed to timely produce anything to contradict the recorded documents.

Furthermore, the Bank has failed to produce the original wet-ink Note which is required to prove ownership on the part of Freddie Mac. Without this evidence, this Court cannot determine, what, if any, endorsements exist in favor of Freddie Mac. There is another presumption under Nevada law that

But even assuming the Bank can contradict the face of the recorded documents (which it cannot under NRS 46.240(2)), if indeed Freddie Mac purchased the Note, this is still not an interest in the Property. Without a recorded assignment transferring the DOT to Freddie Mac, there is zero evidence that Freddie Mac ever had an interest in the Property, let alone at the time of the Association sale.

In short, there is no evidence that Freddie Mac had an interest in the Property at the time of the Association sale, and therefore the Bank has not proven the threshold question of whether the Agency had a property interest such that 4617(j)(3) is not even implicated.

D. <u>The Agency Has Rendered 4617(j)(3) Procedurally Unconstitutional.</u>

Should this Court determine that 4617(j)(3) does apply despite the fact that the fact that Freddie cannot prove its ownership interest, 4617(j)(3) still cannot apply as it violates SFR's due process rights. Under the Fifth Amendment, "No person shall be…deprived of…property, without due process of law. Nev. Const. Art. 1, Sec. 8; U.S. Const. amend. V. In order to trigger due process, a litigant must have a constitutionally protected "property." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999). "Property" interests attain "constitutional status by virtue of the fact that they have been initially recognized and protected by state law…" *Paul v. Davis*, 424 U.S. 693, 710 (1976). Even when state and federal law interact, state law's recognition of an interest establishes the existence of "property." *Id*.; *see also United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53-54 (1993); *Brock v. Roadway Express, Inc.*, 481 U.S. 252, 260 (1987); *Ralls Corp. v. CFIUS*, 758 F.3d 296, 316 (D.C. Cir. 2001); *Pillsbury Co. v. FTC*, 354 F.2d (5th Cir. 1966).

Under Nevada law, "NRS 116.3116(2) gives an Association a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust." *SFR Investments Pool 1, LLC v.*

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U.S. Bank, 334 P. 3d. 408, 419 (Nev. 2014). Hence, Nevada law recognizes SFR's property interest in the subject property as being free and clear of the deed of trust to which Freddie claims an interest. The recognition of this interest in the first instance is what triggers due process. This is true even where, later the federal law might trump.

Due process constrains "governmental decisions" that deprive people of property. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "Deprivation" occurs when a government actor's decision alters or extinguishes a state-recognized interest. *Paul*, 424 U.S. at 711. It is the "alteration, officially removing the interest from the recognition and protection previously afforded by the State, which we found sufficient to involve" due process. *Id.*; *Ralls*, 758 F.3d at 316. In the present case, Freddie claims that 4617(j)(3) overrides Nevada law and keeps in tack the deed of trust recorded against the property because FHFA did not consent to the extinguishment of the deed of trust. This "decision" not to consent constitutes a deprivation without due process. Specifically, the FHFA lacks a process to request/obtain consent and also has no procedure for challenging its "decision" not to consent. As such, there is no opportunity to be heard. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). Due process' "root requirement" is "an individual be given an opportunity for a hearing before he is deprived of" property. *Loudermill*, 470 U.S. at 542; *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

There is no dispute that FHFA did not give SFR an opportunity to be heard. To make matters worse, the FHFA does not give SFR a post-deprivation remedy i.e. an opportunity to contest the decision not to consent. The absence of pre-deprivation procedures coupled with the lack of a post-deprivation remedy establishes that FHFA deprived SFR of its property without due process. *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). But for FHFA's lack of consent, SFR's property interest as initially recognized by Nevada law would be unaltered.

In addition to the lack of process, FHFA also failed to afford SFR notice that it even claimed an interest such that SFR could even be on notice it needed to obtain consent. Such failure to provide notice constitutes a deprivation without due process. *Mullane*, 339 U.S. at 314; *Jones v. Flowers*, 547 U.S. 220, 230, 234 (2006). Because unconstitutional laws cannot preempt

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state law, 4617(j)(3) cannot preempt in this case. *Alden v. Maine*, 527 U.S. 706, 731 (1999).

V. CONCLUSION

Based on the above, the Court should enter summary judgment in favor of SFR, stating that (1) SFR is the title holder of the Property, (2) the Bank's deed of trust was extinguished when the Association foreclosed its lien containing super priority amounts, thus making the Bank's purported interest in the first deed of trust invalid, and (3) the Bank, and any agents acting on its behalf, are permanently enjoined from any sale or transfer that would affect SFR's title to the Property.

DATED this 27th day of March, 2018.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of March, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**, to the

Ballard Spahr	
Contact	**Email**
Abran Vigil	vigila@ballardspahr.com
Mary Kay Carlton	carltonm@ballardspahr.com
Ballard Spahr Andrews & Ingersoll, LLP	
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/s/Caryn R. Schiffman
An Employee of Kim Gilbert Ebron

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EXHIBIT A

Declaration of Jacqueline A. Gilbert

Ex. A

DECLARATION OF JACQUELINE A. GILBERT IN SUPPORT OF SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

I, Jacqueline A. Gilbert, Esq., declare as follows:

1. I am an attorney with Kim Gilbert Ebron, and I am admitted to practice law in the State of Nevada.

2. I am counsel for SFR Investments Pool 1, LLC ("SFR") in this action.

3. I make this declaration in support of SFR's Motion for Summary Judgment.

4. I have personal knowledge of the facts set forth below based upon my review of the documents produced in this matter, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.

5. I am knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case. In connection with this litigation **3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-514-043** (the "Property"), I reviewed the documents attached hereto as **Exhibits A-1 through A-6**.

7. Attached hereto as **Exhibit A-1** through **A-6,** are true and correct copies of excerpts from JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("the Bank") Initial and Supplemental Disclosures of Witnesses and Documents.

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

Dated this 27th day of March, 2018.

/s/Jacqueline A. Gilbert
Jacqueline A. Gilbert

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EXHIBIT A-1

Deed of Trust

Ex. A-1

20060612-0003526

Fee: $34.00
N/C Fee: $0.00

06/12/2006 14:00:35
T20060102935
Requestor:
LAWYERS TITLE OF NEVADA

Frances Deane KCP
Clark County Recorder Pgs: 21

Assessor's Parcel Number:
177-24-516-043
Return To: GreenPoint Mortgage Funding, Inc.
981 Airway Court, Suite E
Santa Rosa, CA 95403-2049

Prepared By: GreenPoint Mortgage Funding, Inc.
100 Wood Hollow Drive, Novato, CA 94945
Recording Requested By: GreenPoint Mortgage Funding, Inc.
981 Airway Court, Suite E
Santa Rosa, CA, 95403-2049

1303226-DK

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN Redacted

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 June 7, 2006 together with all Riders to this document.

(B) "Borrower" is Robert M. Hawkins and Christina V. Hawkins, Husband And Wife as joint tenants

Borrower is the trustor under this Security Instrument.

(C) "Lender" is GreenPoint Mortgage Funding, Inc.

Lender is a Corporation organized and existing under the laws of the State of New York

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Lender's address is 100 Wood Hollow Drive, Novato, CA 94945

(D) "Trustee" is Marin Conveyancing Corp.

(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 June 7, 2006
The Note states that Borrower owes Lender two hundred forty thousand and 00/100
Dollars
(U.S. $240,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2036
(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

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

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(M) "Escrow Items" means those items that are described in Section 3.
(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(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
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time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

As more particularly described in exhibit "A" attached hereto and made a part hereof.

Parcel ID Number: 177-24-514-043 which currently has the address of

1263 Morning Springs Drive [Street]

Henderson [City], Nevada 89074 [Zip Code]

("Property Address").

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

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

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

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

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

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

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

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives

Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

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

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

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

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

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

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

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

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

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

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

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

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

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

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

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

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

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

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

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

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

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

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

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

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ 900.00

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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:

_____ Robert M. Hawkins (Seal) -Borrower

_____ Christine V. Hawkins (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

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STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on June 8, 2006 by
Robert H. Hawkins, Christine V. Hawkins

Mail Tax Statements To:
Robert H. Hawkins
3263 Morning Springs Drive, Henderson, NV 89074 USA

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
TRACEY DERRICK
Appt. No. 04-91185-1
My Appt. Expires Dec 6, 2007

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EXHIBIT "A"

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Lot Fifty (50) in Block Ten (10) of SEASONS AT PEBBLE CANYON, as shown by map thereof on file in Book 53 of Plats, Page 45, in the Office of the County Recorder of Clark County, Nevada.

Assessor's Parcel Number: **177-24-514-043**

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 7th day of June, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to GreenPoint Mortgage Funding, Inc.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 3263 Morning Springs Drive, Henderson, NV 89074

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in Declaration of Covenants, Conditions, and Restrictions

(the "Declaration"). The Property is a part of a planned unit development known as Seasons At Pebble Canyon

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

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

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

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

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

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

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

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

8007

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

Robert M. Hawkins (Seal) -Borrower

Christine V. Hawkins (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

OCCUPANCY RIDER TO MORTGAGE/ DEED OF TRUST/SECURITY DEED

THE OCCUPANCY RIDER is made this 7th day of June, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note (the "Note") to GreenPoint Mortgage Funding, Inc. (the "Lender") of the same date and covering the property described in the Security Instrument and located at

3263 Morning Springs Drive, Henderson, NV 89074

("Property Address")

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

1. That the above-described property will be personally occupied by the Borrower as their principal residence within 60 days after the execution of the Security Instrument and Borrower shall continue to occupy the property as their 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.
2. That if residency is not established as promised above as well as in the Security Instrument, the Lender may, without further notice, take any or all of the following actions:
   a. increase the interest rate on the Note by one-half of one percent (0.500%) per annum on a fixed-rate loan or increase the Margin on an Adjustable Rate Note by one-half of one percent (0.500%) per annum and to adjust the principal and interest payments to the amount required to pay the loan in full within the remaining term; and/or
   b. charge a non-owner occupancy rate adjustment fee of two percent (2.00%) of the original principal balance and/or
   c. require payment to reduce the unpaid principal balance of the loan to the lesser of (1) 70% of the purchase price of the property or (2) 70% of the appraised value at the time the loan was made. The reduction of the unpaid principal balance shall be due and payable within thirty (30) days following receipt of a written demand for payment, and if not paid within thirty (30) days will constitute a default under the terms and provisions of the Note and Security Instrument, and/or
   d. declare a default under the terms of the Note and Security Instrument and begin foreclosure proceedings, which may result in the sale of the above-described property; and/or
   e. refer what is believed to be fraudulent acts to the proper authorities for prosecution. It is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements or reports for the purpose of influencing in any way the action of the Lender in granting a loan on the above property under the provisions of TITLE 18, UNITED STATES CODE, SECTIONS 1010 AND 1014.

It is further understood and agreed that any forbearance by the Lender in exercising any right or remedy given here, or by applicable law, shall not be a waiver of such right or remedy.

Should any clause, section or part of this Occupancy Rider be held or declared to be void or illegal for any reason, all other clauses, sections or parts of this Occupancy Rider which can be effected without such illegal clause, section or part shall nevertheless continue in full force and effect.

It is further specifically agreed that the Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies set forth above, including but not limited to, reasonable attorney's fees.

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

Robert M Hawkins (Borrower)
Robert M. Hawkins

Christine V. Hawkins (Borrower)
Christine V. Hawkins

(Borrower)

(Borrower)

(Borrower)

(Borrower)

(Borrower)

(Borrower)

EXHIBIT A-2

Assignment of Deed of Trust

Ex. A-2

(2)

Stewart Title
APN#: 177-24-514-043

AND WHEN RECORDED MAIL TO

CALIFORNIA RECONVEYANCE COMPANY
9200 Oakdale Avenue
Mail Stop: CA2-4379
Chatsworth, CA 91311

Inst #: 200910270000618
Fees: $15.00
N/C Fee: $0.00
10/27/2009 08:52:54 AM
Receipt #: 107162
Requestor:
SPL INC
Recorded By: GILKS Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Space above this line for recorder's use only

Title Order No. 1024157 Trustee Sale No. 137803NV Loan No. Redacted

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to JPMorgan Chase Bank, National Association all beneficial interest under that certain Deed of Trust dated 06/07/2006 executed by ROBERT M HAWKINS AND CHRISTINE V HAWKINS, HUSBAND AND WIFE AS JOINT TENANTS, as Trustor, to MARIN CONVEYANCING CORP., as Trustee; and Recorded 06/12/2006, Instrument 0003526, Book 20060612, Page of Official Records in the Office of the County Recorder of CLARK County, Nevada..

TOGETHER with the note or notes therein described and secured thereby, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust including the right to have reconveyed, in whole or in part the real property described therein.

Property Address: 3263 MORNING SPRINGS DRIVE
HENDERSON, NV 89074

DTAA 34

Title Order No. 1024157 Trustee Sale No. 137803NV Loan No. Redacted

Date: October 26, 2009

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

COLLEEN IRBY, OFFICER

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On October 26, 2009 before me, C LUCAS, "Notary Public," personally appeared COLLEEN IRBY who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

C. LUCAS
Commission # 1821933
Notary Public - California
Los Angeles County
My Comm. Expires Nov 9, 2012

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EXHIBIT A-3

Substitution of Trustee

Ex. A-3

(2)

Stewart Title

APN# 177-24-514-043

AND WHEN RECORDED MAIL TO

CALIFORNIA RECONVEYANCE COMPANY
9200 Oakdale Avenue
Mail Stop: CA2-4379
Chatsworth, CA 91311

Inst #: 200910270000619
Fees: $15.00
N/C Fee: $0.00
10/27/2009 08:02:54 AM
Receipt #: 107182
Requestor:
SPL INC
Recorded By: GILKS Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Space above this line for recorder's use only

Title Order No. 1024157 Trustee Sale No. 137803NV Loan No. Redacted

SUBSTITUTION OF TRUSTEE

WHEREAS, ROBERT M HAWKINS AND CHRISTINE V HAWKINS, HUSBAND AND WIFE AS JOINT TENANTS was the original Trustor, MARIN CONVEYANCING CORP. was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., (MERS), SOLELY AS NOMINEE FOR LENDER, GREENPOINT MORTGAGE FUNDING, INC., ITS SUCCESSORS AND ASSIGNS. was the original Beneficiary under that certain Deed of trust dated 06/07/2006, Recorded 06/12/2006, Book 20060612, Page ,Instrument 0003526 of Official Records in the office of the Recorder of CLARK County, Nevada.

WHEREAS, JPMorgan Chase Bank, National Association the undersigned, is the present Beneficiary under said Deed of Trust, and,

WHEREAS, the undersigned, desires to substitute a new Trustee under said Deed of Trust in the place of and stead of said original Trustee thereunder.

Now, THEREFORE, the undersigned Beneficiary hereby substitutes CALIFORNIA RECONVEYANCE COMPANY, 9200 Oakdale Avenue CA2-4379, Chatsworth, CA 91311, as Trustee of Said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number indicates the plural.

Date: 10/26/09

JPMorgan Chase Bank, National Association

COLLEEN IRBY, OFFICER

Title Order No. 1024137 Trustee Sale No. 137803NV Loan No Redacted

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On October 26, 2009, before me, C LUCAS, "Notary Public" personally appeared COLLEEN IRBY, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

C. LUCAS
Commission # 1821833
Notary Public - California
Los Angeles County
My Comm. Expires Nov 9, 2012

EXHIBIT A-4

Foreclosure Deed

Ex. A-4

Inst #: 201303060001648
Fees: $18.00 N/C Fee: $0.00
RPTT: $20.40 Ex: #
03/06/2013 11:35:06 AM
Receipt #: 1522804
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: DXI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Please mail tax statement and
when recorded mail to:
S F R Investments Pool 1, LLC
5030 Paradise Rd., B-214
Las Vegas, NV 89119

FORECLOSURE DEED

APN # 177-24-514-043
North American Title #33131

NAS # N71869

The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Pebble Canyon HOA), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded August 3, 2012 as instrument number 00020722 Book 20120803, in Clark County. The previous owner as reflected on said lien is Robert M Hawkins, Christina V Hawkins. Nevada Association Services, Inc. as agent for Pebble Canyon HOA does hereby grant and convey, but without warranty expressed or implied to: S F R Investments Pool 1, LLC (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: SEASONS AT PEBBLE CANYON, PLAT BOOK 53, PAGE 45, LOT 50, BLOCK 10 Clark County

AGENT STATES THAT:
This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Pebble Canyon HOA governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 9/20/2012 as instrument #0001440 Book 20120920 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Pebble Canyon HOA at public auction on 3/1/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid $3,700.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: March 1, 2013

By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

CHASE-HAWKINS0011

STATE OF NEVADA)
COUNTY OF CLARK)

On March 1, 2013, before me, M. Blanchard, personally appeared Elissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

(Seal)

(Signature)

M. Blanchard

M. BLANCHARD
Notary Public, State of Nevada
Appointment No. 09-11646-1
My Appt. Expires Nov. 5, 2013

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 177-24-514-043
   b.
   c.
   d.
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

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

3.a. Total Value/Sales Price of Property $ 3,700.00
   b. Deed in Lieu of Foreclosure Only (value of property) ( )
   c. Transfer Tax Value: $ 3,700.00
   d. Real Property Transfer Tax Due: $ 20.40

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

5. Partial Interest: Percentage being transferred: 100 %

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

Signature Capacity: Agent

Signature Capacity:

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Nevada Association Services	Print Name: S F R Investments Pool 1, LLC
Address: 6224 W. Desert Inn Rd.	Address: 5030 Paradise Rd., B-214
City: Las Vegas	City: Las Vegas
State: NV Zip: 89146	State: NV Zip: 89119

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

- North American Title Company
- 8485 W. Sunset Road #111
- Las Vegas, NV 89113

Escrow # 38131 / NT1869

State: Zip:

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT A-5

Substitution of Trustee

Ex. A-5

Inst #: 201302220001500
Fees: $17.00
N/C Fee: $0.00
02/22/2013 11:58:39 AM
Receipt #: 1507348
Requestor:
PREMIER AMERICAN TITLE
Recorded By: BGN Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:
National Default Servicing Corporation
WHEN RECORDED MAIL TO:
National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 11-36688-JF-NV

Redacted

APN : 177-24-514-043

SUBSTITUTION OF TRUSTEE

WHEREAS, ROBERT M. HAWKINS AND CHRISTINE V. HAWKINS, HUSBAND AND WIFE AS JOINT TENANTS was the original Trustor(s), MARIN CONVEYANCING CORP. was the original Trustee and MORTGAGE ELECTRONIC REGISTRATIONS SYSTEMS, INC., NOMINEE FOR GREENPOINT MORTGAGE FUNDING, INC. ITS SUCCESSORS AND ASSIGNS was the original Beneficiary under that certain Deed of Trust dated 06/07/2006 and recorded on 06/12/2006 as Instrument No. 20060612-0003526 of the Official Records of CLARK County, State of NV and

WHEREAS, the undersigned is the present beneficiary under the said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned hereby substitutes NATIONAL DEFAULT SERVICING CORPORATION, An Arizona Corporation, whose address is 7720 N. 16th Street, Suite 300, Phoenix, Arizona 85020, as Trustee under said Deed of Trust. Said Substitute Trustee is qualified to serve as Trustee under the laws of this state.

Whenever the context hereof requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

Dated: 2-6-13

By: Tonia Y. McFadden-Williams
Its : Vice President

STATE OF Ohio
COUNTY OF Franklin

On February 6, 2013 before me, the undersigned, a Notary Public for said State, personally appeared Tonia Y. McFadden-Williams who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

NOTARY PUBLIC STATE OF OHIO

TARA L. TUCKER
Notary Public, State of Ohio
My Comm. Expires 05/26/2013

Description: Clark,NV Document-Year.Date.DocID 2013.222.1500 Page: 1 of 1
Order: 2 Comment:

Chase-Hawkins_NAS00179

EXHIBIT A-6

Corporate Assignment

Ex. A-6