

1 MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
2 mbohn@bohnlawfirm.com
LAW OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle, Suite 480
4 Henderson, Nevada 89074
(702) 642-3113 / (702) 642-9766 FAX
5 Attorney for plaintiff/appellant
5316 Clover Blossom Ct Trust

Electronically Filed
Jul 15 2021 08:20 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 SUPREME COURT
9 STATE OF NEVADA

10 5316 CLOVER BLOSSOM CT TRUST, CASE NO.: 82426

11 Appellant,

12 vs.

13 U.S. BANK, NATIONAL
14 ASSOCIATION, SUCCESSOR
15 TRUSTEE TO BANK OF AMERICA,
16 N.A., SUCCESSOR BY MERGER TO
17 LASALLE BANK, N.A., AS TRUSTEE
18 TO THE HOLDERS OF THE ZUNI
MORTGAGE LOAN TRUST
2006-OA1, MORTGAGE LOAN
PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR
RECON CORPS,

19 Respondents.
20

21 **APPELLANT'S APPENDIX VOLUME 1**
22

23 Michael F. Bohn, Esq.
24 Law Office of Michael F. Bohn, Esq., Ltd.
2260 Corporate Circle, Suite 140
Henderson, Nevada 89074
25 (702) 642-3113/ (702) 642-9766 FAX
26 Attorney for Plaintiff/Appellant
5316 Clover Blossom Ct Trust

Ariel E. Stern, Esq.
Melanie D. Morgan, Esq.
Nicholas E. Belay, Esq.
Akerman LLP
1635 Village Center Circle, Ste. 200
Las Vegas, NV 89134
Attorneys for Defendant/Respondent
U.S. Bank, National Association

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1	08/26/14	Affidavit of Service for Clear Recon Corps	AA000009
1	09/25/14	U.S. Bank's Answer to Complaint	AA000010- AA000015
1	09/30/14	Stipulation and Order for Non- Monetary Judgment Between Clear Recon Corp and 5316 Clover Blossom Ct Trust	AA000016- AA000018
1	04/23/15	Amended Complaint	AA000019- AA000021
1	05/06/15	Order Granting Motion to Amend Complaint	AA000022- AA000023
1	05/18/15	Motion for Summary Judgment	AA000024- AA000082
1	07/22/15	U.S. Bank, N.A.'s Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment Based on the Due Process Clause and Tender, or Alternatively, for Rule 56(F) Relief	AA000083- AA000170
1	07/29/15	Reply in Support of Plaintiff's Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment, or Alternatively, for Rule 56(F) Relief	AA000171- AA000191
1	08/13/15	U.S. Bank, N.A.'s Supplemental Briefing in Support of Its Countermotion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment	AA000192- AA000205
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4	1	09/28/17	Stipulation and Order to Amend Pleadings and Add Parties	AA000234-AA000235
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DISTRICT COURT CIVIL COVER SHEET

A- 14- 704412- C

XVI I I

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):

5316 CLOVER BLOSSOM CT TRUST

Defendant(s) (name/address/phone):

U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE LOAN TRUST 2006-OA1, MORTGAGE
LOAN PASS-THROUGH CERTIFICATES SERIES 2006-OA1; and CLEAR RECON CORPS

Attorney (name/address/phone):

MICHAEL F. BOHN, ESQ.

Attorney (name/address/phone):

376 East warm Springs Road, Suite 140

Las Vegas, NV 89119

(702) 642-3113

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

Real Property		Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

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

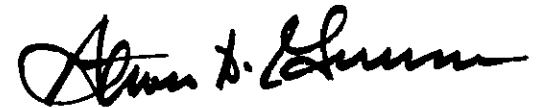
July 25, 2014

Date

/s/ Michael F. Bohn, Esq. /

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 **COMP**

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

3 JEFF ARLITZ, ESQ.

Nevada Bar No.: 6558

4 jarlitz@bohnlawfirm.com

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7 Attorney for plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 5316 CLOVER BLOSSOM CT TRUST

11 Plaintiff,

12 vs.

13 U.S. BANK, NATIONAL ASSOCIATION,
14 SUCCESSOR TRUSTEE TO BANK OF
15 AMERICA, N.A., SUCCESSOR BY MERGER
16 TO LASALLE BANK, N.A., AS TRUSTEE TO
17 THE HOLDERS OF THE ZUNI MORTGAGE
18 LOAN TRUST 2006-OA1, MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
CORPS

19 Defendants.

CASE NO.: A- 14 - 704412 - C

DEPT NO.:

XVI I I

EXEMPTION FROM ARBITRATION:

Title to real property

20 **COMPLAINT**

21 Plaintiff, 5316 Clover Blossom Ct Trust, by and through its attorney, Jeff Arlitz, Esq. alleges as
22 follows:

23 1. Plaintiff is the owner of the real property commonly known as 5316 Clover Blossom Ct, North
24 Las Vegas, Nevada.

25 2. Plaintiff obtained title by foreclosure sale conducted on January 16, 2013.

26 3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments
27
28

1 due from the former owner to the Country Gardens Owners' Association, pursuant to NRS Chapter 116.

2 4. U.S. Bank, National Association, Successor Trustee To Bank of America, N.A., Successor by
3 Merger to LaSalle Bank, N.A., as Trustee To The Holders of The Zuni Mortgage Loan Trust 2006-OA1,
4 Mortgage Loan Pass-Through Certificates, Series 2006-OA1 is the beneficiary of a deed of trust which
5 was recorded as an encumbrance to the subject property on June 30, 2004.

6 5. Clear Recon Corps is the substituted trustee on the deed of trust.

7 7. The interest of each of the defendants has been extinguished by reason of the foreclosure sale,
8 which was properly conducted with adequate notice given to all persons and entities claiming an interest
9 in the subject property, and resulting from a delinquency in assessments due from the former owner, to
10 Country Gardens Owners' Association, pursuant to NRS Chapter 116.

11 8. Nonetheless, defendant U.S. Bank, National Association, Successor Trustee To Bank of
12 America, N.A., Successor by Merger to LaSalle Bank, N.A., as Trustee To The Holders of The Zuni
13 Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates, Series 2006-OA1 has
14 recorded a notice of default and election to sell under its deed of trust pursuant to NRS 107.080.

15 9. Plaintiff is entitled to an injunction prohibiting the foreclosure sale from proceeding.

16 10. The plaintiff is entitled to an award of attorneys fees and costs.

17 **SECOND CLAIM FOR RELIEF**

18 11. Plaintiff repeats the allegations contained in paragraphs 1 through 10.

19 12. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the
20 plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim
21 to the subject property.

22 13. The plaintiff is entitled to an award of attorneys fees and costs.

23 **THIRD CLAIM FOR RELIEF**

24 14. Plaintiff repeats the allegations contained in paragraphs 1 through 13.

25 15. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property
26 is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no
27 estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any

1 estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

2 16. The plaintiff is entitled to an award of attorneys fees and costs.

3 WHEREFORE, plaintiff prays for Judgment as follows:

4 1. For injunctive relief;

5 2. For a determination and declaration that plaintiff is the rightful holder of title to the property,
6 free and clear of all liens, encumbrances, and claims of the defendants.

7 3. For a determination and declaration that the defendants have no estate, right, title, interest or
8 claim in the property.

9 4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest
10 or claim in the property; and

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

12 DATED this 25th day of July 2014.

13 LAW OFFICES OF
14 MICHAEL F. BOHN, ESQ., LTD.

15
16 By: / s / Jeff Arlitz, Esq. /
17 Michael F. Bohn, Esq.
18 Jeff Arlitz, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

19

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28

VERIFICATION


STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

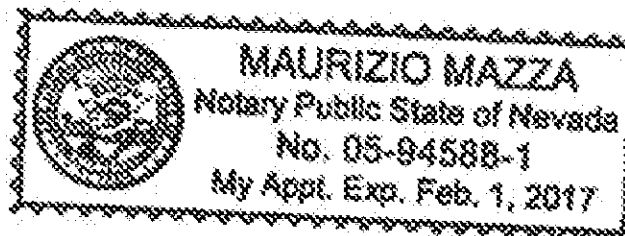
Iyad Haddad, being first duly sworn, deposes and says;

That he is the manager of the trustee of the plaintiff trust and that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.


IYAD HADDAD

SUBSCRIBED and SWORN to before me
this 25 day of July, 2014


NOTARY PUBLIC in and for said
County and State



1 **IAFD**
MICHAEL F. BOHN, ESQ.
2 State Bar No. 1641
mbohn@bohnlawfirm.com
3 JEFF ARLITZ, ESQ.
State Bar No. 6558
4 jarlitz@bohnlawfirm.com
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6 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
7 Attorney for plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 5316 CLOVER BLOSSOM CT TRUST	CASE NO.: DEPT NO.:
11 Plaintiff,	
12 vs.	
13 U.S. BANK, NATIONAL ASSOCIATION, 14 SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A., SUCCESSOR BY MERGER 15 TO LASALLE BANK, N.A., AS TRUSTEE TO THE HOLDERS OF THE ZUNI MORTGAGE 16 LOAN TRUST 2006-OA1, MORTGAGE LOAN PASS-THROUGH CERTIFICATES SERIES 17 2006-OA1; and CLEAR RECON CORPS	
18 Defendants.	

19 **INITIAL APPEARANCE FEE DISCLOSURE**

20 Pursuant to NRS Chapter 19, filing fees are submitted for the party appearing in the above-
21 entitled action as indicated below:

22 5316 CLOVER BLOSSOM CT TRUST, Plaintiff	\$270.00
23 TOTAL REMITTED:	\$270.00
24 DATED this <u>25th</u> day of July 2014.	

25 LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
26 By: / s /Michael F. Bohn, Esq. /
MICHAEL F. BOHN, ESQ.
27 376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
28 Attorney for plaintiff

1 CVAOS

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 5316 CLOVER BLOSSOM CT TRUST

5 Plaintiff,

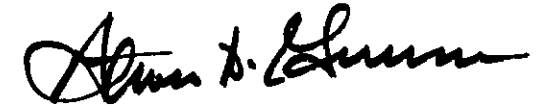
6 vs.

7 U.S. BANK, NATIONAL ASSOCIATION,
8 SUCCESSOR TRUSTEE TO BANK OF AMERICA,
9 N.A., SUCCESSOR BY MERGER TO LASALLE
10 BANK, N.A., AS TRUSTEE TO THE HOLDERS OF
11 THE ZUNI MORTGAGE LOAN TRUST 2006-OA1,
12 MORTGAGE LOAN PASS-THROUGH
13 CERTIFICATES SERIES 2006-OA1; et. al.

14 Defendants.

CASE NO.: A704412
DEPT NO.: XVIII

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CLERK OF THE COURT

15 AFFIDAVIT OF SERVICE

16 STATE OF NEVADA)

17 SS:

18 COUNTY OF CLARK)

19 Maurizio Mazza, being duly sworn, says: That at all times herein affiant was and is citizen of the
20 United States, over 18 years of age, not a party to nor interested in the proceeding in which this
21 affidavit is made I am an employee of the Law Offices of Michael F. Bohn, Esq., and as such, am not
22 required to have a Process Server License under NRS Chapter 648.

23 The affiant received one copy of the, **Summons and Complaint**, on the 12th day of August,
24 2014 and served the same on the 12th day of August, 2014, By serving the defendant, U.S. BANK,
25 NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A.,

26 ///

27 ///

28 ///

///

1 SUCCESSION BY MERGER TO LASALLE BANK, N.A., AS TRUSTEE TO THE HOLDERS
2 OF THE ZUNI MORTGAGE LOAN TRUST 2006-OA1, MORTGAGE LOAN PASS-
3 THROUGH CERTIFICATES SERIES 2006-OA1, by personally delivery and leaving a copy with
4 Zenaida Arthur, Customer Service Manager, at, 400 North Stephanie, Suite 100, Henderson, NV
5 89014 pursuant to NRS 14.020, a person of suitable age and discretion, and, an agent lawfully
6 designated by statute to accept service of process. Pursuant to NRS 53.045: I declare under penalty of
7 perjury under the law of the State of Nevada that the foregoing is true and correct

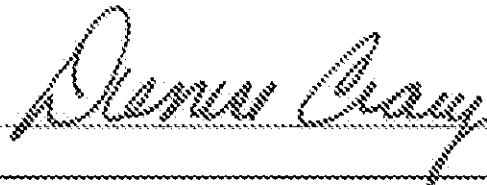
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9 EXECUTED this 13th day of August, 2014

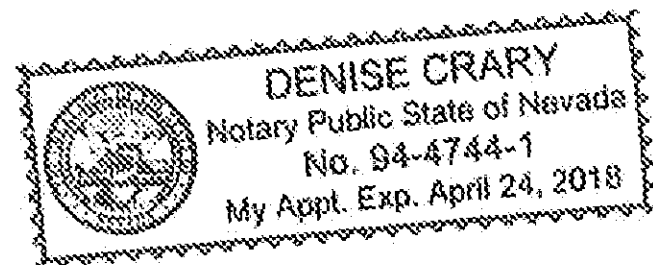
10
11 By: 

12 Maurizio Mazza

13 State of Nevada)
14) ss
15 County of Clark)

16 Signed before me this 13th day of August, 2014,
17 by Maurizio Mazza.

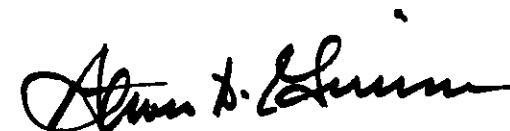
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AOS

**DISTRICT COURT , CLARK COUNTY
CLARK COUNTY, NEVADA**

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CLERK OF THE COURT

**5316 CLOVER BLOSSOM CT
TRUST**

Plaintiff

VS

**U.S. BANK NATIONAL
ASSOCIATION; ET AL**

Defendant

CASE NO: A-14-704412-C

HEARING DATE/TIME:

DEPT NO:

AFFIDAVIT OF SERVICE

PATRICK J. PEREGRIN being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the SUMMONS; COMPLAINT, on the 14th day of August, 2014 and served the same on the 15th day of August, 2014, at 12:15 by:

serving the servee CLEAR RECON CORPS C/O REGISTERED AGENT NATIONAL REGISTERED AGENTS INC by personally delivering and leaving a copy at (address) 311 S. DIVISION ST., CARSON CITY NV 89703 with HEATHER MATTSON, pursuant to NRS 14,020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 53.045

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



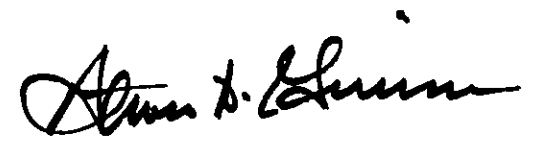
EXECUTED this 15 day of Aug, 2014.

PATRICK J. PEREGRIN

Junes Legal Services - 630 South 10th Street - Suite B - Las Vegas NV 89101 - (702) 579-6300 - Fax (702) 259-6249 - Toll Free (888) 56Junes

14081403

AA000009


CLERK OF THE COURT

1 **ANSW**
2 LAUREL I. HANDLEY (NV Bar #9576)
3 KRISTA J. NIELSON (NV Bar #10698)
4 **PITE DUNCAN, LLP**
5 520 South 4th St., Suite 360
6 Las Vegas, Nevada 89101
7 Telephone: (702) 991-4630
8 Facsimile: (702) 685-6342
9 E-mail: knielson@piteduncan.com

10 Attorneys for Defendant U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE
11 TO BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO LASALLE BANK, N.A.,
12 AS TRUSTEE TO THE HOLDERS OF THE ZUNI MORTGAGE LOAN TRUST 2006-OA1,
13 MORTGAGE LOAN PASS-THROUGH CERTIFICATES SERIES 2006-OA1

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 5316 CLOVER BLOSSOM CT TRUST,
17
18 Plaintiff,

Case No.: A-14-704412-C

Dept. No.: XVIII

19 vs.

20 U.S. BANK, NATIONAL ASSOCIATION,
21 SUCCESSOR TRUSTEE TO BANK OF
22 AMERICA, N.A., SUCCESSOR BY
23 MERGER TO LASALLE BANK, N.A., AS
24 TRUSTEE TO THE HOLDERS OF THE
25 ZUNI MORTGAGE LOAN TRUST 2006-
26 OA1, MORTGAGE LOAN PASS-
27 THROUGH CERTIFICATES SERIES 2006-
28 OA1; and CLEAR RECON CORPS,

**DEFENDANT U.S. BANK, NATIONAL
ASSOCIATION, SUCCESSOR TRUSTEE
TO BANK OF AMERICA, N.A.,
SUCCESSOR BY MERGER TO LASALLE
BANK, N.A., AS TRUSTEE TO THE
HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1'S ANSWER TO
COMPLAINT**

Defendants.

21 COMES NOW Defendant, U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR
22 TRUSTEE TO BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO LASALLE
23 BANK, N.A., AS TRUSTEE TO THE HOLDERS OF THE ZUNI MORTGAGE LOAN
24 TRUST 2006-OA1, MORTGAGE LOAN PASS-THROUGH CERTIFICATES SERIES 2006-
25 OA1 ("Defendant"), by and through its counsel of record, LAUREL I. HANDLEY, ESQ.,
26 KRISTA J. NIELSON, ESQ., of PITE DUNCAN, LLP, and hereby files its Answer to Plaintiff's
27 Complaint.

28 /././

1 1. Answering Paragraph 1 of the Complaint, Defendant lacks sufficient information to
2 form a belief as to the truth of the allegations, and on that basis denies each and every allegation
3 contained therein.

4 2. Answering Paragraph 2 of the Complaint, Defendant lacks sufficient information to
5 form a belief as to the truth of the allegations, and on that basis denies each and every allegation
6 contained therein.

7 3. Answering Paragraph 3 of the Complaint, Defendant lacks sufficient information to
8 form a belief as to the truth of the allegations, and on that basis denies each and every allegation
9 contained therein.
10

11 4. Answering Paragraph 4 of the Complaint, Defendant admits the allegations contained
12 therein.

13 5. Answering Paragraph 5 of the Complaint, Defendant admits the allegations contained
14 therein.

15 6. Answering Paragraph 7 of the Complaint, Defendant denies the allegations contained
16 therein.¹

17 7. Answering Paragraph 8 of the Complaint, Defendant admits that a Notice of Default was
18 recorded against the real property known as 5316 Clover Blossom Court, North Las Vegas,
19 Nevada 89031, pursuant to the Deed of Trust recorded on June 30, 2004. Defendant lacks
20 sufficient information to form a belief as to the truth of the remaining allegations, and on that
21 basis denies the remaining allegation contained therein.
22

23 8. Answering Paragraph 9 of the Complaint, Defendant denies the allegations
24 contained therein.

25 9. Answering Paragraph 10 of the Complaint, Defendant denies the allegations contained
26 therein.
27

28

¹ There is no Paragraph 6 of the Complaint.

1
2 **SECOND CLAIM FOR RELIEF**

3 10. Defendant repeats each of the responses provided in Paragraphs 1-10 as if
4 fully set forth herein.

5 11. Answering Paragraph 11 of the Complaint, Defendant denies the allegations
6 contained therein.

7 12. Answering Paragraph 12 of the Complaint, Defendant denies the allegations
8 contained therein.

9 13. Answering Paragraph 13 of the Complaint, Defendant denies the allegations
10 contained therein.

11
12 **THIRD CLAIM FOR RELIEF**

13 14. Defendant repeats each of the responses provided in Paragraphs 1-13 as if
14 fully set forth herein.

15 15. Answering Paragraph 14 of the Complaint, Defendant denies the allegations contained
16 therein.

17 14. Answering Paragraph 15 of the Complaint, Defendant denies the allegations contained
18 therein.

19 15. Answering Paragraph 16 of the Complaint, Defendant denies the allegations contained
20 therein.

21
22 **AFFIRMATIVE DEFENSES**

23 Defendant sets forth the following distinct and affirmative defenses to each and every
24 purported cause of action alleged in Plaintiff's Complaint, and the whole thereof:

25 **FIRST AFFIRMATIVE DEFENSE**

26 The Complaint, and each and every alleged cause of action contained therein, fails to
27 state a suitable and cognizable claim upon which relief may be granted.
28

1 **SECOND AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred by the doctrines of laches and/or unclean hands.

3 **THIRD AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred by the doctrine of equitable estoppel.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 Plaintiff has waived any rights that he may have had for relief from the Court.

7 **FIFTH AFFIRMATIVE DEFENSE**

8 Defendant cannot be deprived of its interest in the Subject Property in violation of the
9 Procedural Due Process Clause of the 14 Amendment of the United States Constitution and
10 Article 1, Sec. 8, of the Nevada Constitution.
11

12 **SIXTH AFFIRMATIVE DEFENSE**

13 Defendant has complied with all relevant Nevada and Federal statutes governing the
14 relationship, if any, between Plaintiff and Defendant in regard to the alleged conduct of
15 Defendant alleged in the Complaint.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 Plaintiff's claims are barred by the applicable statute of limitations.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 (Void Foreclosure and Lack of Bona Fide Purchaser Status)

20 The foreclosure sale by which Plaintiff alleges it obtained title to the subject property is
21 void as to this Defendant and Plaintiff is not a bona fide purchaser.

22 **NINTH AFFIRMATIVE DEFENSE**

23 Pursuant to NRCP Rule 11, Defendant alleges that at this time it has insufficient
24 knowledge or information on which to form a belief as to whether it may have additional, as yet
25 unstated, affirmative defenses available. Defendant therefore reserves herein the right to assert
26 additional affirmative defenses in the event that discovery indicates such unstated affirmative
27 defenses are appropriate.
28

1 PRAYER FOR RELIEF

2 WHEREFORE, Defendant prays for the following:


3 1. That Plaintiff's Complaint be dismissed in its entirety with prejudice and that Plaintiff
4 take nothing by way of its Complaint.

5 2. For attorney's fees and costs of defending this action; and

6 3. For such other and further relief as the Court deems fit.

7 DATED this 25th day of September, 2014.

8 PITE DUNCAN, LLP

9
10 
11 LAUREL I. HANDLEY

KRISTA J. NIELSON

12 *Attorneys for Defendant*

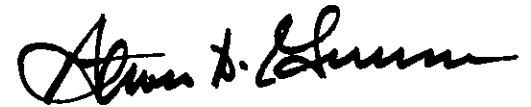
13 *U.S. BANK, NATIONAL ASSOCIATION,*
14 *SUCCESSOR TRUSTEE TO BANK OF*
15 *AMERICA, N.A., SUCCESSOR BY*
16 *MERGER TO LASALLE BANK, N.A., AS*
17 *TRUSTEE TO THE HOLDERS OF THE*
18 *ZUNI MORTGAGE LOAN TRUST 2006-*
19 *OA1, MORTGAGE LOAN PASS-*
20 *THROUGH CERTIFICATES SERIES*
21 *2006-OA1*

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I hereby certify that on September 25, 2014, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Nicole Lane
NICOLE L. LANE



CLERK OF THE COURT

1 **SAO**

2 LAUREL I. HANDLEY (NV Bar # 009576)

3 KRISTA J. NIELSON (NV Bar # 10698)

4 **PITE DUNCAN, LLP**

5 520 South 4th St., Suite 360

6 Las Vegas, Nevada 89101

7 Telephone: (702) 991-4630

8 Facsimile: (702) 685-6342

9 E-Mail: knielson@piteduncan.com

10 Attorneys for Defendant CLEAR RECON CORP

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 5316 CLOVER BLOSSOM CT TRUST,

14 Plaintiff,

15 v.

16 U.S. BANK, NATIONAL ASSOCIATION,
17 SUCCESSOR TRUSTEE TO BANK OF
18 AMERICA, N.A., SUCCESSOR BY
19 MERGER TO LASALLE BANK, N.A., AS
20 TRUSTEE TO THE HOLDERS OF THE
21 ZUNI MORTGAGE LOAN TRUST 2006-
22 OA1, MORTGAGE LOAN PASS-
23 THROUGH CERTIFICATES SERIES 2006-
24 OA1; and CLEAR RECON CORP.,

25 Defendants.

Case No.: A-14-704412-C

Dept. No.: XVIII

**STIPULATION AND ORDER FOR NON-
MONETARY JUDGMENT BETWEEN
CLEAR RECON CORP AND 5316
CLOVER BLOSSOM CT TRUST**

26 COMES NOW Plaintiff, 5316 CLOVER BLOSSOM CT TRUST ("Plaintiff"), by and
27 through its counsel of record, Michael F. Bohn, Esq., Ltd., and Defendant, CLEAR RECON
28 CORP ("CRC"), by and through its counsel of record, Pite Duncan, LLP, and hereby stipulate
and agree as follows:

1. On July 25, 2014, Plaintiff filed its Complaint concerning real property
commonly know as 5316 Clover Blossom Court, North Las Vegas, Nevada 89031-0480

1 any other person or entity's rights or obligations under the Deed of Trust.

2 6. This Stipulation shall inure to the benefit of the parties and their successors and/or
3 assigns.

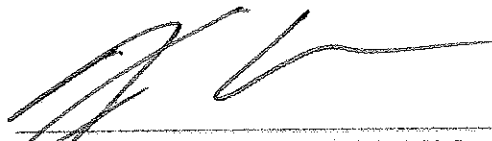
4 7. The parties to this Stipulation agree and request that the Court issue an Order
5 consistent with the terms of this Stipulation.

6 DATED this 11 day of September, 2014.

DATED this 9th day of September, 2014.

7 PITE DUNCAN, LLP

MICHAEL F. BOHN, ESQ., LTD.

8 



9 LAUREL I. HANDLEY

MICHAEL F. BOHN

10 KRISTA J. NIELSON

Attorney for Plaintiff

11 *Attorneys for Defendant CLEAR RECON
CORP*

12 **ORDER**

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court, having
14 considered the Stipulation of the parties, and good cause appearing, the Stipulation is adopted as
15 the order of the Court.

16 DATED this 17th day of September, 2014.

17 
18 DISTRICT COURT JUDGE

19 Respectfully Submitted

20 PITE DUNCAN, LLP

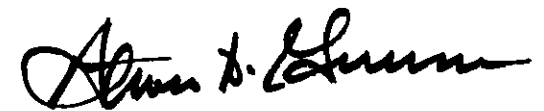
21 

22 LAUREL I. HANDLEY

23 KRISTA J. NIELSON

24 *Attorneys for Defendant*

25 *CLEAR RECON CORP*



CLERK OF THE COURT

1 **ACOM**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.
7 376 East Warm Springs Road, Ste. 140
8 Las Vegas, Nevada 89119
9 (702) 642-3113/ (702) 642-9766 FAX

10 Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST

Plaintiff,

vs.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
CORPS

Defendants.

CASE NO.: A704412
DEPT NO.: XXIV

EXEMPTION FROM ARBITRATION:
Title to real property

AMENDED COMPLAINT

Plaintiff, 5316 Clover Blossom Ct Trust, by and through its attorney, Michael F. Bohm, Esq.
alleges as follows:

1. Plaintiff is the owner of the real property commonly known as 5316 Clover Blossom Ct, North
Las Vegas, Nevada.

2. Plaintiff obtained title by foreclosure sale conducted on January 16, 2013.

3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments
due from the former owner to the Country Gardens Owners' Association, pursuant to NRS Chapter 116.

4. U.S. Bank, National Association, Successor Trustee To Bank of America, N.A., Successor by

1 Merger to LaSalle Bank, N.A., as Trustee To The Holders of The Zuni Mortgage Loan Trust 2006-OA1,
2 Mortgage Loan Pass-Through Certificates, Series 2006-OA1 is the beneficiary of a deed of trust which
3 was recorded as an encumbrance to the subject property on June 30, 2004.

4 5. Clear Recon Corps is the substituted trustee on the deed of trust.

5 6. The interest of each of the defendants has been extinguished by reason of the foreclosure sale,
6 which was properly conducted with adequate notice given to all persons and entities claiming an interest
7 in the subject property, and resulting from a delinquency in assessments due from the former owner, to
8 Country Gardens Owners' Association, pursuant to NRS Chapter 116.

9 7. The HOA foreclosure sale complied with all requirements of law, including but not limited
10 to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the
11 recording, posting and publication of the Notice of Sale.

12 8. Prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion of the
13 HOA Lien representing 9 months of assessments for common expenses.

14 9. Nonetheless, defendant U.S. Bank, National Association, Successor Trustee To Bank of
15 America, N.A., Successor by Merger to LaSalle Bank, N.A., as Trustee To The Holders of The Zuni
16 Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates, Series 2006-OA1 has
17 recorded a notice of default and election to sell under its deed of trust pursuant to NRS 107.080.

18 10. Plaintiff is entitled to an injunction prohibiting the foreclosure sale from proceeding.

19 11. The plaintiff is entitled to an award of attorneys fees and costs.

20 **SECOND CLAIM FOR RELIEF**

21 12. Plaintiff repeats the allegations contained in paragraphs 1 through 11.

22 13. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the
23 plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim
24 to the subject property.

25 14. The plaintiff is entitled to an award of attorneys fees and costs.

26 **THIRD CLAIM FOR RELIEF**

27 15. Plaintiff repeats the allegations contained in paragraphs 1 through 14.

16. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

17. The plaintiff is entitled to an award of attorneys fees and costs.

WHEREFORE, plaintiff prays for Judgment as follows:

1. For injunctive relief;

2. For a determination and declaration that plaintiff is the rightful holder of title to the property, free and clear of all liens, encumbrances, and claims of the defendants.

3. For a determination and declaration that the defendants have no estate, right, title, interest or claim in the property.

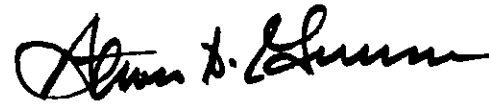
4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest or claim in the property; and

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

DATED this 23rd day of April 2015.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff



CLERK OF THE COURT

1 **ORDG**

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3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 GERALD L. TAN, ESQ.

6 Nevada Bar No.: 13596

7 gtan@bohnlawfirm.com

8 LAW OFFICES OF

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11 Las Vegas, Nevada 89119

12 (702) 642-3113/ (702) 642-9766 FAX

13 Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

11 5316 CLOVER BLOSSOM CT TRUST,

12 Plaintiff,

13 vs.

14 U.S. BANK, NATIONAL ASSOCIATION,
15 SUCCESSOR TRUSTEE TO BANK OF
16 AMERICA, N.A., SUCCESSOR BY MERGER
17 TO LASALLE BANK, N.A., AS TRUSTEE TO
18 THE HOLDERS OF THE ZUNI MORTGAGE
19 LOAN TRUST 2006-OA1, MORTGAGE
20 LOAN PASS-THROUGH CERTIFICATES
21 SERIES 2006-OA1; and CLEAR RECON
22 CORPS,

23 Defendants.

CASE NO.: A704412

DEPT NO.: XXIV

Date of hearing: March 12, 2015

Time of hearing: 9:00 a.m.


21 **ORDER GRANTING MOTION TO AMEND COMPLAINT**

22 The plaintiff's Motion to Amend Complaint having come before the Court on the 12th day of
23 March, 2015, Michael F. Bohn, Esq. appearing on behalf of the plaintiff and Dana J. Nitz, Esq. appearing
24 on behalf of defendant U.S. Bank N.A., and the Court having reviewed the Motion, and having heard the
25 arguments of counsel, and for good cause appearing:

26 ///


1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Amend Complaint
2 is granted. The plaintiff is granted leave to file the form of the amended complaint attached as an exhibit
3 to the Motion to Amend Complaint.

4 DATED this 2 day of ^{May}~~April~~, 2015.

5
6
7 
8 DISTRICT COURT JUDGE
9 MS A704412

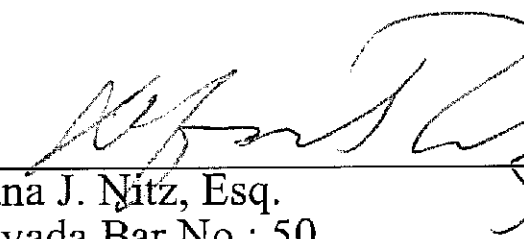
9 Respectfully submitted by:

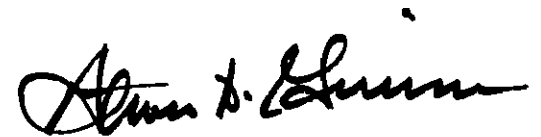
10 LAW OFFICES OF
11 MICHAEL F. BOHN, ESQ., LTD.

12
13 By: 
14 Michael F. Bohn, Esq.
15 Gerald L. Tan, Esq.
16 376 E. Warm Springs Road, Suite 140
17 Las Vegas, Nevada 89119
18 Attorneys for plaintiff

18 Reviewed by:

19 WRIGHT, FINLAY & ZAK, LLP

20
21
22 By: 
23 Dana J. Nitz, Esq.
24 Nevada Bar No.: 50
25 7785 W. Sahara Ave., Ste. 200
26 Las Vegas, NV 89117
27 Attorney for U.S. Bank, N.A.
28



CLERK OF THE COURT

1 **MSJ**
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2 Nevada Bar No.: 1641
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5 (702) 642-3113/ (702) 642-9766 FAX
6 Attorney for plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

10 5316 CLOVER BLOSSOM CT TRUST

11 Plaintiff,

12 vs.

13 U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
14 AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
15 THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
16 LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
17 CORPS

18 Defendants.

CASE NO.: A704412
DEPT NO.: XXIV

19 **MOTION FOR SUMMARY JUDGMENT**

20 Plaintiff, 5316 Clover Blossom Ct Trust, by and through its attorney, Michael F. Bohn, Esq.
21 moves this court for summary judgment granting quiet title to the plaintiff. This motion is based

22 ///

23 ///

24 ///

1 on the points and authorities contained herein.

2 DATED this 18th day of May, 2015.

3 LAW OFFICES OF
4 MICHAEL F. BOHN, ESQ., LTD.

5 By: /s/ /Michael F. Bohn, Esq. /
6 Michael F. Bohn, Esq.
7 376 East Warm Springs Road, Ste. 140
8 Las Vegas NV 89119
Attorney for plaintiff

9 **NOTICE OF MOTION**

10 TO: Defendants above named; and

11 TO: Their respective counsel of record

12 YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the
13 above and foregoing Motion on for hearing before the above entitled Court, Department XXIV on the
14 18 day of June, 2015 at 9:00 a.m. or as soon thereafter as counsel can be heard.

15 DATED this 18th day of May, 2015.

16 LAW OFFICES OF
17 MICHAEL F. BOHN, ESQ., LTD.

18 By: /s/ /Michael F. Bohn, Esq. /
19 Michael F. Bohn, Esq.
20 376 East Warm Springs Road, Ste. 140
Las Vegas NV 89119
Attorney for plaintiff

21 **FACTS**

22 This case is one of the many quiet title actions filed after the plaintiff acquired property at an
23 HOA foreclosure sale conducted pursuant to NRS Chapter 116. The plaintiff acquired the property
24 commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada, at foreclosure sale
25 conducted January 16, 2013, as evidenced by the foreclosure deed recorded on January 24, 2013. A
26 copy of the deed is Exhibit 1.

27 Prior to the foreclosure sale, the foreclosure agent recorded the notice of delinquent
28

1 assessment lien on February 22, 2012. A copy of the lien is Exhibit 2.

2 On April 20, 2012, the foreclosure agent recorded a notice of default and election to sell under
3 homeowners association lien. The foreclosure agent also mailed the notice to Countrywide Home
4 Loans. A copy of the lien and the proof of mailing for the notice of sale is Exhibit 3.

5 On October 31, 2012, the foreclosure agent recorded a notice of trustee's sale. . The
6 foreclosure agent also mailed a copy of the notice of sale by certified mail to Countrywide Home
7 Loans. . The notice of sale and proof of mailing is Exhibit 4.

8 The foreclosure agent also posted the notice on the property and in three locations throughout
9 the county. A copy of the affidavit of posting is Exhibit 5.

10 The foreclosure agent also published the notice of sale in the Nevada Legal News. A copy of
11 the affidavit of publication is Exhibit 6.

12 These exhibits demonstrate that the defendant was on actual notice of the HOA foreclosure
13 and failed to take any action to its own detriment. Plaintiff now moves for summary judgment on its
14 claims for quiet title and declaratory relief.

15 **POINTS AND AUTHORITIES**

16 **A. The trust deed has been extinguished.**

17 NRS 116.3116 provides in part:

18 **Liens against units for assessments.**

19 **1. The association has a lien on a unit for** any construction penalty that is imposed
20 **against the unit's owner pursuant to NRS 116.310305, any assessment levied against**
21 **that unit or any fines imposed against the unit's owner from the time the**
22 **construction penalty, assessment or fine becomes due.** Unless the declaration
23 otherwise provides, any penalties, fees, charges, late charges, fines and interest charged
24 pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are
25 enforceable as assessments under this section. If an assessment is payable in
26 installments, the full amount of the assessment is a lien from the time the first
27 installment thereof becomes due.

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

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a
cooperative, liens and encumbrances which the association creates, assumes or takes
subject to;

(b) **A first security interest on the unit recorded before the date on which the**
assessment sought to be enforced became delinquent or, in a cooperative, the first

1 security interest encumbering only the unit's owner's interest and perfected before the
2 date on which the assessment sought to be enforced became delinquent; and
(c) Liens for real estate taxes and other governmental assessments or charges against
3 the unit or cooperative.

4 **The lien is also prior to all security interests described in paragraph (b) to the**
5 **extent of any charges incurred by the association on a unit pursuant to NRS**
6 **116.310312 and to the extent of the assessments for common expenses based on**
7 **the periodic budget adopted by the association pursuant to NRS 116.3115 which**
8 **would have become due in the absence of acceleration during the 9 months**
9 **immediately preceding institution of an action to enforce the lien,** unless federal
10 regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal
11 National Mortgage Association require a shorter period of priority for the lien. If
12 federal regulations adopted by the Federal Home Loan Mortgage Corporation or the
13 Federal National Mortgage Association require a shorter period of priority for the lien,
14 the period during which the lien is prior to all security interests described in paragraph
15 (b) must be determined in accordance with those federal regulations, except that
16 notwithstanding the provisions of the federal regulations, the period of priority for the
17 lien must not be less than the 6 months immediately preceding institution of an action
18 to enforce the lien. This subsection does not affect the priority of mechanics' or
19 materialmen's liens, or the priority of liens for other assessments made by the
20 association. (emphasis added)

21 By its clear terms, NRS 116.3116 (2) provides that the super-priority lien for 9 months of
22 charges is "prior to all security interests described in paragraph (b)." The first deed of trust here falls
23 squarely within the language of NRS 116.3116(2)(b). The statutory language does not limit the
24 nature of this "priority" in any way.

25 In its decision in the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev. Adv.
26 Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court stated:

27 NRS 116.3116 gives a homeowners' association (HOA) a superpriority lien on
28 an individual homeowner's property for up to nine months of unpaid HOA dues. With
limited exceptions, this lien is "prior to all other liens and encumbrances" on the
homeowner's property, even a first deed of trust recorded before the dues became
delinquent. NRS 116.3116(2). We must decide whether this is a true priority lien
such that its foreclosure extinguishes a first deed of trust on the property and, if so,
whether it can be foreclosed nonjudicially. We answer both questions in the
affirmative and therefore reverse.

334 P.3d at 409.

At the conclusion of its opinion, the Nevada Supreme Court stated:

NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of
which will extinguish a first deed of trust. Because Chapter 116 permits nonjudicial
foreclosure of HOA liens, and because SFR's complaint alleges that proper notices
were sent and received, we reverse the district court's order of dismissal. In view of
this holding, we vacate the order denying preliminary injunctive relief and remand for

1 further proceedings consistent with this opinion.

2 334 P.3d at 419.

3 Because the facts in the present case are substantially the same as the facts in SFR
4 Investments Pool 1, LLC v. U.S. Bank, N.A., the court should reach the same conclusion that the
5 nonjudicial foreclosure of the HOA's super priority lien at the public auction extinguished the deed of
6 trust held by defendant bank on the date of sale. As a result, this court should rule that the deed of
7 trust held by defendant bank was extinguished by the HOA foreclosure sale.

8 **B. There is a conclusive presumption that the HOA foreclosure sale was properly**
9 **conducted.**

10 The detailed and comprehensive statutory requirements for a foreclosure sale are indicative of a
11 public policy which favors a final and conclusive foreclosure sale as to the purchaser. See 6 Angels,
12 Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2011); McNeill
13 Family Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2033); In re Suchy, 786 F.2d 900 (9th Cir. 1985);
14 and Miller & Starr, California Real Property 3d §10:210. In the case of SFR Investments Pool 1,
15 LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), the court described the non-
16 judicial foreclosure provisions of NRS Chapter 116 as "elaborate," and therefore indicative of the
17 public policy favoring the finality of a foreclosure sale.

18 Additionally, there is a common law presumption that a foreclosure sale was conducted
19 validly. Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller
20 v. Lien 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d
21 353 (2014); Timm v. Dewsnup 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas
22 v. McQueen, 804 S.W. 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968);
23 American Bank and Trust Co v. Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank &
24 Trust, 208 Ga. App. 702, 431 S.E. 2d 475 (Ga. App 1993).

25 Nevada has a disputable presumption that "the law has been obeyed." See NRS 47.250(16).
26 This creates a disputable presumption that the foreclosure sale was conducted in compliance with the
27 law. By statute, the recitals in the deed are sufficient and conclusive proof that the required notices

1 were mailed by the HOA. Here, the foreclosure deed (Exhibit 1) includes the following recitals:

2 This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116
3 et seq., and that certain Notice of Delinquent Assessment Lien, described herein.
4 Default occurred as set forth in a Notice of Default and Election to Sell which was
5 recorded in the office of the recorder of said county. All requirements of law regarding
6 the mailing of copies of notices and the posting and publication of the copies of the
7 Notice of Sale have been complied with. Said property was sold by said Trustee at
8 public auction on January 16, 2013 at the place indicated on the Notice of Trustee's
9 Sale.

10 The controlling statute, NRS 116.31166, provides:

11 **Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for**
12 **proper application of purchase money; title vested in purchaser without equity or**
13 **right of redemption.**

14 1. **The recitals in a deed** made pursuant to NRS 116.31164 of:

15 (a) Default, the mailing of the notice of delinquent assessment, and the recording
16 of the notice of default and election to sell;

17 (b) The elapsing of the 90 days; and

18 (c) The giving of notice of sale,

19 are **conclusive proof of the matters recited.**

20 2. **Such a deed containing those recitals is conclusive against** the unit's former
21 owner, his or her heirs and assigns, **and all other persons.** The receipt for the
22 purchase money contained in such a deed is sufficient to discharge the purchaser from
23 obligation to see to the proper application of the purchase money.

24 3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests
25 in the purchaser the title of the unit's owner without equity or right of redemption.
26 (emphasis added)

27 NRS 47.240(6) also provides that conclusive presumptions include "[a]ny other presumption
28 which, by statute, is expressly made conclusive." Because NRS 116.31166 contains such an
expressly conclusive presumption, the recitals in the foreclosure deed are "conclusive proof" that
defendant bank was served with copies of the required notices for the foreclosure sale.

An additional conclusive presumption is found in NRS 47.240(2) which provides:

The 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, but this rule does not apply
to the recital of a consideration.

The recitals in the deed between the foreclosure agent and the purchaser at the foreclosure sale
are conclusive from this statute in addition to NRS 116.31166.

In the case of Pro-Max Corp. v. Feenstra, 117 Nev. 90, 16 P.3d 1074 (2001), the district court

1 refused to apply the conclusive presumption contained in NRS 106.240 because “[t]he district court
2 determined that the legislature intended for the statute to protect bona fide purchasers.” The Nevada
3 Supreme Court reversed the district court’s judgment that the statute only protects bona fide
4 purchasers and stated:

5 We conclude that the statute is clear and unambiguous. That being the case, no further
6 interpretation is required or permissible. Under the plain language of the statute, the
7 deeds of trust are conclusively presumed to have been satisfied and the notes
8 discharged. This conclusive presumption is plain, clear and unambiguous. **No
9 limitation of the statute’s terms to bona fide purchasers can be read into the
10 statute.** (emphasis added)

11 117 Nev. at 95, 16 P.3d at 1078-79.

12 The title in the name of the plaintiff is made conclusive and not subject to attack from any
13 party including defendant bank. Defendant bank’s claims, if any, that it failed to receive notice of the
14 HOA foreclosure are against the foreclosure agent. See Moeller v. Lien 25 Cal. App. 4th 822, 832, 30
15 Cal. Rptr. 2d 777 (1994).

16 It is respectfully submitted that this court should find that the foreclosure deed received by the
17 plaintiff at the time it obtained title to the Property is conclusive and sufficient proof that title is
18 vested in plaintiff and not subject to attack from defendant bank.

19 **C. Defendant received actual notice of the foreclosure sale.**

20 The attached exhibits show that defendant’s predecessor in interest was placed on actual
21 notice of the HOA foreclosure sale and failed to take any action.

22 Prior to the foreclosure sale, the foreclosure agent recorded the notice of delinquent
23 assessment lien on February 22, 2012 A copy of the lien is Exhibit 2.

24 On April 20, 2012 the foreclosure agent recorded a notice of default and election to sell under
25 homeowners association lien. The foreclosure agent also mailed the notice to defendant Bank of
26 America. A copy of the lien and the proof of mailing for the notice of sale is Exhibit 3.

27 On October 31, 2012, the foreclosure agent recorded a notice of trustee’s sale. The
28 foreclosure agent also mailed a copy of the notice of sale by certified mail to defendant Bank of
America. The notice of sale and the proof of mailing is Exhibit 4.

1 The foreclosure agent also posted the notice on the property and in three locations throughout
2 the county. A copy of the affidavit of posting is Exhibit 5.

3 The foreclosure agent also published the notice of sale in the Nevada Legal News. A copy of
4 the affidavit of publication is Exhibit 6.

5 Prior to the HOA foreclosure sale, the foreclosure agent recorded and mailed a notice of
6 delinquent assessment lien. (Exhibit 2)

7 The foreclosure agent recorded a notice of default and mailed it to the defendant. (Exhibit 3)

8 The foreclosure agent recorded a notice of sale and mailed it to the defendant. (Exhibit 4)

9 Additionally, the foreclosure agent posted the notice of sale at three separate public locations
10 (Exhibit 5) and published the notice of sale in Nevada Legal News (Exhibit 6).

11 Any detriment on the part of defendant bank is due to its own inaction despite being on actual
12 notice of the impending HOA foreclosure sale. Summary judgment in favor of plaintiff should
13 therefore be granted.

14 **D. No “commercial reasonableness” requirement applies to an HOA’s foreclosure sale**
15 **because the statute prescribes the method, manner, time and place of an HOA**
16 **foreclosure sale.**

17 The recitals in the foreclosure deed are “conclusive proof” that the HOA satisfied all statutory
18 requirements for the HOA foreclosure sale, and the case law is clear that price alone is not grounds to
19 overturn a foreclosure sale.

20 NRS Chapter 116 does not contain any language that requires that an HOA foreclosure sale be
21 “commercially reasonable,” and no language in NRS Chapter 116 even suggests that an interested
22 party can seek to set aside an HOA foreclosure sale as being “commercially unreasonable” under the
23 terms of the Uniform Commercial Code. The UCIOA also does not contain any language that
24 incorporates Article 9 of the Uniform Commercial Code and the “commercial reasonableness”
25 language found only in Article 9.

26 The holding of the Pro-Max Corp. v. Feenstra, 117 Nev. 90, 16 P.3d 1074 (2001) case again is
27 applicable to this issue. There is no provision for “commercial reasonableness” to be found within
28 NRS Chapter 116 and it would be improper for this court to read this additional requirement when it

1 is not specifically set forth in the chapter.

2 Lenders in similar cases have relied upon Vermont law as authority for the commercial
3 reasonableness requirement. This is a requirement that is specific to Vermont law, not Nevada law.
4 cited The opinion in Will v. Mill Condominium Owners' Association, 848 A.2d 336, 342 (2004),
5 provides that, under Vermont law “[t]he commercial reasonableness of a sale must be determined on a
6 case-by-case basis,” and “[t]he secured party bears the burden ‘to prove that the disposition of
7 collateral was commercially reasonable.’” Id.

8 The Supreme Court of Vermont’s analysis of Vermont law is not helpful in interpreting
9 Nevada’s version of the UCOIA, however, because Vermont law does not include the nonjudicial
10 foreclosure procedure that was “handcrafted” by the Nevada Legislature in NRS 116.31162 through
11 NRS 116.31168. In particular, Vermont’s version of the UCIOA does not contain any statutory
12 language similar to the provision in NRS 116.31166(1) that the recitals in an HOA foreclosure deed
13 “are conclusive proof of the matters recited.” Vermont’s version of the UCIOA also does not contain
14 any provisions similar to the statement in NRS 116.31166(2) that “[s]uch a deed containing those
15 recitals is conclusive against the unit’s former owner, his or her heirs and assigns, **and all other**
16 **persons.**” (emphasis added) While it might make sense to make a secured party prove that its
17 “disposition of collateral was commercially reasonable” when it seeks to recover a deficiency
18 judgment, it makes no sense to impose this obligation on the purchaser at an HOA foreclosure sale.
19 To do so would read NRS 116.31166 out of the statute.

20 NRS Chapter 116 does not contain any language that requires an HOA foreclosure sale to be
21 “commercially reasonable,” and no language in NRS Chapter 116 even suggests that an interested
22 party can seek to set aside an HOA foreclosure sale as being “commercially unreasonable” under the
23 terms of the Uniform Commercial Code. Instead, the Nevada Supreme Court recognized that:

24 NRS 116.3116 largely tracks section 3-116(a)-(ii) of the 1982 UCIOA. But it does not
25 use the language in subsections (j) and (k) of UCIOA § 3-116, which offer alternative
26 HOA lien foreclosure provisions for adaptation to local law. *See* 1982 UCIOA § 3-
27 116(j)(1) (“In a condominium or planned community, the association’s lien must be
foreclosed in a like manner as a mortgage on real estate [or by power of sale] under
[insert appropriate state statute].”); *id.* § 3-116(k) (offering optional fast-track
foreclosure method for cooperatives, which often carry substantial debt service

obligations). **Instead, the Nevada Legislature handcrafted a series of provisions to govern HOA lien foreclosures, NRS 116.31162 through NRS 116.31168, and** refashioned 1982 UCIOA §§ 3-116(j)(2) and (3), concerning cooperatives, as NRS 116.3116(10). (emphasis added)

130 Nev. Adv. Op. 75 at *6, 334 P.3d at 411.

The comment to Section 1-113 of the UCIOA states that the definition of “good faith” contained in Section 1-113 of the UCIOA is derived from and used in the same manner as in Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.” It has been contended that the definition of “good faith” contained in NRS 104.1201(2)(t) must be applied to an HOA foreclosure sale and add a “commercial reasonableness” standard to the HOA foreclosure sale. The UCIOA, however, does not contain any language that incorporates Article 9 of the Uniform Commercial Code and the “commercial reasonableness” language is not to be found in Nevada’s version of the UCIOA.

The Nevada version of the Uniform Commercial Code does not apply to real property foreclosure sales. NRS 104.9109(4)(k) provides that Article 9 of the Uniform Commercial Code does not apply to “[t]he creation or transfer of an interest in or lien on real property . . .” Consequently, the language in NRS 104.9610(2) requiring that “[e]very aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable” does not apply to the HOA foreclosure sale that was held in the present case pursuant to NRS 116.31162 through NRS 116.31168 and, by incorporation, NRS 107.090.

To the extent that this Court may feel that “commercial reasonableness” does apply to the instant foreclosure sale, compliance with the foreclosure statutes is all that is required, and the recitals in the foreclosure deed are conclusive proof that the statutory requirements were satisfied.

“Every aspect of the disposition, including the method, manner, time, place, and terms, must be commercially reasonable.” Levers v. Rio King Land & Investment Co., 93 Nev. 95, 560 P.2d 917 (1977). Levers involved a sale under the UCC. However, the method, manner, time, and place of an HOA foreclosure sale, unlike a UCC sale, are governed by statute – NRS 116.31162 through 116.31168. The final factor, price, is not an issue pursuant to SFR.

In SFR, the Nevada Supreme Court painstakingly went through each of the foreclosure

1 statutes, calling the statutory scheme “elaborate.” The SFR court began by comparing the Nevada
2 statutes to the UCIOA:

3 NRS 116.3116 largely tracks section 3–116(a)–(i) of the 1982 UCIOA. But it does not
4 use the language in subsections (j) and (k) of UCIOA § 3–116, which offer alternative
5 HOA lien foreclosure provisions for adaptation to local law. *See* 1982 UCIOA §
6 3–116(j)(1) (“In a condominium or planned community, the association's lien must be
7 foreclosed in like manner as a mortgage on real estate [or by power of sale under
8 [insert appropriate state statute]].”); *id.* § 3–116(k) (offering an optional fast-track
foreclosure method for cooperatives, which often carry substantial debt service
obligations). **Instead, the Nevada Legislature handcrafted a series of provisions to
govern HOA lien foreclosures, NRS 116.31162 through NRS 116.31168, and
refashioned 1982 UCIOA §§ 3–116(j)(2) and (3), concerning cooperatives, as NRS
116.3116(10).** (emphasis added)

9 To initiate foreclosure under NRS 116.31162 through NRS 116.31168, a Nevada HOA
10 must notify the owner of the delinquent assessments. NRS 116.31162(1)(a). If the
11 owner does not pay within 30 days, the HOA may record a notice of default and
12 election to sell. NRS 116.31162(1)(b). Where the UCIOA states general third-party
13 notice requirements, *see* 1982 UCIOA § 3–116(j)(4) (“In the case of foreclosure under
[insert reference to state power of sale statute], the association shall give reasonable
notice of its action to all lien holders of the unit whose interest would be affected.”),
NRS 116.31168 imposes specific timing and notice requirements.

14 “The provisions of NRS 107.090,” governing notice to junior lienholders and others in
15 deed-of-trust foreclosure sales, “apply to the foreclosure of an association's lien as if a
16 deed of trust were being foreclosed.” NRS 116.31168(1). The HOA must provide the
17 homeowner notice of default and election to sell; it also must notify “[e]ach person
18 who has requested notice pursuant to NRS 107.090 or 116.31168” and “[a]ny holder of
19 a recorded security interest encumbering the unit's owner's interest who has notified
20 the association, 30 days before the recordation of the notice of default, of the existence
21 of the security interest.” NRS 116.31163(1), (2). The homeowner must be given at
least 90 days to pay off the lien. NRS 116.31162. If the lien is not paid off, then the
HOA may proceed to foreclosure sale. *Id.* Before doing so, the HOA must give notice
of the sale to the owner and to the holder of a recorded security interest if the security
interest holder “has notified the association, before the mailing of the notice of sale of
the existence of the security interest.” NRS 116.31163(1)(b)(2); *see* NRS
107.090(3)(b), (4) (requiring notice of default and notice of sale to “[e]ach other
person with an interest whose interest or claimed interest is subordinate to the deed of
trust”).

22 NRS 116.31164 addresses the procedure for sale upon foreclosure of an HOA lien and
23 specifies the distribution order for the proceeds of sale. A trustee's deed reciting
24 compliance with the notice provisions of NRS 116.31162 through NRS 116.31168 “is
25 conclusive” as to the recitals “against the unit's former owner, his or her heirs and
assigns, and all other persons.” NRS 116.31166(2). And, “[t]he sale of a unit pursuant
to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the
unit's owner without equity or right of redemption.” NRS 116.31166(3).

26 The court confirmed that the HOA lien may be foreclosed non-judicially, stating:

27 Since NRS 116.3116(2) establishes a true superpriority lien, the next question we must

28

1 decide is whether the lien may be foreclosed nonjudicially or requires judicial
2 foreclosure. NRS Chapter 116 answers this question directly: An HOA may foreclose
3 its lien by nonjudicial foreclosure sale. . . . To “foreclose [a] lien by sale” under NRS
4 116.31162(1) encompasses an HOAs conducting a nonjudicial foreclosure sale. This is
5 evident from the remainder of NRS 116.31162, which speaks to the statutory notices
of delinquency, default and election to sell required of a nonjudicial foreclosure sale,
and the sections that follow, NRS 116.31163 through NRS 116.31168, all of which
concern the mechanics and requirements of nonjudicial foreclosure sales of HOA
liens...

6 The court also stated:

7 But the choice of foreclosure method for HOA liens is the Legislature's, and the
8 Nevada Legislature has written NRS Chapter 116 to allow nonjudicial foreclosure of
9 HOA liens, subject to the special notice requirements and protections handcrafted by
the Legislature in NRS 116.31162 through NRS 116.31168.

10 The court noted that the “requirements of law” were compliance with these foreclosure
11 statutes, stating:

12 In view of the fact that the “requirements of law” include compliance with NRS
13 116.31162 through NRS 116.31168 and by incorporation, NRS 107.090, *see* NRS
14 116.31168(1), we conclude that U.S. Bank's due process challenge to the lack of
adequate notice fails, at least at this early stage in the proceeding^{FN6}

15 It is in this context that the court inserted footnote 6 and its passing reference to commercial
reasonableness. Footnote 6 provides:

16 On a motion to dismiss, a court must take all factual allegations in the complaint as
17 true and not delve into matters asserted defensively that are not apparent from the face
18 of the complaint....Consistent with this standard, we note but do not resolve U.S.
Bank's suggestion that we could affirm by deeming SFR's purchase ‘void as
commercially unreasonable.’” (citations omitted)

19 This “elaborate” and all inclusive statutory scheme must be found, as a matter of law, to be
20 commercially reasonable, simply because the method of foreclosure was chosen by the legislature.

21 The cases by the Nevada Supreme Court that discuss “commercially reasonable” sales all
22 involved sales of personal property pursuant to Article 9 of the Uniform Commercial Code. See
23 Dennison v. Allen Group Leasing Corp., 110 Nev. 181, 871 P.2d 288 (1994); Savage Construction,
24 Inc. v. Challenge-Cook Bros., Inc., 102 Nev. 34, 714 P.2d 573 (1986); Levers v. Rio King Land &
25 Investment Co., 93 Nev. 95, 560 P.2d 917 (1977).

26 Because the foreclosure sale was performed in compliance with the specific Nevada statutes,
27 the method, manner, time, and place of the sale must be deemed “commercially reasonable” as a

1 matter of law.

2 **E. The “terms of sale” or price paid are not sufficient grounds to set aside a foreclosure**
3 **sale.**

4 The Nevada Supreme Court has repeatedly held that inadequacy of price is not sufficient to set
5 aside a foreclosure sale where there is no showing of fraud, unfairness, or oppression. Long v.
6 Towne, 98 Nev. 11, 639 P.2d 528, 530 (1982); Turner v. Dewco Services, Inc., 87 Nev. 14, 479 P.2d
7 462 (1971); Brunzell v. Woodbury, 85 Nev. 29, 449 P.2d 158 (1969); Golden v. Tomiyasu, 79 Nev.
8 503, 387 P.2d 989 (1963).

9 There is no authority for the proposition that a foreclosure agent must seek sufficient sums to
10 satisfy the claims of junior lienholders. This was noted by Judge Pro in his recently issued decision
11 which is to be published in the near future in the case of Bourne Valley Court Trust v. Wells Fargo
12 Bank, ___ F.Supp.3d ___, 2015 WL301063 (D. Nev.). A copy of the decision is Exhibit 7. The
13 decision addresses commercial reasonableness and notes that there is no duty to obtain sums in excess
14 of the sums necessary to satisfy the HOA lien. The court stated:

15 Wells Fargo next argues that even if the HOA foreclosure sale extinguished its first
16 deed of trust on the property, the HOA foreclosure sale was “commercially
17 unreasonable” and therefore was void. (Opp’n at 5–7.) Specifically, Wells Fargo argues
18 the HOA foreclosure sale was not conducted in good faith because “the HOA made no
19 effort to obtain the best price or to protect either Johnson or Wells Fargo” by selling
20 the property for \$4,145.00 when the assessed value of the property was \$90,543.00.
(*Id.* at 7.) Bourne Valley replies that Chapter 116 does not require an HOA foreclosure
21 sale to be commercially reasonable. Bourne Valley further argues that the inadequacy
22 of the price is not sufficient to void the HOA foreclosure sale when there is no
23 evidence of fraud, procedural defects, or other irregularities in the conduct of the sale.

24 The commercial reasonableness here must be assessed as of the time the sale occurred.
25 Wells Fargo's argument that the HOA foreclosure sale was commercially unreasonable
26 due to the discrepancy between the sale price and the assessed value of the property
27 ignores the practical reality that confronted the purchaser at the sale. Before the
28 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 a 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

1 would be willing to pay and the assessed value of the property is to be expected.

2 **Moreover, Wells Fargo does not point to any evidence or legal authority**
3 **indicating the Court must void an HOA foreclosure sale because the purchaser**
4 **bid only a fraction of the property's assessed value. Wells Fargo does not point to**
5 **evidence of fraud or any other procedural defects or other irregularities in the**
6 **conduct of the sale that would require the Court to void the sale, or any evidence**
7 **indicating the HOA acted in bad faith by selling the property for an amount that**
8 **would satisfy the unpaid assessments. Nor does Wells Fargo point to evidence or**
9 **legal authority indicating that beyond selling the property to the highest bidder,**
10 **the HOA was responsible for protecting Wells Fargo and Johnson's interests in**
11 **addition to the homeowners' interests. See *Carmen v. S.F. Unified Sch. Dist.*, 237**
12 **F.3d 1026, 1028–31 (9th Cir.2001) (stating that a court need not “comb the record”**
13 **looking for a genuine issue of material fact if the party has not brought the evidence to**
14 **the court's attention) (quotation omitted)). Thus, no genuine issue of material fact**
15 **remains as to whether the HOA foreclosure sale was commercially unreasonable.**
16 **Under the specific facts presented here, it was not. (emphasis added)**

17 Additionally, the Supreme Court in the SFR decision said not once, but twice, that the price
18 paid at the foreclosure sale was not an issue because the bank could simply have paid the super
19 priority amount to preserve its interest in the property. The court stated at page 414:

20 U.S. Bank's final objection is that it makes little sense and is unfair to allow a
21 relatively nominal lien—nine months of HOA dues—to extinguish a first deed of trust
22 securing hundreds of thousands of dollars of debt. But as a junior lienholder, U.S.
23 Bank could have paid off the SHHOA lien to avert loss of its security; it also could
24 have established an escrow for SHHOA assessments to avoid having to use its own
25 funds to pay delinquent dues. 1982 UCIOA § 3116 cmt. 1; 1994 & 2008 UCIOA §
26 3–116 cmt. 2. **The inequity U.S. Bank decries is thus of its own making and not a**
27 **reason to give NRS 116.3116(2) a singular reading at odds with its text and the**
28 **interpretation given it by the authors and editors of the UCIOA. (emphasis added)**

The court also stated at page 418:

U.S. Bank further complains about the content of the notice it received. It argues that
due process requires specific notice indicating the amount of the superpriority piece of
the lien and explaining how the beneficiary of the first deed of trust can prevent the
superpriority foreclosure sale. But it appears from the record that specific lien amounts
were stated in the notices, ranging from \$1,149.24 when the notice of delinquency was
recorded to \$4,542.06 when the notice of sale was sent. The notices went to the
homeowner and other junior lienholders, not just U.S. Bank, so it was appropriate to
state the total amount of the lien. As U.S. Bank argues elsewhere, dues will typically
comprise most, perhaps even all, of the HOA lien. See *supra* note 3. **And from what**
23 **little the record contains, nothing appears to have stopped U.S. Bank from**
24 **determining the precise superpriority amount in advance of the sale or paying the**
25 **entire amount and requesting a refund of the balance. Cf. *In re Medaglia*, 52 F.3d**
26 **451, 455 (2d Cir.1995) (“[I]t is well established that due process is not offended by**
27 **requiring a person with actual, timely knowledge of an event that may affect a right to**
28 **exercise due diligence and take necessary steps to preserve that right.”). (Emphasis**
added)

1 In the case of BFP v. Resolution Trust Corporation, 511 U.S. 531, 548-49 (1994), the U.S.
2 Supreme Court explained why the fair market value of a property sold at foreclosure or a “forced
3 sale” is in fact the price said at the foreclosure sale:

4 ...the fact that a piece of property is legally subject to forced sale, like any other fact
5 bearing upon the property’s use or alienability, necessarily affects its worth. Unlike
6 most other legal restrictions, however, foreclosure has the effect of completely
7 redefining the market in which the property is offered for sale; normal free-market
8 rules of exchange are replaced by the far more restrictive rules governing forced sales.
9 Given this altered reality, and the concomitant inutility of the normal tool for
10 determining what property is worth (fair market value), the only legitimate evidence of
11 the property’s value at the time it is sold is the foreclosure-sale price itself.

12 The standard for a “commercially reasonable” sale under Nevada’s UCC is that each aspect of
13 the disposition, including the method, manner, time, place, and terms must be commercially
14 reasonable.

15 The method, manner, time and place of an HOA foreclosure are all governed by the
16 foreclosure statutes contained in Chapter 116. The last issue would be “terms” meaning the price to
17 be paid.

18 Each of the factors involved in a “commercially reasonable” sale are not an issue here. The
19 time, place and manner of sale are governed by statute, and there is no allegation that the statutes were
20 not followed or that the defendant did not get notice. The sole remaining factor is “term” or “price.”
21 However, price alone is not grounds to set aside a foreclosure sale, and the Supreme Court has noted
22 that the bank is the cause of its own harm by failing to pay the super priority amount prior to the
23 foreclosure sale. Commercial reasonableness of the sale is not an issue in this case.

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CONCLUSION

The HOA foreclosure sale extinguished the defendant’s deed of trust, and therefore its interest in the Property. As conclusively evidenced by the recitals in the foreclosure deed, the HOA foreclosure sale complied with all requirements of Nevada law. Accordingly, it is respectfully requested that this Court enter its order granting plaintiff’s motion for summary judgment and quieting title to the Property in plaintiff free and clear of all liens and encumbrances and forever enjoining the defendant from asserting any estate, title, right, interest, or claim to the Property adverse to the plaintiff.

DATED this 18th day of May, 2015

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 18th day of May, 2015, an electronic copy of the **MOTION FOR SUMMARY JUDGMENT** was served on opposing counsel via the Court’s electronic service system to the following counsel of record:

Dana J. Nitz, Esq.
Ryan T. O’Malley, Esq.
WRIGHT, FINLAY & ZAK, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

/s/ /Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

EXHIBIT 1

EXHIBIT 1

②-1

Inst #: 201301240002549
Fees: \$17.00 N/C Fee: \$0.00
RPTT: \$43.35 Ex: #
01/24/2013 02:33:00 PM
Receipt #: 1470974
Requestor:
ALESSI & KOENIG LLC
Recorded By: ANI Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
5316 Clover Blossom Ct Trust
PO Box 36208
LAS VEGAS, NV 89133

A.P.N. No. 124-31-220-092

TS No. 30488-5316

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **5316 Clover Blossom Ct Trust**
The Foreclosing Beneficiary herein was: **Country Gardens Owners' Association**
The amount of unpaid debt together with costs: **\$5,021.00**
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$8,200.00**
The Documentary Transfer Tax: **\$43.35**
Property address: **5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031**
Said property is in [] unincorporated area: **City of North Las Vegas**
Trustor (Former Owner that was foreclosed on): **DENNIS L & GERALDINE J JOHNSON**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **February 22, 2012** as instrument number **0001651**, in **Clark County**, does hereby grant, without warranty expressed or implied to: **5316 Clover Blossom Ct Trust (Grantee)**, all its right, title and interest in the property legally described as: **LOT 92**, as per map recorded in **Book 91, Pages 71** as shown in the Office of the County Recorder of **Clark County Nevada**.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **January 16, 2013** at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.

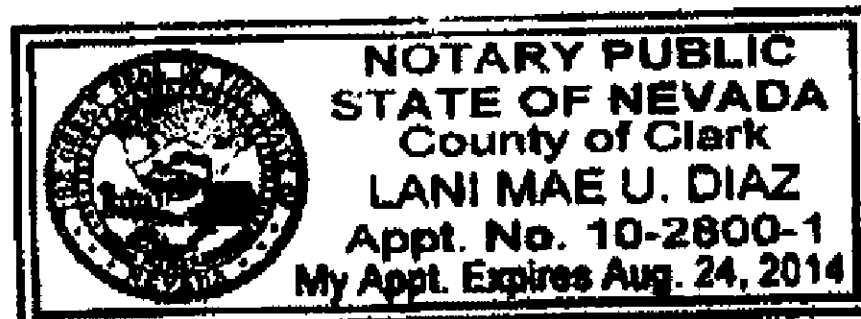
Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me 1/24/13

WITNESS my hand and official seal.
(Seal)

(Signature)



A&K0112

AA000041

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a. 124-31-220-092
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: _____

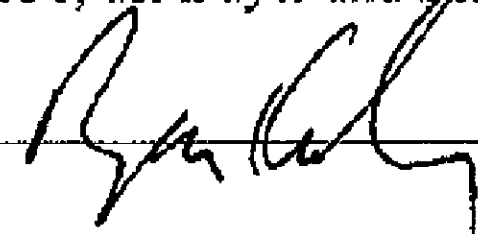
3.a. Total Value/Sales Price of Property \$ 8,200.00
b. Deed in Lieu of Foreclosure Only (value of property (_____))
c. Transfer Tax Value: \$ 8,200.00
d. Real Property Transfer Tax Due \$ 43.35

4. **If Exemption Claimed:**

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

5. Partial Interest: Percentage being transferred: 100 %

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

Signature  Capacity: Grantor
Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi & Koenig, LLC
Address: 9500 W Flamingo Rd. Suite 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: 5316 Clover Blossom Ct Trust
Address: PO Box 36208
City: Las Vegas
State: NV Zip: 89133

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

Print Name: Alessi & Koenig, LLC
Address: 9500 W Flamingo Rd. Suite 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 2

EXHIBIT 2

Inst #: 201202220001651

Fees: \$17.00

N/C Fee: \$0.00

02/22/2012 09:17:26 AM

Receipt #: 1073371

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: MSH Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 124-31-220-092

Trustee Sale # 29628-5316

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark** County, Nevada, **Country Gardens Owners' Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031** and more particularly legally described as: **LOT 92 Book 91 Page 71** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **DENNIS L & GERALDINE J JOHNSON**

The mailing address(es) is: **5225 ELM GROVE DR, LAS VEGAS, NV 89130**

The total amount due through today's date is: **\$1,095.50**. Of this total amount **\$1,020.50** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **January 11, 2012**

By: 

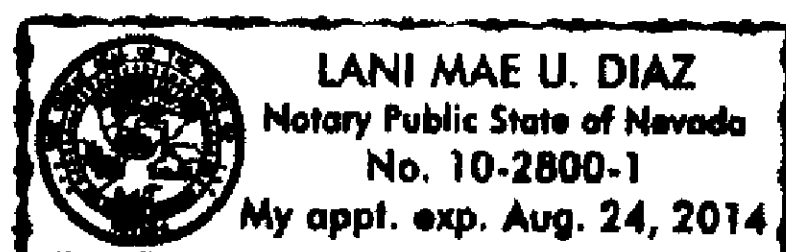
Ryan Kerboy, Esq. of Alessi & Koenig, LLC on behalf of **Country Gardens Owners' Association**

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me **February 17, 2012**

(Seal)



(Signature)


NOTARY PUBLIC

A&K0013

EXHIBIT 3

EXHIBIT 3

30488

DENNIS L. JOHNSON
5225 ELM GROVE DR

LAS VEGAS, NV 89130-3669

DENNIS L. JOHNSON
5316 CLOVER BLOSSOM CT

North Las Vegas, NV 89031

GERALDINE J. JOHNSON
5225 ELM GROVE DR

LAS VEGAS, NV 89130-3669

GERALDINE J. JOHNSON
5316 CLOVER BLOSSOM CT

North Las Vegas, NV 89031

COUNTRYWIDE HOME LOANS, INC.
7350 W. CHEYENNE AVE

LAS VEGAS, NV 89129

MERS
PO BOX 2026

FLINT, MI 48501-2026

COUNTRYWIDE HOME LOANS, INC.
4500 PARK GRANADA

CALABASAS, CA 91302-1613

CTC REAL ESTATE SERVICES
400 NATIONAL WAY MSN SV-88

SIMI VALLEY, CA 93065

COUNTRYWIDE HOME LOANS, INC
PO BOX 10219

VAN NUYS, CA 91410-0219

CORELOGIC
450 E. BOUNDARY ST

CHAPIN, SC 29036

MERS, INC.
3300 S.W. 34TH AVENUE, SUITE 101

OCALA, FL 34474

U.S. BANK NATL ASSOC, Successor Trustee
9062 OLD ANNAPOLIS RD

COLUMBIA, MD 21045

RECONTRUST COMPANY
2380 PERFORMANCE DR, TX2-984-0407

RICHARDSON, TX 75082

COUNTRYWIDE HOME LOANS, INC
PO BOX 10423

VAN NUYS, CA 91410-0423

BLALOCK & QALEY
20 BONNEVILLE AVE

LAS VEGAS, NV 89101

DENNIS L. JOHNSON
7870 WIDEWING DRIVE

NO LAS VEGAS, NV 89084

GERALDINE J. JOHNSON
7870 WIDEWING DRIVE

NO. LAS VEGAS, NV 89084

PERFECT STORM LLC
7870 WIDEWING DRIVE

NO. LAS VEGAS, NV 89084

DENNIS L. JOHNSON
8155 WHITE MILL CT

LAS VEGAS, NV 89131-1457

U.S. DEPARTMENT OF TREASURY - IRS
110 CITY PARKWAY

LAS VEGAS, NV 89106

CRISIS COLLECTIONS MANAGEMENT, LL
PO BOX 3479

RENO, NV 89505

ROBERT H. BROILI, ESQ.
PO BOX 3479

RENO, NV 89503

PERFECT STORM LLC
5225 ELM GROVE DR

LAS VEGAS, NV 89130

THE JOHNSON FAMILY TRUST
5225 ELM GROVE DRIVE

LAS VEGAS, NV 89130

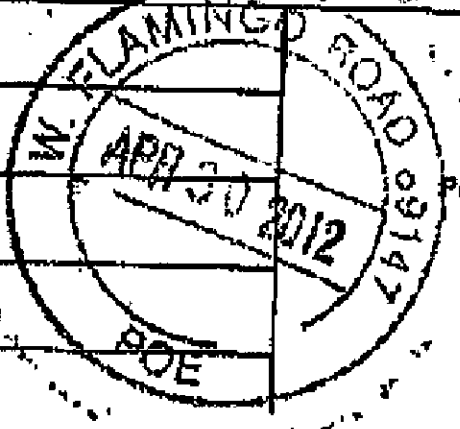
NOTICE OF DEFAULT
10-DAY MAILINGS

7012 0470 0000 0541 0986

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$	 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: DENNIS L. JOHNSON
 5225 ELM GROVE DR
 LAS VEGAS, NV 89130-3669


PS Form 3800, Aug.

7012 0470 0000 0541 1008

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
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For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$	 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: GERALDINE J. JOHNSON
 5225 ELM GROVE DR
 LAS VEGAS, NV 89130-3669

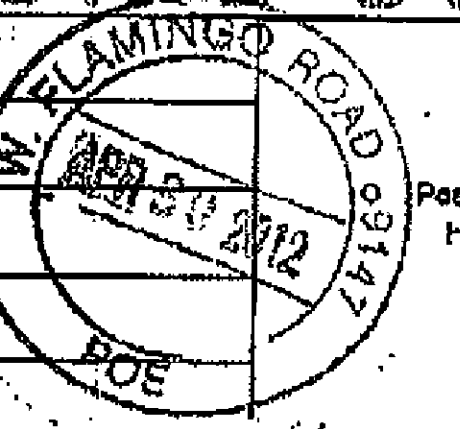
PS Form 3800, Aug.

7012 0470 0000 0541 0995

U.S. Postal Service™
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OFFICIAL USE

Postage	\$	 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: DENNIS L. JOHNSON
 5316 CLOVER BLOSSOM CT
 North Las Vegas, NV 89031

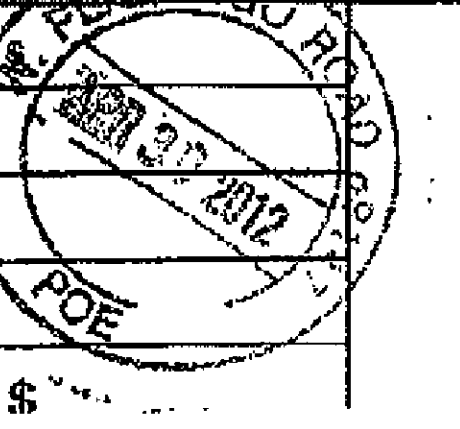
PS Form 3800, Aug.

7012 0470 0000 0541 1053

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OFFICIAL USE

Postage	\$	 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: GERALDINE J. JOHNSON
 7870 WIDEWING DRIVE
 NO. LAS VEGAS, NV 89084

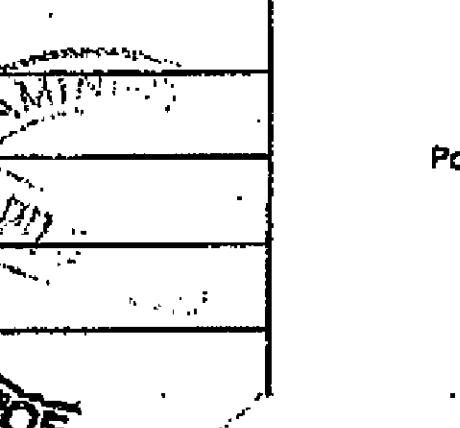
PS Form 3800, Aug.

7012 0470 0000 0541 1039

U.S. Postal Service™
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For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$	 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: GERALDINE J. JOHNSON
 5316 CLOVER BLOSSOM CT
 North Las Vegas, NV 89031

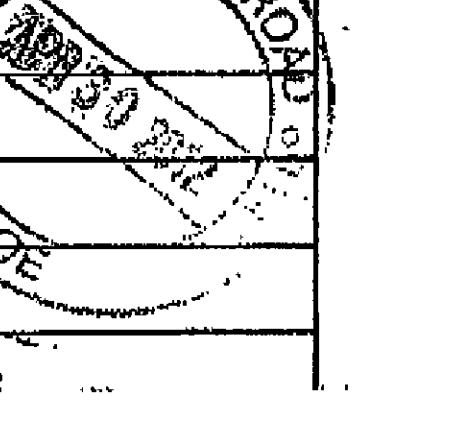
PS Form 3800, Aug.

7012 0470 0000 0541 1046

U.S. Postal Service™
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 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$	 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

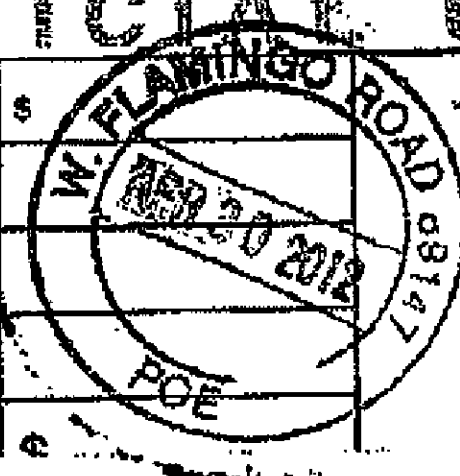
Sent To: DENNIS L. JOHNSON
 7870 WIDEWING DRIVE
 NO LAS VEGAS, NV 89084

PS Form 3800, Aug.

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Sent To	DENNIS L. JOHNSON
Street, Apt. No., or PO Box No.	8150 WHITE MILL CT
City, State, ZIP+4	LAS VEGAS, NV 89131-1457

PS Form 3800, AUG 06

7012 0470 0000 0541 1060



A&K0120

Inst #: 201204200000428
Fees: \$17.00
N/C Fee: \$0.00
04/20/2012 08:27:12 AM
Receipt #: 1136956
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: SAO Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 205
Las Vegas, Nevada 89147
Phone: 702-222-4033

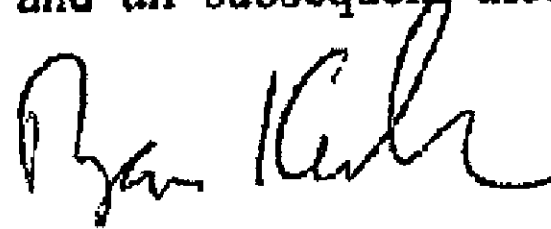
A.P.N. 124-31-220-092

Trustee Sale No. 30488-5316

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$3,396.00 as of March 27, 2012 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Country Gardens Owners' Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.**

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on February 22, 2012 as document number 0001651, of Official Records in the County of Clark, State of Nevada. Owner(s): **DENNIS L & GERALDINE J JOHNSON**, of **PLAT BOOK 91 PAGE 71 LOT 92**, as per map recorded in Book 91, Pages 71, as shown on the Plan and Subdivision map recorded in the Maps of the County of Clark, State of Nevada. **PROPERTY ADDRESS: 5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031.** If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated February 22, 2012, on behalf of **Country Gardens Owners' Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from January 10, 2011 and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.
Dated: March 27, 2012



Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of Country Gardens Owners' Association



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

COUNTRYWIDE HOME LOANS, INC.
4500 PARK GRANADA
CALABASAS, CA 91302-1813



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

COUNTRYWIDE HOME LOANS, INC
PO BOX 10219
VAN NUYS, CA 91410-0219



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

MERS, INC.
3300 S.W. 34TH AVENUE, SUITE 101
OCALA, FL 34474



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

CTC REAL ESTATE SERVICES
400 NATIONAL WAY MSN SV-88
SIMI VALLEY, CA 93065



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

CORELOGIC
450 E. BOUNDARY ST
CHAPIN, SC 29036



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

RECONTRUST COMPANY
2380 PERFORMANCE DR, TX2-984-0407
RICHARDSON, TX 75082



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

U.S. BANK NATL ASSOC, Successor Trustee
9062 OLD ANNAPOLIS RD
COLUMBIA, MD 21045



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

BLALOCK & QUALEY
20 BONNEVILLE AVE
LAS VEGAS, NV 89101



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

COUNTRYWIDE HOME LOANS, INC.
PO BOX 10423

VAN NUYS, CA 91410-0423



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

U.S. DEPARTMENT OF TREASURY - IRS
110 CITY PARKWAY

LAS VEGAS, NV 89106



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

PERFECT STORM LLC
7870 WIDEWING DRIVE

NO. LAS VEGAS, NV 89084



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

COUNTRYWIDE HOME LOANS, INC.
7350 W. CHEYENNE AVE

LAS VEGAS, NV 89129



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

MERS
PO BOX 2026

FLINT, MI 48501-2026



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

THE JOHNSON FAMILY TRUST
5225 ELM GROVE DRIVE

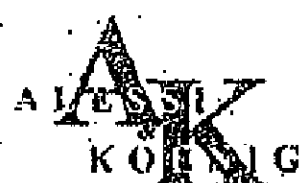
LAS VEGAS, NV 89130



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

PERFECT STORM LLC
5225 ELM GROVE DR

LAS VEGAS, NV 89130



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

ROBERT H. BROIL, ESQ.
PO BOX 3479

RENO, NV 89503



9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

CRISIS COLLECTIONS MANAGEMENT, LL
PO BOX 3479

RENO, NV 89503

EXHIBIT 4

EXHIBIT 4

30488

DENNIS L. JOHNSON
5225 ELM GROVE DR
LAS VEGAS, NV 89130-3669

DENNIS L. JOHNSON
5316 CLOVER BLOSSOM CT
North Las Vegas, NV 89031

GERALDINE J. JOHNSON
5225 ELM GROVE DR
LAS VEGAS, NV 89130-3669

GERALDINE J. JOHNSON
5316 CLOVER BLOSSOM CT
North Las Vegas, NV 89031

COUNTRYWIDE HOME LOANS, INC.
7350 W. CHEYENNE AVE
LAS VEGAS, NV 89129

MERS
PO BOX 2026
FLINT, MI 48501-2026

COUNTRYWIDE HOME LOANS, INC.
4500 PARK GRANADA
CALABASAS, CA 91302-1613

CTC REAL ESTATE SERVICES
MSN SV-88
400 NATIONAL WAY
SIMI VALLEY, CA 93065

COUNTRYWIDE HOME LOANS, INC
PO BOX 10219
VAN NUYS, CA 91410-0219

CORELOGIC
450 E. BOUNDARY ST
CHAPIN, SC 29036

MERS, INC.
3300 S.W. 34TH AVENUE, SUITE 101
OCALA, FL 34474

U.S. Bank Natl Assoc, Successor Trustee
to Holders of ZUNI MORT LOAN TRUST
9062 OLD ANNAPOLIS RD
COLUMBIA, MD 21045

RECONTRUST COMPANY
2380 Performance Dr., TX2-984-0407
RICHARDSON, TX 75082

COUNTRYWIDE HOME LOANS, INC
PO BOX 10423
VAN NUYS, CA 91410-0423

BLALOCK & QUALEY
20 BONNEVILLE AVE
LAS VEGAS, NV 89101

DENNIS L. JOHNSON
7870 WIDEWING DRIVE
NO LAS VEGAS, NV 89084

GERALDINE J. JOHNSON
7870 WIDEWING DRIVE
NO. LAS VEGAS, NV 89084

PERFECT STORM LLC
7870 WIDEWING DRIVE
NO. LAS VEGAS, NV 89084

DENNIS L. JOHNSON
6156 WHITE MILL CT
LAS VEGAS, NV 89131-1457

U.S. Department of Treasury - IRS
110 CITY PARKWAY
LAS VEGAS, NV 89108

Crisis Collection Management, LLC
PO BOX 3479
RENO, NV 89505

ROBERT H. BROILI, Esq.
PO BOX 3479
RENO, NV 89503

PERFECT STORM LLC
5225 ELM GROVE DR
LAS VEGAS, NV 89130

THE JOHNSON FAMILY TRUST
5225 ELM GROVE DRIVE
LAS VEGAS, NV 89130

OMBUDSMANS OFFICE
Attn: GORDAN MILDEN
2501 E SAHARA AVE SUITE 205
LAS VEGAS, NV 89104

NOTS MAILINGS

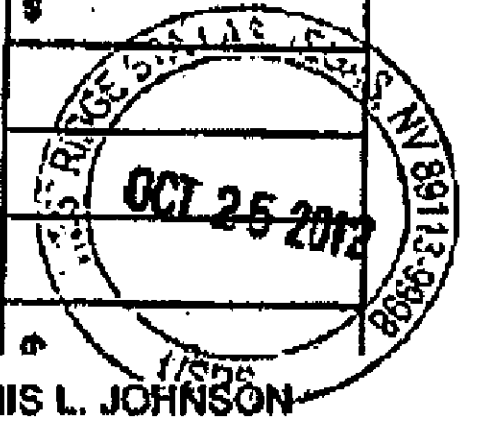
A&K0131

AA000060

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$		Postmark Here
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees			

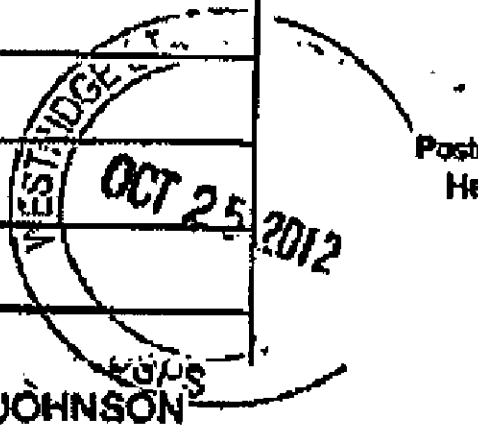
Sent To: **DENNIS L. JOHNSON**
 5225 ELM GROVE DR
 LAS VEGAS, NV 89130-3669

PS Form 3800, August 2000 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
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For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$		Postmark Here
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees			

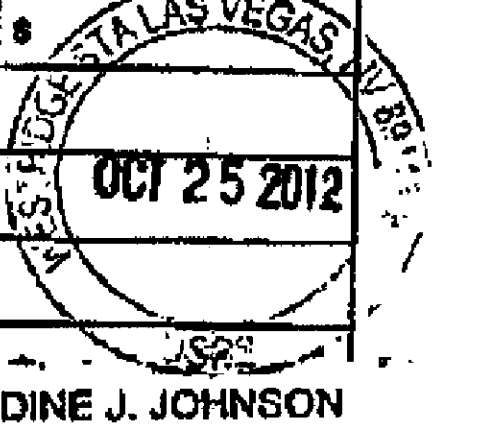
Sent To: **DENNIS L. JOHNSON**
 5316 CLOVER BLOSSOM CT
 North Las Vegas, NV 89031

PS Form 3800, August 2000 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$		Postmark Here
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees			

Sent To: **GERALDINE J. JOHNSON**
 5225 ELM GROVE DR
 LAS VEGAS, NV 89130-3669

PS Form 3800, August 2000 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$		Postmark Here
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees			

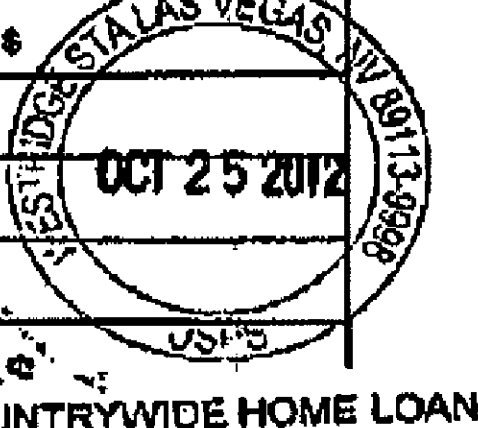
Sent To: **GERALDINE J. JOHNSON**
 5315 CLOVER BLOSSOM CT
 North Las Vegas, NV 89031

PS Form 3800, August 2000 See Reverse for Instructions

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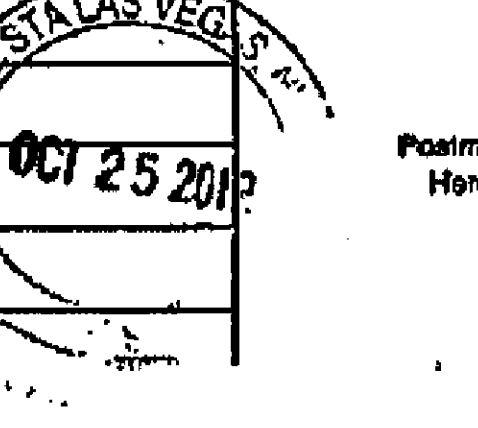
Sent To: **COUNTRYWIDE HOME LOANS, INC.**
 7350 W. CHEYENNE AVE
 LAS VEGAS, NV 89129

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 FLINT, MI 48501-2026

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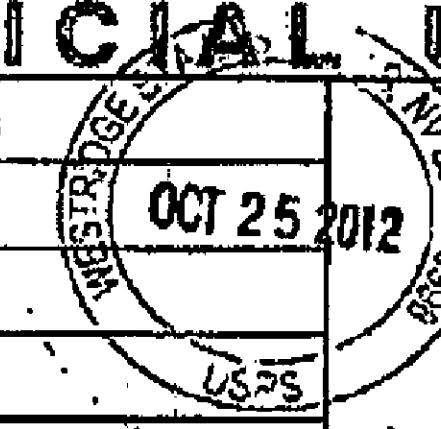
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 4500 PARK GRANADA
 CALABASAS, CA 91302-1613

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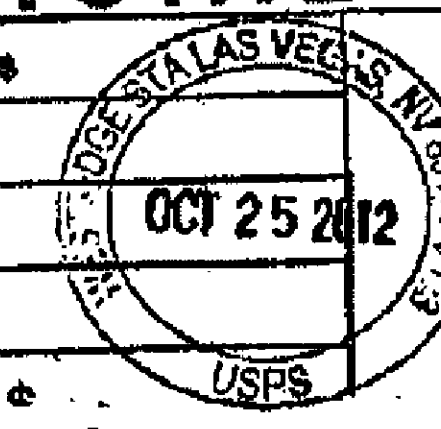
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Restricted Delivery Fee (Endorsement Required)			
Total Postage	\$		

Sent To: COUNTRYWIDE HOME LOANS, INC.
 PO BOX 10219
 VAN NUYS, CA 91410-0219

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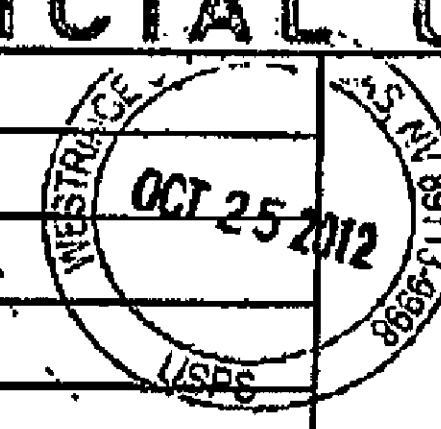
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Total Postage	\$		

Sent To: MERS, INC.
 3300 S.W. 34TH AVENUE, SUITE 101
 Ocala, FL 34474

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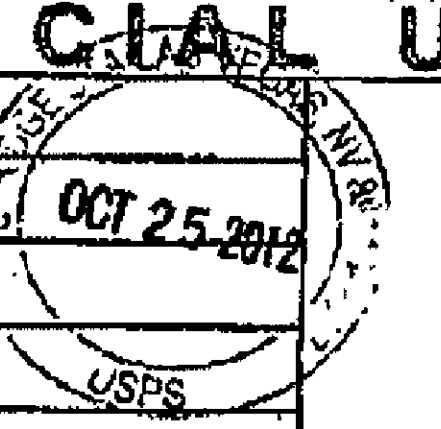
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Total Postage	\$		

Sent To: CTC REAL ESTATE SERVICES
 MSN SV-88
 400 NATIONAL WAY
 SIMI VALLEY, CA 93065

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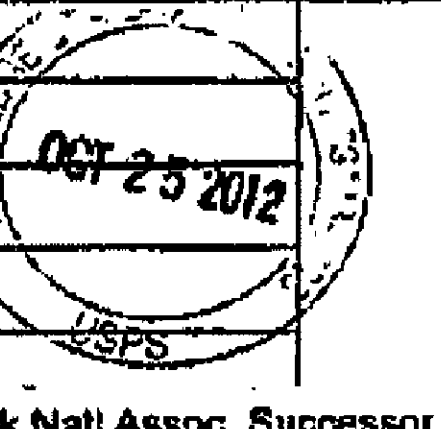
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 450 E. BOUNDARY ST
 CHAPIN, SC 29036

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Sent To: U.S. Bank Natl Assoc, Successor Trustee
 to Holders of ZUNI MORT LOAN TRUST
 9062 OLD ANNAPOLIS RD
 COLUMBIA, MD 21045

PS Form 3800

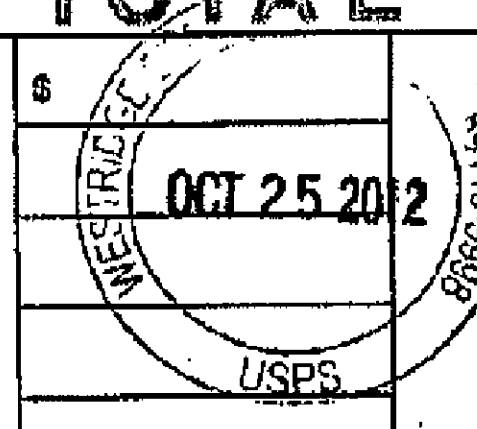
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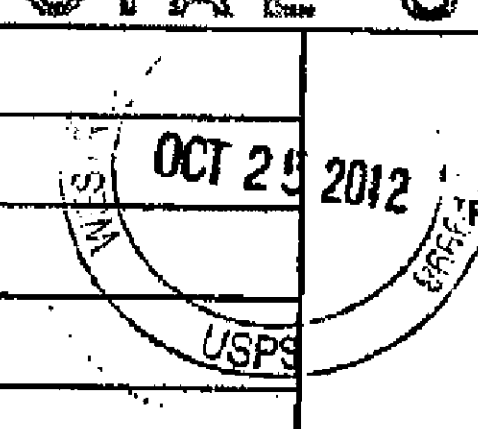
RECONTRUST COMPANY
 2380 Performance Dr., TX2-984-0407
 RICHARDSON, TX 75082

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Restricted Delivery Fee (Endorsement Required)			
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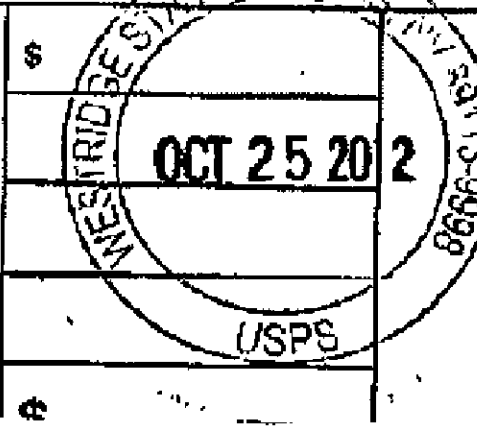
COUNTRYWIDE HOME LOANS, INC
 PO BOX 10423
 VAN NUYS, CA 91410-0423

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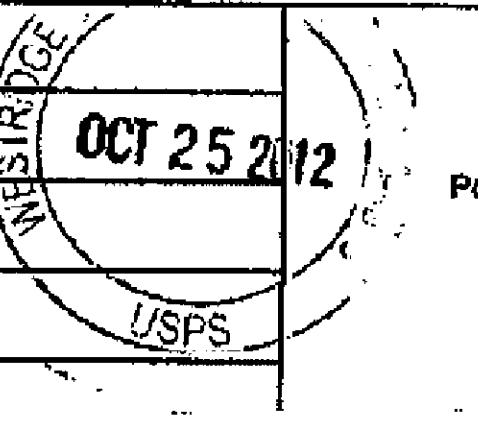
BLALOCK & QAULEY
 20 BONNEVILLE AVE
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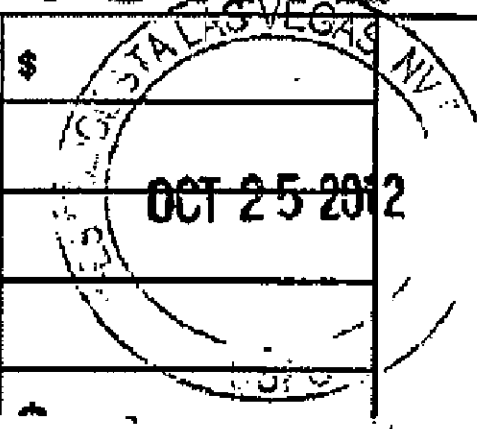
DENNIS L. JOHNSON
 7870 WIDEWING DRIVE
 NO LAS VEGAS, NV 89084

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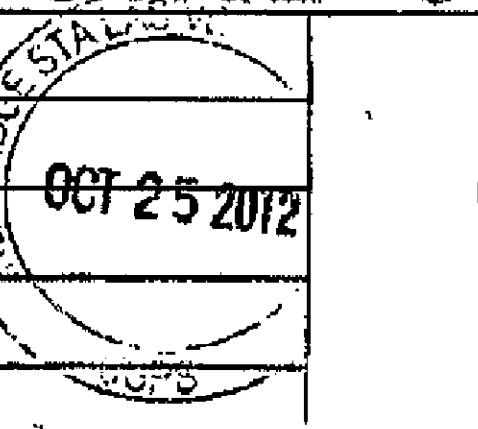
GERALDINE J. JOHNSON
 7870 WIDEWING DRIVE
 NO. LAS VEGAS, NV 89084

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Total Postage & Fees	\$		

PERFECT STORM LLC
 7870 WIDEWING DRIVE
 NO. LAS VEGAS, NV 89084

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7012 2210 0000 1326 5437

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Restricted Delivery Fee (Endorsement Required)			
Total Postage	\$		

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8156 WHITE MILL CT
LAS VEGAS, NV 89131-1457

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Restricted Delivery Fee (Endorsement Required)			
Total Postage	\$		

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110 CITY PARKWAY
LAS VEGAS, NV 89106

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7012 2210 0000 1326 5420

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Restricted Delivery Fee (Endorsement Required)			
Total Postage	\$		

Sent To: Crisis Collection Management, LLC
PO BOX 3479
RENO, NV 89505

PS Form 3800

7012 2210 0000 1326 5451

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Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage	\$		

Sent To: ROBERT H. BROULT, Esq.
PO BOX 3479
RENO, NV 89503

PS Form 3800

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7012 2210 0000 1326 5444

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Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees	\$		

Sent To: **THE JOHNSON FAMILY TRUST**
 5225 ELM GROVE DRIVE
 LAS VEGAS, NV 89130

PS Form 3800, August 2006

7012 2210 0000 1326 5468

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Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees	\$		

Sent To: **PERFECT STORM LLC**
 5225 ELM GROVE DR
 LAS VEGAS, NV 89130

PS Form 3800, August 2006

7012 2210 0000 1326 5475

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Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage	\$		

Sent To: **OMBUDSMANS OFFICE**
 Attn: GORDAN MILDEN
 2501 E SAHARA AVE SUITE 205
 LAS VEGAS, NV 89104

PS Form 3800, August 2006

NOTS MAILINGS

A&K0136

Inst #: 201210310000738
Fees: \$17.00
N/C Fee: \$0.00
10/31/2012 08:04:08 AM
Receipt #: 1364103
Requestor:
ALESSI & KOENIG LLC
Recorded By: MAT Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 124-31-220-092

TSN 30488-5316

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

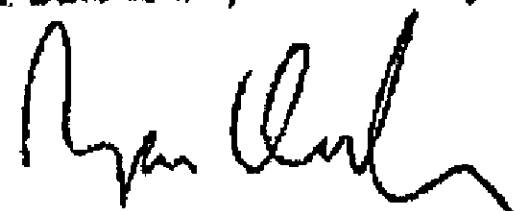
NOTICE IS HEREBY GIVEN THAT:

On November 28, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on February 22, 2012, as instrument number 0001651, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031. The owner of the real property is purported to be: DENNIS L & GERALDINE J JOHNSON

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$4,039.00. Payment must be in made in the form of certified funds.

Date: October 15, 2012



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Country Gardens Owners' Association

EXHIBIT 5

EXHIBIT 5

Alessi & Koenig, LLC

TSN 30488-5316

AFFIDAVIT OF SERVICE

State of Nevada
County of Clark

I, Daniel Vidovic, state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in proceeding in which this affidavit is made.

I served **DENNIS L & GERALDINE J JOHNSON**, with a copy of the Notice of Trustee's Sale, on 10/28/2012 at approximately 5:25 PM by:

Personally posting a copy of Notice of Trustee's Sale in the manner prescribed pursuant NRS 107.087, in the conspicuous place on the property, upon information and belief, at least 15 days before the date of sale, which is located at:

Trust Property:
5316 CLOVER BLOSSOM CT
North Las Vegas, NV 89031

I posted a copy of the Notice of Trustee Sale pursuant to NRS 107.080, for 20 days consecutively, in the public place in the county where the property is situated, to wit:


Nevada Legal News:
930 S.4th St. #100
Las Vegas, NV 89101

Regional Justice Center:
200 Lewis Ave
Las Vegas, NV 89101

Clark County Law Library
309 S.3rd St, Ste B
Las Vegas, NV 89101

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

Dated 11/26/2012

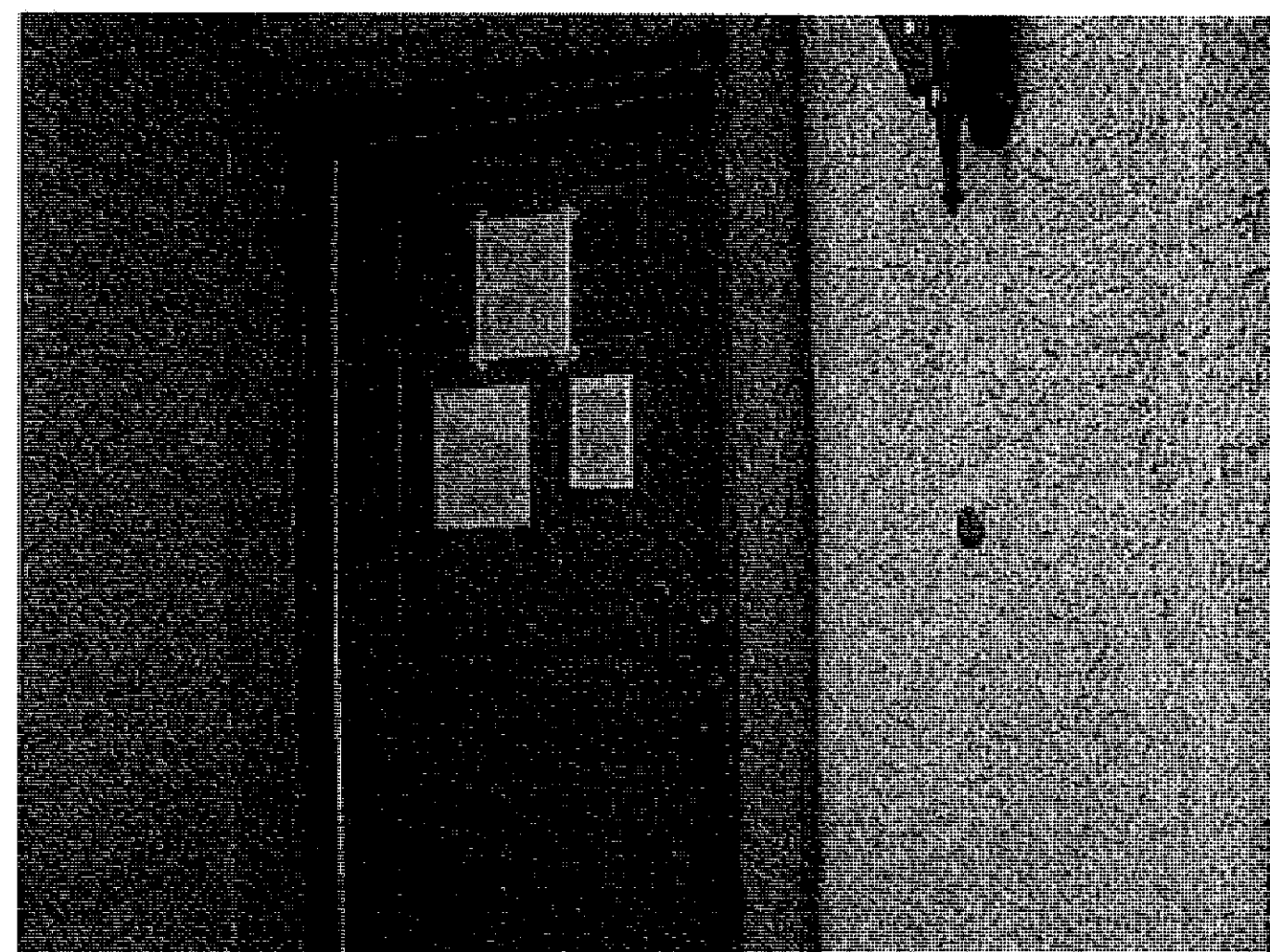
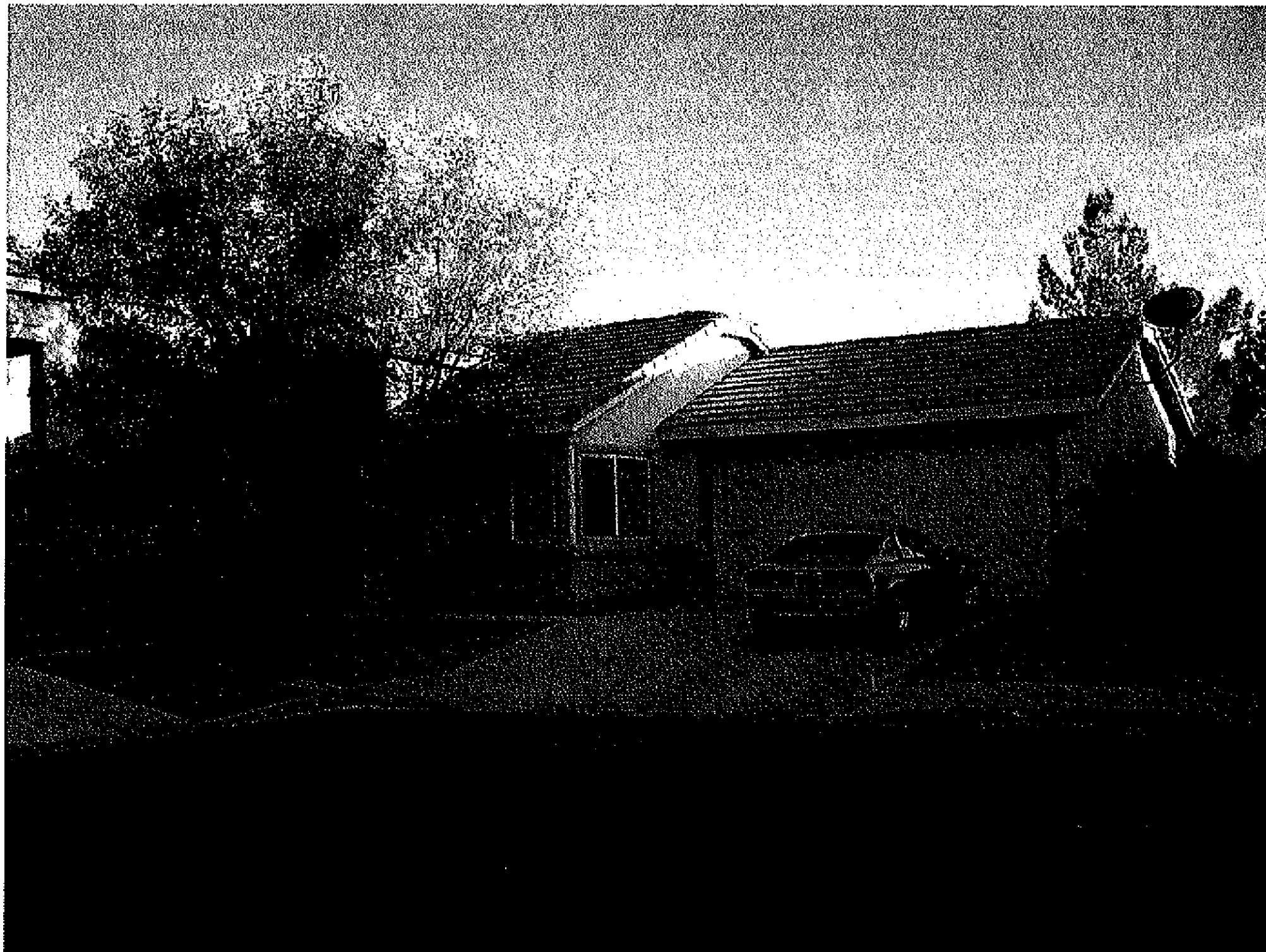


Daniel Vidovic
Alessi & Koenig, LLC
9500 West Flamingo Rd. Ste 205
Las Vegas, NV 89147

COUNTY OF SERVICE: CLARK
SERVER: Daniel Vidovic

A&K0106

AA000068



Photos taken by: Daniel Vidovic

Photo date: 10/28/2012 at approximately 5:25 PM

Property owner: DENNIS L & GERALDINE J JOHNSON

Property address: 5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031

ALESSI & KOENIG, LLC

TSN 30488-5316

A&K0107

AA000069

EXHIBIT 6

EXHIBIT 6

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

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The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$4,039.00. Payment must be in made in the form of certified funds.

Date: October 15, 2012

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Country Gardens Owners' Association

PUBLISHED
11/02/2012, 11/09/2012 & 11/16/2012

CLARK COUNTY LEGAL NEWS
CLARK & NYE COUNTY, NEVADA
CCLN FILE 12110223.wps

Certification of Publication

This is to confirm that, on the aforementioned dates, the attached Legal Notice was published in the Clark County Legal News newspaper, a newspaper of general and subscription circulation in Clark County, Nevada.

Per NRS 238.030, the Clark County Legal News newspaper is printed and published in whole or in part in both Clark County and Nye County, Nevada.

WITNESS my hand on this

11/16/2012
DATE

Miranda Donovan

MIRANDA DONOVAN, co-publisher,
Clark County Legal News newspaper

EXHIBIT 7

EXHIBIT 7

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BOURNE VALLEY COURT TRUST,

Plaintiff,

v.

WELLS FARGO BANK, N.A., et al.

Defendants.

2:13-CV-00649-PMP-NJK

ORDER

Presently before the Court is Plaintiff Bourne Valley Court Trust's Motion for Summary Judgment (Doc. #45), filed on September 26, 2014. Defendant Wells Fargo Bank, N.A. filed an Opposition (Doc. #48) on November 3, 2014. Plaintiff Bourne Valley Court Trust filed a Reply (Doc. #51) on December 1, 2014.

I. BACKGROUND

This case involves a dispute over whether a foreclosure sale conducted by a homeowners' association ("HOA") to collect unpaid HOA assessments extinguishes all junior liens, including a first deed of trust. The property at issue, located at 410 Horse Pointe Avenue, Las Vegas, Nevada, previously was owned by Defendant Renee Johnson. (Mot. for Summ. J. (Doc. #45) ["MSJ"], Ex. 2 at 1.) The property was subject to a first deed of trust recorded in 2006, which identified Plaza Home Mortgage, Inc. as the lender. (Def. Wells Fargo Bank, N.A.'s Req. for Judicial Notice (Doc. #25) ["Req. for Judicial Notice"], Ex. B at 1.) On March 7, 2011, Plaza Home Mortgage, Inc. assigned the deed of

1 trust to Defendant Wells Fargo Bank, N.A. (“Wells Fargo”). (Req. for Judicial Notice, Ex.
2 C at 1.) Later that same date, Plaza Home Mortgage, Inc. recorded a notice of default and
3 election to sell based on Defendant Johnson’s deed of trust. (Req. for Judicial Notice, Ex.
4 D.)

5 The property is subject to Covenants, Conditions and Restrictions (“CC&Rs”)
6 recorded in 2000 by The Parks Homeowners Association (“The Parks”). (Def. Wells Fargo
7 Bank, N.A.’s Opp’n to Pl.’s Mot. for Summ. J. (Doc. #48) [“Opp’n”], Ex. B.) In August of
8 2011, The Parks recorded a notice of delinquent assessment lien with respect to Johnson’s
9 property, and in October of 2011, The Parks initiated an HOA foreclosure sale of the
10 property pursuant to Nevada Revised Statutes § 116.3116 et seq. to recover unpaid HOA
11 assessments. (Req. for Judicial Notice, Ex. F, Ex. G.) The sale was conducted on May 7,
12 2012, at which Horse Pointe Avenue Trust purchased the property for \$4,145.00. (MSJ, Ex.
13 2.) The HOA foreclosure deed was recorded with the Clark County Recorder on May 29,
14 2012. (Id.) The HOA foreclosure deed states that the foreclosure sale was conducted in
15 compliance with all applicable notice requirements. (Id. at 1.) The same date, a grant deed
16 from Horse Pointe Avenue Trust to Plaintiff Bourne Valley Court Trust (“Bourne Valley”)
17 was recorded with the Clark County Recorder. (MSJ, Ex. 1.) According to Wells Fargo, at
18 the time of the HOA foreclosure sale, the property’s assessed value was \$90,543.00.
19 (Opp’n, Ex. A.)

20 Bourne Valley brought suit in Nevada state court on January 16, 2013, asserting
21 claims for quiet title and declaratory relief against Defendants. (Pet. for Removal (Doc.
22 #1), Ex. A at 5-8, Ex. D at 4-6.) According to Bourne Valley, the foreclosure deed
23 extinguished Wells Fargo’s deed of trust and vested clear title in Bourne Valley, leaving
24 Wells Fargo nothing to foreclose. (Id.) Defendant MTC Financial Inc. removed the action
25 to this Court on April 17, 2013. (Pet. for Removal.)

26 ///

1 Bourne Valley now moves for summary judgment on its claims, arguing Nevada
2 Revised Statutes § 116.3116 and SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334
3 P.3d 408 (Nev. 2014), provide an HOA with a lien for nine months' worth of unpaid HOA
4 assessments that is superior to the first deed of trust, commonly referred to as the "super
5 priority lien." Bourne Valley further argues that SFR Investments clarifies that under
6 § 116.3116, foreclosure of an HOA super priority lien extinguishes all junior liens,
7 including a first deed of trust. Bourne Valley therefore contends that Wells Fargo's first
8 deed of trust was extinguished by the HOA foreclosure sale and that title to the property
9 should be quieted in Bourne Valley's name.

10 Wells Fargo responds that Bourne Valley is not entitled to summary judgment
11 because it does not provide evidence indicating that the HOA sale complied with the notice
12 requirements of Nevada Revised Statutes Chapter 116. Wells Fargo further argues that the
13 HOA foreclosure sale was commercially unreasonable and therefore was void. Wells Fargo
14 also argues Bourne Valley is not a bona fide purchaser because it purchased the property
15 with knowledge of the previously-recorded CC&Rs, which contain a mortgage protection
16 clause stating that a lender's deed of trust cannot be extinguished by an HOA foreclosure
17 sale to satisfy a lien for delinquent assessments. Finally, Wells Fargo argues that because
18 Bourne Valley does not provide evidence the HOA complied with all statutory notice
19 requirements, Bourne Valley has not demonstrated that constitutional due process
20 requirements were met.

21 Bourne Valley replies that the recitals in the trustee's deed upon sale stating there
22 was compliance with all statutory notice requirements are conclusive proof that the HOA
23 complied with the notice requirements. Bourne Valley further argues that Wells Fargo does
24 not provide any evidence indicating it did not receive the required statutory notices.
25 Regarding Wells Fargo's argument that the HOA foreclosure sale was commercially
26 unreasonable, Bourne Valley replies that Chapter 116 does not require an HOA foreclosure

1 sale to be commercially reasonable. Bourne Valley further argues that the inadequacy of
2 the price is not sufficient to void the HOA foreclosure sale when there is no evidence of
3 fraud, procedural defects, or other irregularities in the conduct of the sale. As for Wells
4 Fargo's mortgage protection clause argument, Bourne Valley replies that the clause is
5 unenforceable to the extent that it attempts to limit the super priority lien given to the HOA
6 under § 116.3116. Finally, regarding Wells Fargo's due process argument, Bourne Valley
7 replies that no state action is involved in a nonjudicial HOA foreclosure sale. Bourne
8 Valley further argues the trustee's deed reciting compliance with all applicable notice
9 requirements is conclusive proof that statutory notice requirements were met, and hence
10 Wells Fargo received all process that was due.

11 **II. DISCUSSION**

12 Summary judgment is appropriate if the pleadings, the discovery and disclosure
13 materials on file, and any affidavits "show[] that there is no genuine dispute as to any
14 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
15 56(a), (c). A fact is "material" if it might affect the outcome of a suit, as determined by the
16 governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An
17 issue is "genuine" if sufficient evidence exists such that a reasonable fact finder could find
18 for the non-moving party. Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th
19 Cir. 2002). Initially, the moving party bears the burden of proving there is no genuine issue
20 of material fact. Leisek v. Brightwood Corp., 278 F.3d 895, 898 (9th Cir. 2002). After the
21 moving party meets its burden, the burden shifts to the non-moving party to produce
22 evidence that a genuine issue of material fact remains for trial. Id. The Court views all
23 evidence in the light most favorable to the non-moving party. Id.

24 **A. Notice**

25 Wells Fargo argues Bourne Valley is not entitled to judgment on its quiet title
26 claim because Bourne Valley does not provide evidence indicating that the HOA sale

1 complied with the notice requirements of Chapter 116. Bourne Valley contends that the
 2 recitals in the trustee's deed upon sale stating there was compliance with all statutory notice
 3 requirements are conclusive proof that the HOA complied with the notice requirements.
 4 Bourne Valley further argues that Wells Fargo does not provide any evidence indicating it
 5 did not receive the required statutory notices.

6 The Nevada statutes and case law applicable in this case are clear and conclusive.
 7 Section 116.3116(2) sets forth the priority of the HOA lien with respect to other liens on the
 8 property. Pursuant to § 116.3116(2), the HOA lien is prior to all other liens on the property
 9 except:

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

14 Although § 116.3116(2)(b) makes a first deed of trust superior to an HOA lien, the
 15 last paragraph of § 116.3116(2) gives what is commonly referred to as "super priority"
 16 status to a portion of the HOA's lien which is superior to the first deed of trust:

17 The lien is also prior to all security interests described in paragraph (b) to the
 18 extent of any charges incurred by the association on a unit pursuant to NRS
 116.310312 and to the extent of the assessments for common expenses based
 19 on the periodic budget adopted by the association pursuant to NRS 116.3115
 20 which would have become due in the absence of acceleration during the 9
 months immediately preceding institution of an action to enforce the lien,
 21 unless federal regulations adopted by the Federal Home Loan Mortgage
 Corporation or the Federal National Mortgage Association require a shorter
 period of priority for the lien. . . . This subsection does not affect the priority
 22 of mechanics' or materialmen's liens, or the priority of liens for other
 assessments made by the association.

23 Id. § 116.3116(2).

24 The Nevada Supreme Court recently held in SFR Investments that foreclosure of a
 25 super priority lien established pursuant to § 116.3116(2) extinguishes all junior interests,
 26 including a first deed of trust on the property. 334 P.3d at 410-14; see also 7912 Limbwood

1 Court Trust v. Wells Fargo Bank, N.A., 979 F. Supp. 2d 1142, 1149 (D. Nev. 2013). SFR
 2 Investments resolves a previous division of authority among the Nevada state trial courts
 3 and decisions from the United States District Court for the District of Nevada on the
 4 question. 334 P.3d at 412.

5 To conduct a foreclosure on this type of lien, an HOA must comply with certain
 6 notice requirements at certain time intervals, including mailing a notice of delinquent
 7 assessment, recording and mailing a notice of default and election to sell, and providing
 8 notice of the time and place of the sale. Nev. Rev. Stat. §§ 116.31162-116.311635.
 9 Contrary to the argument advanced by Wells Fargo, a deed which recites that there was a
 10 default, that the notice of delinquent assessment was mailed, that the notice of default and
 11 election to sell was recorded, that 90 days have lapsed between notice of default and sale,
 12 and that notice of the sale was given, is “conclusive proof of the matters recited.” Id.
 13 § 116.31166(1). A deed containing these recitals also “is conclusive against the unit’s
 14 former owner, his or her heirs and assigns, and all other persons.” Id. § 116.31166(2).

15 Here, the foreclosure deed recites as follows:

16 Default occurred as set forth in the Notice of Default and Election to Sell
 17 which was recorded October 12, 2011 as instrument/document number
 201110120001641 in the office of the Recorder of said County. After the
 18 expiration of ninety (90) days from the recording and mailing of the copies of
 the Notice of Default and Election to Sell, a Notice of Trustee’s Sale was
 19 recorded on April 09, 2012 as instrument/document number
 201204090000179 in the Office of the Recorder of said County and the
 Association claimant, The Parks Homeowners Association, demanded that
 20 such sale be made.

21 All requirements of law regarding the recording and mailing of copies of the
 22 Notice of Delinquent Assessment, Notice of Default and Election to Sell, and
 the recording, mailing, posting and publication of copies of the Notice of
 Trustee’s Sale have been complied with.
 23

24 (MSJ, Ex. 2 at 1.) Given that the foreclosure deed recites there was a default, the proper
 25 notices were given, the appropriate amount of time has lapsed between notice of default and
 26 sale, and notice of the sale was given, under § 116.31166(1), the foreclosure deed

1 constitutes “conclusive proof” that the required statutory notices were provided. Bourne
2 Valley therefore has met its burden of showing the required statutory notices were provided
3 to Wells Fargo.

4 Once Bourne Valley met its burden of showing the required statutory notices were
5 provided, Wells Fargo was required to come forward with evidence that a genuine issue of
6 fact remains for trial as to notice. See Leisek, 278 F.3d at 898. Wells Fargo does not
7 provide any evidence or even assert that it did not receive the required statutory notices.
8 Nor does Wells Fargo point to any other procedural irregularities related to the HOA
9 foreclosure sale that would explain Wells Fargo’s failure to pay the HOA lien to avert its
10 loss of security. See SFR Investments, 334 P.3d at 414; Limbwood, 979 F. Supp. 2d at
11 1149 (“If junior lienholders want to avoid this result, they readily can preserve their security
12 interests by buying out the senior lienholder’s interest.”). Therefore, no issue of fact
13 remains as to whether the required statutory notices were provided. Given that Wells
14 Fargo’s due process arguments are premised on Bourne Valley not providing evidence that
15 the statutory notice requirements were met, the Court likewise finds that no genuine issue of
16 material fact remains as to whether Wells Fargo’s due process rights were violated.

17 **B. HOA Foreclosure Sale**

18 Wells Fargo next argues that even if the HOA foreclosure sale extinguished its first
19 deed of trust on the property, the HOA foreclosure sale was “commercially unreasonable”
20 and therefore was void. (Opp’n at 5-7.) Specifically, Wells Fargo argues the HOA
21 foreclosure sale was not conducted in good faith because “the HOA made no effort to
22 obtain the best price or to protect either Johnson or Wells Fargo” by selling the property for
23 \$4,145.00 when the assessed value of the property was \$90,543.00. (Id. at 7.) Bourne
24 Valley replies that Chapter 116 does not require an HOA foreclosure sale to be
25 commercially reasonable. Bourne Valley further argues that the inadequacy of the price is
26 not sufficient to void the HOA foreclosure sale when there is no evidence of fraud,

1 procedural defects, or other irregularities in the conduct of the sale.

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

18 Moreover, Wells Fargo does not point to any evidence or legal authority indicating
19 the Court must void an HOA foreclosure sale because the purchaser bid only a fraction of
20 the property's assessed value. Wells Fargo does not point to evidence of fraud or any other
21 procedural defects or other irregularities in the conduct of the sale that would require the
22 Court to void the sale, or any evidence indicating the HOA acted in bad faith by selling the
23 property for an amount that would satisfy the unpaid assessments. Nor does Wells Fargo
24 point to evidence or legal authority indicating that beyond selling the property to the highest
25 bidder, the HOA was responsible for protecting Wells Fargo and Johnson's interests in
26 addition to the homeowners' interests. See Carmen v. S.F. Unified Sch. Dist., 237 F.3d

1 1026, 1028–31 (9th Cir. 2001) (stating that a court need not “comb the record” looking for a
 2 genuine issue of material fact if the party has not brought the evidence to the court’s
 3 attention) (quotation omitted)). Thus, no genuine issue of material fact remains as to
 4 whether the HOA foreclosure sale was commercially unreasonable. Under the specific
 5 facts presented here, it was not.

6 C. CC&Rs

7 Wells Fargo argues Bourne Valley is not a bona fide purchaser because it purchased
 8 the property with knowledge of the previously-recorded CC&Rs, which contain a mortgage
 9 protection clause. According to Wells Fargo, under the mortgage protection clause, its deed
 10 of trust cannot be extinguished by an HOA foreclosure sale to satisfy a lien for delinquent
 11 assessments. Bourne Valley replies that the clause is unenforceable to the extent that it
 12 attempts to limit the super priority lien given to the HOA under § 116.3116. The mortgage
 13 savings clause states as follows:

14 [N]o lien created under this Article V [titled “Mortgage Protection”] or under
 15 any other Article of this Declaration, nor any lien arising by reason of any
 16 breach of this Declaration, nor the enforcement of any provision of this
 17 Declaration, shall defeat or render invalid the rights of the beneficiary under
 any Recorded Mortgage of first and senior priority now or hereafter upon a
 Lot, made in good faith and for value, perfected before the date on which the
 Assessment sought to be enforced became delinquent.

18 (Opp’n, Ex. B at § 5.08.) The preceding section, titled “Unpaid Assessments,” provides
 19 that liens for unpaid assessments “shall be created in accordance with NRS § 116.3116 and
 20 shall be foreclosed on in the manner provided for in NRS § 116.31162-116.31168 as is now
 21 or hereafter may be in effect.” (*Id.* at § 5.07.)

22 The Nevada Supreme Court held in SFR Investments that a mortgage protection
 23 clause does not affect the application of § 116.3116(2) in an HOA super priority lien
 24 foreclosure case. 334 P.3d at 419. Specifically, “Chapter 116’s ‘provisions may not be
 25 varied by agreement, and rights conferred by it may not be waived . . . [e]xcept as expressly
 26 provided in’ Chapter 116.” *Id.* (quoting Nev. Rev. Stat. § 116.1104) (emphasis omitted).

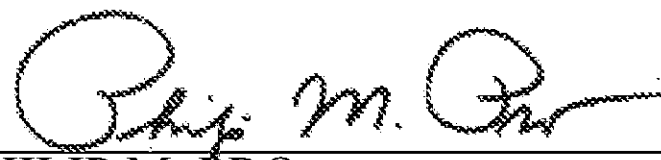
1 “Nothing in [NRS] 116.3116 expressly provides for a waiver of the HOA’s right to a
2 priority position for the HOA’s super priority lien.” Id. (quoting Limbwood, 979 F. Supp.
3 2d at 1153).

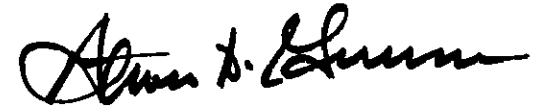
4 Given that Chapter 116’s requirements cannot be varied by agreement, the mortgage
5 protection clause in the CC&Rs does not preserve Wells Fargo’s security interest in the
6 property. Moreover, by the CC&R’s plain language, in § 5.07 The Parks preserved its
7 statutory super priority lien rights by reference to § 116.3116, which is the statutory section
8 setting forth the relative priority of the HOA’s super priority and the junior liens in relation
9 to a first deed of trust. Thus, no genuine issue of fact remains as to whether the mortgage
10 protection clause affects the application of § 116.3116 in this case. The Court therefore
11 will grant Bourne Valley’s Motion for Summary Judgment.

12 **III. CONCLUSION**

13 IT IS THEREFORE ORDERED that Plaintiff Bourne Valley Court Trust’s Motion
14 for Summary Judgment (Doc. #45) is GRANTED.

15
16 DATED: January 23, 2015

17
18 
19 PHILIP M. PRO
United States District Judge



CLERK OF THE COURT

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LaSalle Bank, N.A., as Trustee to the holders of the
Zuni Mortgage Loan Trust 2006-OA1, Mortgage
Loan Pass-Through Certificates Series 2006-OA1*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

5316 CLOVER BLOSSOM CT TRUST,
Plaintiff,

v.

U.S. BANK, N.A., SUCCESSOR TRUSTEE TO
BANK OF AMERICA, N.A. SUCCEsor BY
MERGER TO LASALLE BANK, N.A., AS
TRUSTEE TO THE HOLDERS OF THE ZUNI
MORTGAGE LOAN TRUST 2006-OA1,
MORTGAGE LOAN PASS-THORUGH
CERTIFICATES SERIES 2006-OA1

Defendants.

Case No.: A-14-704412-C
Dept. : XXIV

**U.S. BANK, N.A.'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND COUNTERMOTION
FOR SUMMARY JUDGMENT BASED
ON THE DUE PROCESS CLAUSE AND
TENDER, OR ALTERNATIVELY, FOR
RULE 56(F) RELIEF**

Date of Hearing: 08-06-15
Time of Hearing: 9:00 AM

Defendant U.S. Bank, N.A., solely as Successor Trustee to Bank of America, N.A., successor by merger to LaSalle Bank, N.A., as Trustee to the holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**U.S. Bank**), opposes Plaintiff's Motion for Summary Judgment and moves for summary judgment based on the Due Process Clause and Tender. This Opposition and Countermotion is made and based upon the Memorandum of Points and Authorities attached hereto, all exhibits attached hereto, and such oral argument as may be entertained by the Court at the time and place of the hearing of this matter.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 U.S. Bank is entitled to summary judgment because NRS 116, *et seq.*, the HOA foreclosure
4 statute, is facially unconstitutional because it does not mandate that mortgagees receive actual notice
5 of HOA foreclosure sales. The Due Process Clause requires, under *all* circumstances, that a statute
6 authorizing extinguishment of a lien in a foreclosure sale also *mandate* actual notice to those
7 lienholders. Because no provision of NRS 116 mandates actual notice to mortgagees prior to an
8 HOA's foreclosure sale, the statute is facially unconstitutional. Independently, NRS 116 is
9 unconstitutional as applied to the circumstances of this case, because U.S. Bank was not provided
10 any notice of the amount of the super-priority lien that would extinguish its constitutionally-
11 protected property interest when foreclosed. Because the HOA's foreclosure sale was conducted
12 pursuant to a statute which is unconstitutional—both facially and as applied—it is invalid, and
13 summary judgment should be granted in favor of U.S. Bank.

14 Even if NRS 116 complied with the Due Process Clause, U.S. Bank would still be entitled to
15 summary judgment because the loan servicer tendered payment of the super-priority amount prior to
16 the foreclosure sale, thereby extinguishing the super-priority portion of the HOA's lien.
17 Consequently, to the extent Plaintiff received any interest in the subject property at the HOA's
18 foreclosure sale, that interest is subordinate to U.S. Bank's senior deed of trust.

19 Even if this Court does not grant summary judgment in favor of U.S. Bank, Plaintiff's
20 Motion for Summary Judgment should be denied. Instead of offering evidence showing that the sale
21 of the Property for a 94% discount was commercially reasonable, Plaintiff claims that, under *SFR*
22 *Investments Pool 1, LLC v. U.S. Bank, N.A.*, every HOA foreclosure sale conducted pursuant to NRS
23 116 is commercially reasonable, no matter how diminutive the price. Plaintiff ignores the fact that
24 *SFR Investments* was a case decided at the pleadings stage on a motion to dismiss, and the Court
25 remanded that case for further fact-finding regarding the commercial reasonableness of the sale.
26 Because issues of material fact remain regarding the commercial reasonableness of the foreclosure
27 sale, Plaintiff's Motion for Summary Judgment should be denied.
28

1 In the alternative, U.S. Bank is entitled to a Rule 56(f) continuance, as additional discovery is
2 necessary to develop facts integral to U.S. Bank's defenses. If this Court is not inclined to grant U.S.
3 Bank's Countermotion for Summary Judgment on the pure legal issue of whether NRS 116 is
4 facially invalid under the Due Process Clause, or because the HOA's super-priority lien was
5 extinguished by the pre-foreclosure, super-priority tender, discovery is necessary to develop facts
6 regarding (1) how the HOA Trustee calculated the super-priority amount of the HOA's lien before
7 rejecting Bank of America's tender as insufficient, (2) whether the HOA complied with all
8 requirements of NRS 116, and (3) whether the sale of the Property for a 94% discount was
9 commercially reasonable. To the extent the Court is not inclined to grant U.S. Bank's Countermotion
10 for Summary Judgment or deny Plaintiff's Motion for Summary Judgment for the reasons set forth
11 below, U.S. Bank is entitled to a Rule 56(f) continuance.

12 **II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

13 **A. The Johnsons borrow \$147,456.00 to purchase a home.**

14 In June 2004, Dennis Johnson and Geraldine Johnson (collectively **Borrowers**) purchased
15 real property located at 5316 Clover Blossom Court, North Las Vegas, Nevada 89031 (the
16 **Property**). To finance this purchase, Borrower took out a loan in the amount of \$147,456.00, which
17 was secured by a deed of trust (**Deed of Trust**) in favor of Countrywide Home Loans, Inc. **Exhibit**
18 **A**. This Deed of Trust was assigned to U.S. Bank via an Assignment of Deed of Trust, which was
19 recorded on June 20, 2011. **Exhibit B**.

20 **B. The HOA forecloses on its \$5,021.00 lien.**

21 Alessi & Koenig, LLC (**HOA Trustee**), acting on behalf of Country Gardens Owners'
22 Association (**HOA**), recorded two Notices of Delinquent Assessment Liens on February 22, 2012, at
23 9:17 AM, both ostensibly encumbering the Property. One of the Notices stated the Borrowers owed
24 \$1,095.50 to the HOA. **Exhibit C**. The other Notice stated the Borrowers owed \$1,150.50 to the
25 HOA. **Exhibit D**. On April 20, 2012, the HOA Trustee recorded a Notice of Default and Election to
26 Sell Under Homeowners Association Lien, particularly the Lien attached as Exhibit C, stating the
27 total amount due to the HOA was \$3,396.00. **Exhibit E**. The HOA Trustee then recorded a Notice of
28 Trustee's Sale on October 31, 2012, stating the total amount due to the HOA was \$4,039.00, and

1 setting the sale for November 28, 2012. **Exhibit F**. No sale occurred on that date. Rather, on January
2 26, 2013, the HOA non-judicially foreclosed on the Property. **Exhibit G**. According to the Trustee's
3 Deed Upon Sale, the HOA sold the Property to Plaintiff for \$8,200.00. *Id.*

4 **C. Bank of America's pre-foreclosure, super-priority tender.**

5 Prior to the foreclosure sale, Bank of America, N.A.,¹ through counsel at Miles Bauer
6 Bergstrom & Winters LLP (**Miles Bauer**), contacted the HOA Trustee and requested a payoff ledger
7 detailing the specific super-priority amount of the HOA's lien on the Property. **Exhibit H-1**. Rather
8 than providing a payoff ledger with the exact super-priority amount, the HOA Trustee provided a
9 payoff demand in the amount of \$4,186.00. **Ex. H-2**. However, the ledger showed the HOA's
10 monthly assessments to be \$55.00, meaning the total amount of the last nine months of delinquent
11 assessments was \$495.00. **Exhibit H-2**. On December 6, 2012, Bank of America tendered
12 \$1,494.50—which included \$999.50 in “reasonable collection costs” in addition to the \$495.00 for
13 delinquent assessments—to the HOA Trustee to satisfy the super-priority lien. **Exhibit H-3**. The
14 HOA Trustee refused to accept this tender, and proceeded to foreclose on the Property. **Exhibits H-**
15 **4.**

16 **D. Procedural History**

17 Plaintiff filed its Complaint on July 25, 2014. U.S. Bank answered the Complaint on
18 September 25, 2014. On April 23, 2015, Plaintiff filed its Amended Complaint. Plaintiff filed the
19 instant motion for summary judgment on May 18, 2015.

20 **III. LEGAL STANDARDS**

21 Summary judgment is appropriate only if, after viewing the record in the light most favorable
22 to the nonmoving party, “no genuine issue of material fact exists, and the moving party is entitled to
23 judgment as a matter of law.” NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d
24 1026, 1030 (2005). “[T]he nonmoving party is entitled to have the evidence and all reasonable
25 inferences accepted as true.” *Scialabba v. Brandise Const. Co., Inc.*, 112 Nev. 965, 968, 921 P.2d
26 928, 930 (1996). The moving party “bears the initial burden of production to show the absence of a
27

28 ¹ At the time, Bank of America serviced the loan secured by U.S. Bank's Deed of Trust.

1 genuine issue of material fact.” *Cuzze v. University and Community College System of Nevada*, 123
2 Nev. 598, 602, 172 P.3d 131, 134 (2007).

3 Factual disputes are genuine “if the evidence is such that a rational trier of fact could return a
4 verdict in favor of the nonmoving party.” *Wood*, 121 Nev. at 731. If the moving party bears the
5 burden of persuasion at trial, “that party must present evidence that would entitle it to a judgment as
6 a matter of law in the absence of contrary evidence.” *Francis v. Wynn Las Vegas, LLC*, 262 P.3d
7 705, 714 (2011). Summary judgment is particularly appropriate where issues of law are controlling
8 and dispositive of the case. *American Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P.2d 274, 277
9 (1979).

10 IV. ARGUMENT

11 A. U.S. Bank is entitled to summary judgment because the HOA Lien Statute is 12 facially unconstitutional, as it does not guarantee that mortgagees receive notice 13 and an opportunity to be heard.

14 On its face, the HOA Lien Statute is unconstitutional. As an irreducible minimum, courts
15 have universally required that statutes that provide for extinguishment of junior liens in foreclosure
16 also provide for mandatory notice to the junior lienholders. The HOA Lien Statute does not provide
17 for mandatory notice. Rather, the Nevada Legislature has provided only a “request-notice” or “opt-
18 in” provision; which requires notice *only* if the junior lienholder—here the holder of a first deed of
19 trust—requests notice in advance. Such opt-in provisions have met with universal disapprobation in
20 every federal and state court to have considered the question. The reason is clear: where the state
21 will extinguish such a significant interest in real property, it must also mandate that the holder of the
22 lien to be extinguished have notice and some opportunity to remediate. By not mandating such
23 notice, the HOA Lien Statute is unconstitutional on its face. In this case, that means the foreclosure
24 by the HOA and the extinguishment of U.S. Bank’s Deed of Trust are both invalid and U.S. Bank is
entitled to summary judgment.

25 The Due Process Clause of the U.S. Constitution requires that, “at a minimum, [the]
26 deprivation of life, liberty, or property by adjudication be preceded by notice and an opportunity for
27 hearing appropriate to the nature of the case.” *Mullane v. Central Hanover Bank & Trust Co.*, 339
28

1 U.S. 306, 314 (1950) (emphasis added). An “elementary and fundamental requirement of due
2 process ... is notice reasonably calculated, *under all circumstances*, to apprise interested parties of
3 the pendency of the action and afford them an opportunity to present their objections.” *Tulsa Prof’l*
4 *Collection Services, Inc. v. Pope*, 458 U.S. 478, 484 (1988) (quoting *Mullane*, 339 U.S. at 314)
5 (emphasis added). Put more simply, state action may not extinguish an interest in real property
6 unless the holder of that interest is afforded notice of that action.

7 Foreclosures pursuant to the HOA Lien Statute constitute state action, as the Nevada
8 Supreme Court has held that a private party’s deprivation of another private party’s “significant
9 property interest” pursuant to a Nevada statute entitles the property owner to “federal and state due
10 process.” *J.D. Construction v. IBEX Int’l Group*, 240 P. 3d 1033, 1040 (Nev. 2010). In *J.D.*
11 *Construction*, one private party recorded a mechanic’s lien on the property of another private party.
12 *Id.* at 1035. No state actor was involved in placing the lien, yet the Nevada Supreme Court held that
13 “[a] mechanic’s lien is a ‘taking’ in that the property owner is deprived of a significant property
14 interest, which entitles the property owner to federal and state due process.” *Id.* at 1040 (citing
15 *Connolly Dev., Inc. v. Superior Court*, 553 P.2d 637, 645 (Cal. 1976) (holding that private party’s
16 imposition of a “stop notice” lien involved “significant state action” because the imposition is
17 “encouraged, indeed only made possible, by explicit state authorization.”).

18 *J.D. Construction* provides sufficient binding authority that the state-action requirement is
19 met here. If more evidence were needed, however, the logic and reasoning in *Connolly Development,*
20 *Inc. v. Superior Court*, extensively relied upon in *J.D. Construction*, see 240 P.3d at 1040–41 (citing
21 *Connolly* at least five times), applies here. In *Connolly*, the California Supreme Court held that there
22 was “no question” that the state-law “stop notice” lien at issue—which could be enforced by a purely
23 private procedure “without filing or recordation before any state official”—“involve[d] significant
24 state action” and triggered due-process protections. *Id.* at 815. The *Connolly* Court expressly rejected
25 arguments that the lien did not involve state action, noting that the private enforcement procedure
26 “‘is not just action against a backdrop of an amorphous state policy, but is instead action encouraged,
27 indeed only made possible, by explicit state authorization.’” *Id.* at 815 & n.14 (quoting *Klim v.*
28 *Jones*, 315 F. Supp. 109, 114 (N.D. Cal. 1970)).

1 Because foreclosures authorized solely by the HOA Lien Statute constitute state action, the
2 HOA Lien Statute must satisfy the Due Process Clause's notice requirements as set forth in *Mullane*.
3 The United States Supreme Court has applied *Mullane*'s principles to the deprivation of a
4 mortgagee's security interests in property that is subject to potential extinguishment in foreclosure,
5 such as the first deed of trust at issue in this case. *Mennonite Bd. of Missions v. Adams*, 462 U.S.
6 791, 800 (1983). In *Mennonite*, an Indiana county sold mortgaged real property as a result of the
7 borrower's delinquent taxes. *Id.* at 793. The county complied with Indiana's governing notice
8 statute, but that statute required only constructive notice to the mortgagee and actual notice to the
9 borrower. *Id.* at 794. The Indiana courts upheld the tax sale statute against a constitutional due
10 process challenge. *Id.* at 795. But the U.S. Supreme Court reversed the decision upholding the
11 statute, holding that because the "sale immediately and drastically diminishes the value of th[e]
12 security interest" and "may result in the complete nullification of the mortgagee's interest" the
13 mortgagee must receive *actual* notice. *Id.* at 798, 800. The Court held that the Due Process Clause
14 required that mortgagees receive either personal service or mailed notice of the foreclosure sale that
15 could extinguish their property interest.

16 Nevada's HOA Lien Statute does not require that mortgagees be provided with actual notice
17 of the HOA foreclosure sales that can extinguish their property interest. Indeed, the statute is not
18 only silent on the subject of mandatory notice, but it effectively disclaims that notice is required in
19 all instances. In two key provisions, the statute explicitly and unambiguously disclaims that notice is
20 required to all mortgagees; rather, mortgagees only receive notice if they have previously requested
21 notice from the HOA. In Section 116.31163, the statute provides that a notice of default and election
22 to sell need only be provided to a mortgagee who "has requested notice" or "has notified the
23 association" more than thirty days before the recordation of the notice of default of the existence of a
24 security interest. NRS 116.31163(1)–(2). Section 116.31165 similarly limited mortgagee notice of
25 sale to those mortgagees who have requested notice under Section 116.31163, or those who have
26 "notified the association." NRS 116.31165(1)(b)(1)–(2). A third provision concerning notice of
27 delinquent assessments does not require notice to lenders at all. NRS 116.31162.

1 As a consequence, the HOA Lien Statute allows for the total extinguishment of the first deed
2 of trust without any notice to the mortgagee holding that deed. If a mortgagee does not request
3 notice—or, put differently, fails to opt in to its right to due process—Nevada law permits the
4 extinguishment of a first deed of trust without notice. Such a result is in direct contravention of
5 *Mennonite*, which held that *actual* notice is required in *all circumstances* where a significant
6 property interest was subject to extinguishment, and rejected the argument that the necessity of
7 actual personal service or mailed notice may vary based on the ability of the mortgagee to protect its
8 own interests. “[A] party’s ability to take steps to safeguard its interests does not relieve the State of
9 its constitutional obligation.” *Mennonite*, 462 U.S. at 799.

10 While *Mennonite* did not address an opt-in or request-notice provision, a broad consensus has
11 emerged in state and federal courts that such provisions are unconstitutional under *Mennonite*. The
12 Fifth Circuit, for instance, considered a Louisiana statute that required notice of a foreclosure sale
13 only to those persons who had filed a request for such notice in the mortgage records. *Small Engine*
14 *Shop, Inc. v. Cascio*, 878 F.2d 883, 885–86 (5th Cir. 1989). The Fifth Circuit applied *Mullane* and
15 *Mennonite*, and held that the statute “as interpreted by the district court, cannot be squared with
16 *Mennonite*’s allocation of notice burdens.” *Id.* at 890.

17 Perhaps more significantly, opt-in provisions have been universally condemned by a
18 consensus of state-court decisions. *See, e.g., Jefferson Tp. v. Block 447A*, 548 A.2d 521, 524 (N.J.
19 1988) (“We conclude that a person’s entitlement to the notice required by due process cannot be
20 conditioned on the requirement that he request it.”); *Wylie v. Patton*, 720 P.2d 649, 655 (Idaho 1986)
21 (holding opt-in scheme unconstitutional because the Constitution requires notice “both to
22 mortgagees of record who have requested such a notice and to mortgagees of record who have not
23 requested such a notice”); *Reeder & Assocs. v. Locker*, 542 N.E.2d 1371, 1373 (Ind. Ct. App. 1989)
24 (“[A]fter *Mennonite* a mortgagee is required to receive actual notice of a tax sale unless the
25 mortgagee’s address is not reasonably identifiable.”); *City of Boston v. James*, 530 N.E.2d 1254
26 (Mass. App. Ct. 1988) (holding that a “shifting of responsibility” from the foreclosing party to the
27 mortgagee is unconstitutional “even when the persons deprived of notice are sophisticated and
28 knowledgeable”); *Seattle First National Bank v. Umatilla County*, 713 P.2d 33 (Or. App. 1986)

(holding that statute permitting notice only to mortgagee who makes request unconstitutional as violating affirmative duty to provide notice); *In re Foreclosure of Tax Liens*, 103 A.D.2d 636, 640 (N.Y. App. Div. 1984) (“The Erie County statutes create a real danger that a mortgagee will be forever divested of his property without ever learning of the impending foreclosure.”); *United States v. Malinka*, 685 P.2d 405, 409 (Okla. Civ. App. 1984) (“*Mennonite* clearly places the onus on the State to provide notice notwithstanding that a mortgagee might take steps to protect its own interest.”).

“Constitutional due process protection does not exist only for those who follow the notice statute but encompasses all interests that may be affected by state action.” *Island Fin., Inc. v. Ballman*, 607 A.2d 76, 81 (Md. Ct. Spec. App. 1992). The notice provision here renders the HOA Lien Statute unconstitutional, as Nevada trial courts have previously found. *See, e.g., Octavio Cano-Martinez v. HSBC Bank USA, N.A.*, Dist. Ct. Case No. A-692027-C (EJDC) (May 7, 2015), Summary Judgment Order, p. 4 (“Because the Statute does not does not require the foreclosing party to take reasonable steps to ensure that actual notice is provided to interested parties who are reasonably ascertainable (unless the interested party first requests notice) it does not comport with long standing principles of constitutional due process.”); *Paradise Harbor Place Trust v. Deutsche Bank National Trust Company*, Dist. Ct. Case No. A-687846-C (EJDC) (Jan. 6, 2014), Dismissal Order, p. 8 (R.A. II, at 302) (holding that HOA Lien Statute’s provisions were facially invalid because the statute “expressly does not require notice of the HOA lien sale to be given to all lienholders before their property interests are completely erased by operation of law”).

The Nevada Legislature drafted a notice scheme that does not provide for notice of delinquency to mortgagees and then explicitly disclaims the duty to provide notices of default or sale to mortgagees who do not file a prior request for such notice. The case law cited in the two preceding paragraphs provides that such a scheme is plainly unconstitutional. The fact that the HOA Lien Statute does not require notice to the mortgagee is sufficient, standing on its own, to sustain a facial attack on the statute—requiring invalidation of both the statute and the foreclosure at issue in this case. *See, e.g., Garcia-Rubiera v. Calderon*, 570 F.3d 443, 456 (1st Cir. 2009) (sustaining facial attack on notice provisions and holding that “actual notice cannot defeat [facial] due process claim”).

1 As to mortgagees, the HOA Lien Statute's notice provisions are constitutionally flawed, rendering
2 the statute invalid on its face. Accordingly, summary judgment should be granted in favor of U.S.
3 Bank because the foreclosure sale is unconstitutional.

4 **B. The HOA Lien Statute is unconstitutional as applied to this case because U.S.**
5 **Bank was not provided actual notice of the super-priority lien.**

6 Even if the HOA Lien Statute required that mortgagees receive actual notice of HOA
7 foreclosure sales under all circumstances, the statute is still unconstitutional as applied in this case
8 because U.S. Bank was not provided any notice of the super-priority amount of the HOA's lien.
9 "[W]hen notice is a person's due, process which is a mere gesture is not due process." *Mullane*, 339
10 U.S. at 315. To pass muster under the Due Process Clause, the required "notice must be of such
11 nature as reasonabl[e] to convey the required information," with "reference to the subject of which
12 the statute deals." *Id.* at 314.

13 The subject of the HOA Lien Statute is the super-priority lien it provides, the proper
14 foreclosure of which extinguishes a mortgagee's constitutionally-protected security interest in the
15 subject property. While granting super-priority to an HOA lien is a "significant departure from
16 existing practice," the HOA Lien Statute's drafters predicted that the effect on secured lenders would
17 be minimal, as the "secured lenders [would] most likely pay the [nine] months' assessments
18 demanded by the association rather than having the association foreclose on the unit." 1982 UCIOA
19 § 3116 cmt. 1 (cited with approval in *SFR Investments*, 334 P.3d at 414). UCIOA's drafters
20 presumed that HOAs and their collection agents would willingly provide secured lenders with the
21 amount of the super-priority lien.

22 The Nevada Supreme Court made the same assumption when evaluating the mortgagee's due
23 process challenge in *SFR Investments*. 334 P.3d at 418. In that case, the mortgagee argued that due
24 process required specific notice "indicating the amount of the superpriority piece of the lien[.]" *Id.*
25 Importantly, this case was decided on a motion to dismiss, which did not allow the Nevada Supreme
26 Court to consider any facts "not apparent from the face of the complaint." *Id.* at 418 n.6. In this
27 posture, the Court rejected the mortgagee's due process challenge, stating that "nothing appears to
28 have stopped [the lender] from determining the precise superpriority amount" prior to the sale, and

1 stating that “[i]t is well established that due process is not offended by requiring a person with
2 actual, timely knowledge of an event that may affect a right to exercise due diligence and take
3 necessary steps to preserve that right.” *Id.* at 418 (quoting *In re Medaglia*, 52 F.3d 451, 455 (2d Cir.
4 1995). The Court did not decide whether due process is offended when a mortgagee exercises due
5 diligence by requesting “the precise superpriority amount in advance of the sale,” and the HOA
6 refuses to provide that information. *See SFR Investments*, 334 P.3d at 418.

7 Here, the HOA refused to provide U.S. Bank with the super-priority amount prior to the
8 foreclosure sale. None of the documents recorded by the HOA provide notice of the super-priority
9 portion of the HOA’s lien. *See Ex. C, Ex. D, Ex. E, and Ex. F.* Nonetheless, Bank of America, who
10 serviced the loan secured by U.S. Bank’s Deed of Trust, reached out to the HOA Trustee and
11 requested a payoff ledger detailing the precise amount of the super-priority lien prior to the
12 foreclosure sale. The HOA Trustee refused to provide the super-priority amount, instead demanding
13 that Bank of America pay off the entire HOA lien, even though the majority of the lien was
14 subordinate to U.S. Bank’s Deed of Trust. **Ex. H-2.** Unlike *SFR Investments*, where the Court relied
15 on contentions in the complaint that “nothing appeared to have stopped” the lender from determining
16 the super-priority amount, here the record is clear: the only parties with the information necessary to
17 determine the super-priority amount—the HOA and the HOA Trustee—refused to provide U.S.
18 Bank with the super-priority amount.² It is clear that U.S. Bank was never put on actual notice of the
19 amount of the lien that could extinguish its own senior Deed of Trust.

20 Holding that due process requires HOAs to identify the super-priority amount is not only
21 fundamentally fair—it also implements a policy of the Nevada Legislature. The Nevada Legislature,
22 apparently cognizant of the manipulative and evasive conduct of HOAs like the one here, now
23 requires a foreclosing HOA to identify the “amount of the association’s lien that is prior to the first
24 security interest,” *see* NRS 116.31162(1)(b)(2(I)), as amended by Senate Bill 306. The amended
25

26 ² As discussed fully in Section C below, Bank of America estimated the amount of the super-priority lien
27 based on the payoff ledger provided, and tendered an amount at least equal to the super-priority amount,
28 extinguishing the super-priority portion of the lien. To the extent Bank of America’s tender was inaccurate,
such inaccuracy resulted from the HOA and HOA Trustee’s refusal to provide Bank of America with actual
notice of the super-priority amount.

1 statute also requires the HOA to specifically explain how the holder of a first deed of trust may
2 extinguish a super-priority lien—by tendering the identified super-priority amount no later than five
3 days before the sale. *See* NRS 116.31162(1)(b)(3(II)), as amended by Senate Bill 306. If the holder
4 of the first deed of trust records with the county recorder that it has satisfied the super-priority
5 amount, "the sale may not extinguish the first security interest as to the unit." *Id.*

6 While U.S. Bank does not suggest the procedures the Legislature laid out in the recent
7 amendments are applicable today or to this case, the amendments demonstrate two key points. First,
8 the Nevada Legislature agrees it is fundamentally unfair to permit a foreclosure of a first deed of
9 trust without ever providing notice or recording with the country recorder (1) the *existence* of a
10 super-priority lien; (2) the *amount* of the super-priority lien; or (3) *how to cure* the super-priority lien
11 before the first deed of trust is extinguished. Second, the amendments demonstrate the modesty of
12 U.S. Bank's position. If the Court rules this particular foreclosure did not comport with constitutional
13 due process requirements because of the HOA's failure to identify the existence or amount of a
14 super-priority lien, that holding would apply to only those cases in which HOAs have been so
15 evasive as to avoid identifying the super-priority amount. It will also do no more than implement a
16 requirement already endorsed by the Legislature.

17 The Due Process Clause requires that a party be provided *actual* notice and an *actual*
18 opportunity to be heard prior to the deprivation of that party's property interest. *See, e.g., J.D.*
19 *Constr.*, 240 P.3d at 1040 (Nev. 2010). Providing notice that a lien exists, without specific notice
20 that a super-priority lien exists and the amount of that lien is a "mere gesture" of process. *See*
21 *Mullane*, 339 U.S. at 315 ("[W]hen notice is a person's due, process which is mere gesture is not due
22 process."). The notice provided to a mortgagee whose security interest is at risk of extinguishment
23 must be calculated to afford the mortgagee an opportunity to present its objections or, if necessary,
24 cure the delinquency. *Id.* at 314. But here, U.S. Bank was provided with no notice, much less actual
25 notice, of the amount of the super-priority lien which would extinguish the Bank's constitutionally-
26 protected property interest when foreclosed. Without notice of the super-priority amount, U.S. Bank
27 had no opportunity to protect its property interest prior to the HOA's foreclosure. As applied to the
28

1 circumstances of this case, the HOA Lien Statute operated unconstitutionally, invalidating the HOA
2 foreclosure sale. Accordingly, this Court should grant summary judgment in favor of U.S. Bank.

3 C. Bank of America's tender extinguished the super-priority portion of the HOA's
4 lien.

5 Even if the HOA Lien Statute satisfied the actual-notice requirements of the Due Process
6 Clause, U.S. Bank would still be entitled to summary judgment because Bank of America's super-
7 priority tender extinguished that portion of the HOA's lien prior to the foreclosure sale. As Plaintiff
8 freely admits, in *SFR Investments*, the Nevada Supreme Court "said not once, but twice, that ... the
9 bank could simply have paid the super priority amount to preserve its interest in the property." Mot.
10 at 14; *see SFR Investments*, 334 P.3d at 414 ("[A]s junior lienholder, [the holder of the first deed of
11 trust] could have paid off the [HOA] lien to avert loss of its security[.]"). Here, the loan servicer paid
12 the super-priority amount prior to the sale, and thus preserved the first-priority position of U.S.
13 Bank's Deed of Trust.

14 Both the drafters of the HOA Lien Statute and the Nevada agency charged with its
15 enforcement agree with Plaintiff's position—tender of the super-priority amount preserves a first
16 deed of trust holder's interest in the foreclosed property. The drafters of the Uniform Common
17 Interest Ownership Act (UCIOA), adopted by Nevada as the HOA Lien Statute, contemplated this
18 result when drafting the super-priority provision, stating that "[a]s a practical matter, secured lenders
19 will most likely pay the [nine] months assessments demanded by the association rather than having
20 the association foreclose on the unit." 1982 UCIOA § 3116 cmt. 1 (cited with approval in *SFR*
21 *Investments*, 334 P.3d at 414.).³ Further, the Nevada Real Estate Division of the Department of
22 Business and Industry (NRED), the agency charged with administering the HOA Lien Statute, has
23 explained that it is "likely that the holder of the first security interest will pay the super priority lien
24 amount to avoid foreclosure by [an HOA]." 13-01 Op. Dep't of Bus. & Indus., Real Estate Div. 18

25
26 ³ The Nevada Supreme Court cited to the official comments to UCIOA extensively when evaluating the HOA
27 Lien Statute in *SFR Investments*, 334 P.3d at 412 ("An official comment written by the drafters of a statute
28 and available to the legislature before the statute is enacted has considerable weight as an aid to statutory
construction.")

(2012) (hereinafter **NRED Letter**); *see also Folio v. Briggs*, 99 Nev. 30, 34, 656 P.2d 842, 844 (1983) (explaining that courts “are obliged to attach substantial weight to [an] agency’s interpretation” of a statute it is charged with administering). This super-priority amount is equal to the amount of assessments that “would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce the lien....” *See* NRS 116.3116(2); *accord* NRED Letter (explaining that “the total amount of the super priority lien attributable to assessments is no more than 9 months of the monthly assessments reflected in the association’s budget.”).

Here, Bank of America, who serviced the loan secured by U.S. Bank’s senior Deed of Trust at the time, tendered the super-priority amount to the HOA Trustee prior to the foreclosure sale. Shortly after the HOA Trustee recorded the Notice of Default and Election to Sell, Bank of America, through counsel at Miles Bauer, contacted the HOA Trustee and requested a payoff ledger detailing the super-priority amount of the HOA’s lien. Rather than providing a breakdown of the nine months of delinquent assessments constituting the super-priority amount, the HOA Trustee provided a payoff demand in the amount of \$4,186.00, which included late fees, interest, and collection costs that fell within the sub-priority portion of the HOA’s lien. **Ex. H-2**. However, the payoff demand showed that, during the nine months preceding the “institution of an action to enforce the lien,” namely the recording of the Notices of Delinquent Assessments Lien, the HOA’s monthly assessments were \$55.00. *Id.*

Accordingly, to satisfy the super-priority portion of the HOA’s lien, Bank of America, tendered \$1,494.50 to the HOA Trustee on December 6, 2012. **Ex. H-3**. This amount included not only the last nine months of delinquent assessments, \$495.00, but also \$999.50 for “reasonable collection costs,” which constituted the sub-priority, rather than super-priority, portion of the HOA’s lien. *Id.* By tendering the full super-priority amount prior to the foreclosure, Bank of America extinguished the super-priority portion of the HOA’s lien, thus redeeming the first-priority position of U.S. Bank’s Deed of Trust prior to the foreclosure sale.

Since the super-priority portion of the HOA’s lien was extinguished prior to the foreclosure sale, Plaintiff’s interest in the Property, if any, is subordinate to U.S. Bank’s senior Deed of Trust

1 pursuant to NRS 116.31164(3)(a). This provision provides that the purchaser at an HOA foreclosure
2 receives “a deed without warranty which conveys to the grantee *all title of the unit’s owner to the*
3 *unit.*” NRS 116.31164(3)(a) (emphasis added). Put differently, under Nevada law, the HOA lost the
4 ability to pass clear title when Bank of America’s tender extinguished the super-priority lien. This
5 point was not lost on Plaintiff, who states “that the bank could have paid the super priority amount to
6 preserve its interest in the property” prior to the foreclosure sale. Mot. at 14.

7 According to the *SFR Investments* Court, the drafters of the UCIOA, the NRED, and even
8 Plaintiff itself, tender of the super-priority amount prior to an HOA foreclosure extinguishes the
9 super-priority portion of an HOA’s lien, thus preserving the first-priority position of the respective
10 deed of trust. Because Bank of America tendered the full super-priority amount prior to the HOA’s
11 foreclosure sale in this case, the super-priority portion of the HOA’s lien was extinguished,
12 preserving the first-priority position of U.S. Bank’s Deed of Trust. Consequently, to the extent
13 Plaintiff received any interest in the Property by way of the HOA foreclosure sale, such interest is
14 junior to U.S. Bank’s senior Deed of Trust, meaning Plaintiff’s quiet title claim fails as a matter of
15 law. Accordingly, U.S. Bank’s Countermotion for Summary Judgment should be granted.

16
17 **D. Plaintiff has produced no evidence showing that the HOA’s foreclosure sale was**
18 **commercially reasonable.**

19 This Court should also deny Plaintiff’s Motion for Summary Judgment because (1) every
20 foreclosure sale conducted pursuant to the HOA Lien Statute must be commercially reasonable, and
21 (2) Plaintiff has produced no evidence showing that the HOA’s foreclosure sale of the Property at a
22 94% discount was commercially reasonable as a matter of law.

23 **1. HOA foreclosure sales must be commercially reasonable.**

24 While the HOA Lien Statute provides homeowners associations with strong enforcement
25 mechanisms to assure their dues are paid, the statute also provides a check to insure those with first
26 deeds of trust are treated fairly—specifically, that every foreclosure sale conducted pursuant to the
27 statute must be commercially reasonable. Plaintiff’s assertions that “NRS Chapter 116 does not
28 contain any language that requires that an HOA foreclosure sale be ‘commercially reasonable’” and

1 that “UCIOA also does not contain any language that incorporates Article 9 of the Uniform
2 Commercial Code” ignores the plain language of the statute. *See* Mot, at 8.

3 The HOA Lien Statute requires that HOA foreclosure sales be commercially reasonable,
4 stating that “every contract or duty governed by this chapter imposes an obligation of good faith in
5 its performance or enforcement.” NRS 116.1113. The drafters of this section defined good faith as
6 follows: “[g]ood faith ... means observance of two standards: ‘honesty in fact,’ and observance of
7 reasonable standards of fair dealing. While the term is not defined, [it is] derived from and used *in*
8 *the same manner as* ... Sections 2-103(i)(b) and 7-404 of the *Uniform Commercial Code*.” UCIOA §
9 1-113 cmt. (1982) (emphasis added). Nevada’s version of the UCC defines “good faith” as “honesty
10 in fact and the observance of *reasonable commercial standards* of fair dealing.” NRS 104.1201(2)(t)
11 (emphasis added).⁴

12 Nevada courts have confirmed that this commercial reasonableness standard applies to the
13 disposition of collateral. *See, e.g. Jones v. Bank of Nev.*, 91 Nev. 368, 373, 535 P.2d 1279, 1282
14 (1975). And courts in other states interpreting the same UCIOA provision at issue here, UCIOA § 1-
15 113, have held that the disposition of the collateral in these cases, real property, must be
16 commercially reasonable. *Will v. Mill Condominium Owner’s Ass’n*, 848 A.2d 336, 340 (Vt. 2004)
17 (“Although the rules generally applicable to real estate mortgages do not impose a commercial
18 reasonableness standard on foreclosure sales, the UCIOA does provide for this additional layer of
19 protection.”).⁵ Plaintiff’s argument that the HOA’s disposition of the Property here did not have to
20 be commercially reasonable is misplaced. *See* Mot. at 8.

21
22
23 ⁴ Plaintiff’s contention that “UCIOA ... doe [sic] not contain any language that incorporates Article 9 of the
24 Uniform Commercial Code” is directly at odds with intention of UCIOA’s drafters as shown by UCIOA’s
25 official comments. *See* Mot. at 10. As noted by the *SFR Investments* Court, “[a]n official comment written by
26 the drafters of a statute and available to the legislature before the statute is enacted has considerable weights as
27 an aid to statutory construction.” 334 P.3d at 413.

28 ⁵ Plaintiff contends that the “Supreme Court of Vermont’s analysis of Vermont law is not helpful in
interpreting Nevada’s version of the UCIOA, however, because Vermont law does not include the nonjudicial
foreclosure procedure that was ‘handcrafted’ by the Nevada Legislature in NRS 116.31162 through NRS
116.31168.” Mot. at 9. Plaintiff fails to explain how Nevada’s handcrafting of those provisions, which mostly
concern opt-in notice requirements, somehow effects the commercial reasonableness provision of UCIOA,
which has been wholly adopted in both Nevada and Vermont. *Compare* NRS 116.1113, with 27A V.S.A. § 1-
113.

1 Granting super-priority to nominal HOA liens over first deeds of trust “represents a
2 ‘significant departure from existing practice.’” *SFR Investments*, 334 P.3d at 412 (quoting the
3 official comments to UCIOA § 1-116). However, NRS 116.1113’s requirement that the foreclosure
4 of these super-priority liens be commercially reasonable provides first deed of trust holders with
5 assurance that, in the event of an HOA foreclosure, they will receive some of the value they
6 bargained for when they provided a mortgage loan. The commercial reasonableness requirement is
7 provided in the statutory text, was intended by the statute’s drafters, and has been recognized by
8 other courts interpreting the same statutory provision at issue here. Therefore, for Plaintiff to succeed
9 on its instant Motion for Summary Judgment, it must prove that the foreclosure sale of the Property
10 for a 94% discount was commercially reasonable as a matter of law. This is a burden Plaintiff cannot
11 meet.

12 **2. Plaintiff has provided no evidence that the foreclosure sale of the**
13 **Property at a 94% discount was commercially reasonable.**

14 Plaintiff’s Motion for Summary Judgment should be denied because it has failed to provide
15 any evidence showing that the foreclosure sale of the Property for 6% of its ostensible value was
16 commercially reasonable as a matter of law. The Nevada Supreme Court has explained that the
17 conditions of a commercially reasonable sale should reflect a calculated effort to promote a sales
18 price that is equitable to both the debtor and to the secured creditor. *See Dennison v. Allen Group*
19 *Leasing Corp.*, 110 Nev. 181, 186, 871 P.2d 288, 291 (1994). The “quality of the publicity, the price
20 obtained at the auction, [and] the number of bidders in attendance” are also factors to consider when
21 analyzing the commercial reasonableness of a public sale. *Id.* While the price obtained at a
22 foreclosure sale is not the sole determinative factor, it is highly relevant in determining whether a
23 sale is commercially reasonable. *Id.* Importantly, it is well-settled under Nevada law that “a wide
24 discrepancy between the sale price and the value of the collateral compels close scrutiny into the
25 commercial reasonableness of the sale.” *Levers v. Rio King Land & Inv. Co.*, 93 Nev. 95, 98, 560
26 P.2d 917, 920 (1977); *see also Iama Corp. v. Wham*, 99 Nev. 730, 736, 669 P.2d 1076, 1079 (1983);
27 *Jones*, 91 Nev. at 368.

1 Such close scrutiny is surely required here, where Plaintiff purchased Property securing a
2 \$147,456.00 loan for \$8,200.⁶ **Ex. A; Ex. G.** Put differently, the discrepancy between the sales price
3 and the value of the collateral here was more than 94%. In light of this wide discrepancy, and the
4 close scrutiny into the circumstances of the sale such discrepancy entails, it is not surprising that
5 Plaintiff contends that the HOA Lien Statute does not require an HOA foreclosure sale to be
6 commercially reasonable.⁷ Mot. at 9.

7 To the contrary, courts analyzing the commercial reasonableness of foreclosure sales have
8 either voided such sales or refused to grant summary judgment in favor of the foreclosing party
9 where the discrepancy between the sales price and the value of the secured property was much less
10 egregious than the present case. For example, in *Iama Corp.*, the Nevada Supreme Court reversed a
11 trial court's finding that a sale of collateral was conducted in a commercially reasonable manner. 99
12 Nev. at 737. Central to the court's decision was the wide discrepancy—25.1% —between the fair
13 market value and the sale price of the collateral. *Id.* at 736. The court then scrutinized whether
14 proper notice was given, whether the bidding was competitive, and whether the sale was conducted
15 pursuant to the sheriff's office's normal procedures. *Id.* The court ultimately set aside the sale
16 because the pre-foreclosure conduct of the seller had detrimentally affected the price the collateral
17 would bring at auction. *Id.* at 736-37.

18 Additionally, courts applying UCIOA have voided commercially unreasonable foreclosure
19 sales. *Will*, 848 A.2d at 340. In *Will*, the property was sold pursuant to a homeowners' association
20 lien of \$3,510.10. *Id.* at 338. The fair market value of the property was \$70,000. *Id.* The court noted
21 that the comment to UCIOA § 1-113, discussed in Section C(1) *supra*, "expresse[d] in unequivocal
22 terms the Legislature's intent to import the [UCC's] commercial reasonableness standard into the
23 UCIOA." *Id.* at 341. The court explained that the homeowners association bears the burden to prove

24
25 ⁶ Plaintiff will likely claim that the value of the loan secured by the Deed of Trust is not an accurate indication
26 of the value of the Property. This is yet another reason why Plaintiff's motion is premature. Discovery is
27 needed to determine the exact value of the Property at the time of the foreclosure sale.

28 ⁷ Plaintiff curiously quotes the *SFR Investments* Court's noting that it declined to reach the commercial
 reasonableness argument before relying of the *SFR Investments* decision to say that the price paid at a
 foreclosure sale has no bearing on commercial reasonableness "pursuant to SFR." Mot. at 10, 12. Needless to
 say, a court's "holding" on an issue that it specifically declined to reach does not constitute binding precedent.

1 the foreclosure was commercially reasonable. *Id.* at 342. The court also stated that the party
2 conducting the sale “must make a good faith effort to maximize the value of collateral,” and “have a
3 reasonable regard for the debtor’s interest.” *Id.* After espousing these standards, the court voided the
4 trustee’s sale because the sale was not made in a commercially reasonable manner. *Id.* at 342.
5 Central to the court’s finding that the sale was commercially unreasonable was the sale of the
6 condominium for an amount 85% lower than the value of the collateral, and the fact that there was
7 only one bid on the property. *See id.* Because the sale was commercially unreasonable, the court
8 vacated the lower court’s grant of summary judgment in favor of the HOA, and voided the sale to
9 the third-party purchaser. *Id.* at 343.

10 Here, Plaintiff has produced no evidence showing that the sale of the Property for a 94%
11 discount was commercially reasonable. Such a wide discrepancy between the sales price and the
12 price of the collateral subjects the commercial reasonableness of this HOA sale to close scrutiny
13 under settled Nevada law. *See Levers*, 93 Nev. at 98; *Iama Corp.*, 99 Nev. at 736; *Jones*, 91 Nev. at
14 368. This close scrutiny entails an inquiry into the bidding process and participants, which U.S.
15 Bank will attempt to uncover through discovery. But currently, “the record is completely devoid of
16 any evidence relating to the bidding process or participants.” *Dennison*, 110 Nev. at 186 (reversing
17 grant of summary judgment in favor of the creditor because the moving party failed to produce
18 evidence showing the sale was commercially reasonable). Further, there is no evidence showing that
19 the HOA “took steps to insure the best price possible would be obtained for the benefit of the
20 debtor.” *Levers*, 93 Nev. at 99 (holding that the secured party failed to meet its burden to show that
21 the sale was commercially reasonable).⁸ Because Plaintiff has failed to produce any evidence
22 showing that the sale of the Property for 6% of its ostensible value is commercially reasonable, its
23

24 ⁸ In an effort to distinguish these UCC cases and prove that the foreclosure sale at issue was commercially
25 reasonable without offering a shred of evidence concerning the foreclosure sale, Plaintiff states that the
26 “method, manner, time, and place of an HOA foreclosure sale, unlike a UCC sale are governed by statute –
27 NRS 116.31162 through 116.31168.” Mot. at 10. However, NRS 116.31162 through NRS 116.31168 concern
28 notice to the unit’s owner, the constitutionally-defective opt-in notice requirements for lienholders, and the
effect of an HOA foreclosure sale on title. Nowhere in those statutes does it specify the method or manner in
which a foreclosure sale must be conducted, the time it must be conducted, or the place where it must be
conducted. NRS 116.31162 through NRS 116.31168 are thus irrelevant to whether “the method, manner,
time, [and] place” of an HOA foreclosure sale is “commercially reasonable.” *See Levers*, 93 Nev. at 98.

1 quiet title claims fail as a matter of law. Accordingly, this Court should deny Plaintiff's Motion for
2 Summary Judgment.

3 **E. In the alternative, U.S. Bank requests a Rule 56(f) Continuance, as additional**
4 **discovery is necessary to develop facts essential to U.S. Bank's defenses.**

5 This Court should deny Plaintiff's Motion for Summary Judgment under Nevada Rule of
6 Civil Procedure 56(f) because it is premature. U.S. Bank has not had the opportunity to develop
7 several issues central to its defense to Plaintiff's quiet title claim. Specifically, additional discovery
8 is necessary to determine: (1) how the HOA Trustee calculated the super-priority amount of the
9 HOA's lien before rejecting Bank of America's super-priority tender as insufficient, (2) whether the
10 HOA complied with all requirements of the HOA Lien Statute, and (3) whether the sale of the
11 Property for a 94% discount was commercially reasonable. To develop the facts around the tender,
12 compliance, and commercial reasonableness issues, U.S. Bank will subpoena the HOA and HOA
13 Trustee, seeking to determine, *inter alia*, who attended the foreclosure sale, whether the HOA's
14 assessments were based on a periodic budget adopted by the HOA pursuant to NRS 116.3115, what
15 announcements were made at the sale regarding Bank of America's super-priority tender, the
16 particulars of the bidding process, and whether all payments made to the HOA were properly
17 applied. Once these subpoenas reveal knowledgeable parties, U.S. Bank intends to depose those
18 parties, seeking to determine more information regarding the HOA's accounting of the payments it
19 received, how the foreclosure auction was conducted, and the general circumstances of the
20 foreclosure sale.

21 In accordance with Rule 56(f), counsel has provided the Court with a detailed affidavit
22 providing the reasons that discovery is necessary to fully develop U.S. Bank's opposition to
23 Plaintiff's quiet title claim. *See* Declaration of Counsel, p. 22. Therefore, to the extent the Court is
24 not inclined to grant U.S. Bank's Countermotion for Summary Judgment, or deny Plaintiff's Motion
25 for Summary Judgment, this Court should grant U.S. Bank a continuance under Rule 56(f).

26 ...

27 ...

28 ...

1 **V. CONCLUSION**

2 This Court should grant U.S. Bank's Countermotion for Summary Judgment because the
3 HOA Lien Statute is unconstitutional under the Due Process Clause, both facially and as-applied to
4 the present case. Even if the statute were constitutional, U.S. Bank would still be entitled to
5 summary judgment because Bank of America's super-priority tender extinguished that portion of the
6 HOA's lien prior to the foreclosure sale.

7 Even if the Court denies U.S. Bank's Countermotion, this Court should also deny Plaintiff's
8 Motion for Summary Judgment. Plaintiff has not shown that the HOA's sale of the Property for a
9 94% discount was commercially reasonable, as required by the HOA Lien Statute. In the alternative,
10 U.S. Bank is entitled to discovery to determine how the HOA Trustee calculated the super-priority
11 amount of the HOA's lien before rejecting Bank of America's tender as insufficient, whether the
12 HOA complied with the HOA Lien Statute, and whether the manner in which the HOA conducted
13 the sale was commercially reasonable.

14 DATED this 22nd day of July, 2015.

AKERMAN LLP

15
16 /s/ Tenesa S. Scaturro
17 MELANIE D. MORGAN, ESQ.
18 Nevada Bar No. 8215
19 TENESA S. SCATURRO, ESQ.
20 Nevada Bar No. 12488
21 1160 Town Center Drive, Suite 330
22 Las Vegas, Nevada 89144

23 *Attorneys for U. S. Bank, N.A., successor trustee*
24 *to Bank of America, N.A., Successor by Merger*
25 *to LaSalle Bank, N.A.,*
26 *as Trustee to the holders of the Zuni Mortgage*
27 *Loan Trust 2006-OA1, Mortgage Loan Pass-*
28 *Through Certificates Series 2006-OA1*

DECLARATION OF TENESA S. SCATURRO, ESQ. IN SUPPORT OF 56(f)
CONTINUANCE

1. I make this declaration based on my personal knowledge.

2. I am an associate with Akerman LLP and legal counsel for U.S. Bank in this action.

3. This Court should deny Plaintiff's Motion for Summary Judgment based on NRC P 56(f). U.S. Bank should be permitted to conduct discovery as to how the HOA Trustee calculated the super-priority amount owed before rejecting Bank of America's tender as insufficient, whether the HOA and HOA Trustee complied with all requirements of NRS 116, *et seq.*, and whether the foreclosure sale was commercially unreasonable in violation of NRS 116.1113.

4. U.S. Bank requires additional discovery to fully develop several key defenses. U.S. Bank plans to depose the 30(b)(6) witnesses of the HOA and HOA Trustee, the person who actually conducted the auction on the HOA Trustee's behalf, and the 30(b)(6) witness of Plaintiff to determine whether the sale was conducted in accordance with Nevada law. For example, U.S. Bank intends to conduct discovery on whether the HOA impermissibly attempted to foreclose on violation liens, whether the HOA's monthly assessments were based on a periodic budget adopted by the HOA pursuant to NRS 116.3116, whether the homeowner made HOA payments that were not applied, whether there was a payment plan between the HOA and the homeowner that was ignored, whether the HOA approved the sale, and whether the HOA Trustee changed the sale date from the date listed in the Notice of Sale in accordance with NRS 116.31164.

5. Additionally, discovery is necessary to determine—among a host of facts relevant to the commercial reasonableness of the sale—how the HOA Trustee conducted the sale, the market value of the Property at the time of the sale, whether accurate information concerning Bank of America's super-priority tender was communicated to those in attendance at the auction, and the relationship, if any, between Plaintiff, the HOA, HOA Trustee, and other prospective purchasers. Plaintiff has not in any way disclosed the circumstances of the sale, which must be evaluated to determine whether the sale was commercially reasonable, especially in light of the diminutive price Plaintiff paid for the Property.

7. This discovery is necessary to determine whether the HOA complied with NRS 116, *et seq.*, a prerequisite to Plaintiff taking any title to the Property by way of the foreclosure sale, and whether the sale was commercially unreasonable in violation of NRS 116.1113.

8. This Court should deny Plaintiff's Motion for Summary Judgment pursuant to NRCP 56(f).

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

DATED this 22nd day of July, 2015.

/s/ Tenesa S. Scaturro
TENESA S. SCATURRO, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 22, 2015 and pursuant to NRCP 5, I served through this Court's electronic service notification system (Wiznet) a true and correct copy of the foregoing **U.S. BANK, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT BASED ON THE DUE PROCESS CLAUSE AND TENDER, OR ALTERNATIVELY, FOR RULE 56(F) RELIEF** on all parties and counsel as identified on the Court generated notice of electronic filing.

Michael F. Bohn, Esq.
LAW OFFICES OF MICHAEL F. BOHN, ESQ.
376 East Warm Springs Road, Suite 140
Las Vegas, Nevada 89119
mbohn@bohnlawfirm.com

Attorneys for Plaintiff

/s/ Rebecca L. Thole

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

20040630-0002408

Assessor's Parcel Number
12431220392
After Recording Return To: *MAIL TAX STATEMENTS TO:*
COUNTRYWIDE HOME LOANS, INC.

Fee: \$45.00
06/30/2004 11:16:47 T23040047643
Re: LAWYERS TITLE OF NEVADA
Frances Deane
Clark County Recorder Pgs 32

MS SV-79 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91410-0423
Prepared By:
KARLA R. WILSON
~~Recording Requested By:~~
J. BOLICH

32

COUNTRYWIDE HOME LOANS, INC.

7350 W. CHEYENNE AVENUE
LAS VEGAS
NV 89129

04050200-CV

[Space Above This Line For Recording Data]

04050200 0006348226006004
[Escrow/Closing #] [Doc ID #]

DEED OF TRUST

MIN 1000157-0003681336-4

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 24, 2004 together with all Riders to this document.

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

Page 1 of 16

SA(NV) (0307) CHL (07/03)(d)

VMP Mortgage Solutions - (800)521-7291

Initials: *[Signature]*
FEB 30 2004 1/01

23991

003482260000001008A

(B) "Borrower" is
DENNIS L JOHNSON, AND GERALDINE J JOHNSON, HUSBAND AND WIFE
AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
COUNTRYWIDE HOME LOANS, INC.

Lender is a
CORPORATION

organized and existing under the laws of NEW YORK
4500 Park Granada
Calabasas, CA 91302-1613

Lender's address is

(D) "Trustee" is
CTC REAL ESTATE SERVICES

400 COUNTRYWIDE WAY MSN SV-88
SIMI VALLEY, NV 93065

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JUNE 24, 2004

The Note states that Borrower owes Lender
ONE HUNDRED FORTY SEVEN THOUSAND FOUR HUNDRED FIFTY SIX and
00/100

Dollars (U.S. \$ 147,456.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 01, 2034

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

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

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

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

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

[Handwritten initials]

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

ELL

ELL

DOC ID #: 0006348226006004

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

[Type of Recording Jurisdiction]

CLARK

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of

5316 CLOVER BLOSSOM COURT, NORTH LAS VEGAS

[Street/City]

Nevada 89031-0480 ("Property Address"):

[Zip Code]

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

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

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Initials:

Form 3029 1/01

AA000111

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

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

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

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

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

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

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

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

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Form 3026 1/01

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

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or

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defends against enforcement of the lien in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be

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. Assignments 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 claims 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.

Initials:

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

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

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees.

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property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined in 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).

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Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

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

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ 300.00

DOC ID #: 0036348226006004

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:

Dennis L. Johnson (Seal)
DENNIS L. JOHNSON -Borrower

Geraldine J. Johnson (Seal)
GERALDINE J. JOHNSON -Borrower

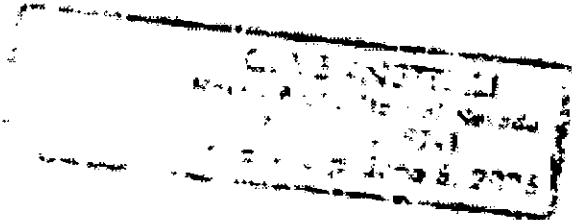
_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on 6-28-04 by

Dennis L. Johnson + Geraldine J. Johnson



A handwritten signature in cursive script, appearing to read "C. Vermettili".

C. Vermettili

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065

EXHIBIT "A"

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Parcel I

Lot Ninety two (92) of the Plat of Arbor Gate as shown by map thereof on file in Book 91 of plats, page 71, in the Office of the County Recorder of Clark County, Nevada.

Parcel II

A non-exclusive easement for ingress and egress and enjoyment in and to the Association property as set forth in the Declaration of Covenants, Conditions and Restrictions for Country Garden (Arbor Gate) a common interest community recorded February 25, 2000 in Book 20000225 as Document No. 00963, of Official Records of Clark County, Nevada, as the same may from time to time be amended and/or supplemented, which easement is appurtenant to Parcel One.

Assessor's Parcel Number: 124-31-220-092

ADJUSTABLE RATE RIDER
(MTA Index - Payment Caps)

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

PARCEL ID #:
12431220092
Prepared By:
KARLA R. WILSON

04050200
[Escrow/Closing #]

0006348226006004
[Doc ID #]

CONV
• ARM PayOption Rider
10729-US (07/02) 01(d)

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Initials: 



DOC ID #: 0006348226066004

THIS ADJUSTABLE RATE RIDER is made this TWENTY-FOURTH day of JUNE, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrowers Adjustable Rate Note (the "Note") to COUNTRYWIDE HOME LOANS, INC.

("Lender") of the same date and covering the property described in the Security Instrument and located at:
5316 CLOVER BLOSSOM COURT
NORTH LAS VEGAS, NV 89031-0490
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE LIMIT STATED IN THE NOTE.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for changes in the interest rate and the monthly payments, as follows:

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.625 %. The interest rate I will pay may change.

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

CONV
• ARM PayOption Rider
10729-US (07/02) 01

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Initials: 

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DOC ID #: 0006348226006004

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of AUGUST, 2004, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date.

(C) Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index".

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

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE & 25/1000 percentage point(s) (3.025 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest rate will never be greater than 10.325 %.

CONV
* ARM PayOption Rider
10729-US (07/02).C1

Page 3 of 7

Initials: 

AA000127

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payments on the **FIRST** day of each month beginning on **August, 2004**. I will make these payments every month until I have paid all the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied to interest before Principal. If, on **JULY 01, 2034**, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
P.O. Box 10219, Van Nuys, CA 91410-0219

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ **517.79**. This amount may change.

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the **first** day of **AUGUST, 2005**, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment.

I will pay the amount of my new monthly payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal installments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment". The Note Holder will then calculate the amount of my monthly payment due the month preceding the Payment Change Date multiplied by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new

required monthly payment will be lesser of the Limited Payment and the Full Payment. I also have the option each month to pay more than the Limited Payment up to and including the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

My monthly payment could be less than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid principal. The Note Holder also will add interest on the amount of this difference to my unpaid principal each month. The interest rate on the interest added to Principal will be the rate required by Section 2 above.

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid principal can never exceed a maximum amount equal to ONE HUNDRED FIFTEEN percent (115 %) of the Principal amount I originally borrowed. My unpaid principal could exceed that maximum amount due to the Limited Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. The new monthly payment will be in an amount that would be sufficient to repay my then unpaid principal in full on the Maturity Date in substantially equal installments at the current interest rate.

(G) Required Full Payment

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my monthly payment until my monthly payment changes again. I also will begin paying the Full Payment as my monthly payment on the final Payment Change Date.

4. NOTICE OF CHANGES

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

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

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

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

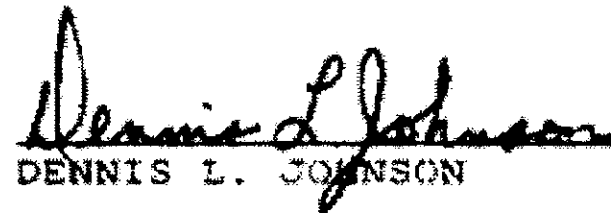
If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this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

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

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

DOC ID #: 0006348226006004

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


DENNIS L. JOHNSON (Seal)
Borrower


GERALDINE J. JOHNSON (Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

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

(Space Above This Line For Recording Data)

1-4 FAMILY RIDER
(Assignment of Rents)

PARCEL ID #:
12431220092
Prepared By:
KARLA R. NILSON

04050200
(ESSEOM/CASHMID #)

0036348226006094
(Doc ID #)

MULTISTATE 1-4 FAMILY RIDER - Fannie Mae/Freddie Mac Uniform Instrument

Page 1 of 4

100-575 (0000) 01 CHL (00/01)(0)
CONV/NA

VMP MORTGAGE FORMS - (800) 521-7291

Initials: *DLH*
Form 5170 1/01
DFG



DOC ID #: 0006348226006004

THIS 1-4 FAMILY RIDER is made this TWENTY-FOURTH day of JUNE, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to

COUNTRYWIDE HOME LOANS, INC.

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

5316 CLOVER BLOSSOM COURT, NORTH LAS VEGAS, NV 89031-0480

(Property Address)

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in the Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

1-57R (0008) 01 CHL (08/01)

Page 2 of 4

Initials: *[Signature]*

FORM 3170 1/01

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorneys' fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

DOC ID #: 0006348226006004

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this 1-4 Family Rider.


DENNIS L. JOHNSON (Seal)
- Borrower


GERALDINE J. JOHNSON (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS 2V-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

[Space Above This Line For Recording Data]

PLANNED UNIT DEVELOPMENT RIDER

PARCEL ID #:
12431220092
Prepared By:
KARLA R. WILSON

04050200

(Pscrow/Closing #)

0006348226006004

(Doc ID #)

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Page 1 of 4

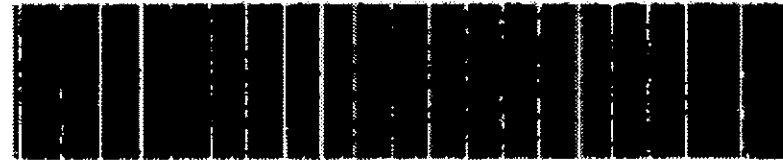
Initials:

79 (0000) 01 CHL (0001)(0) VMP MORTGAGE FORMS - (800)521-7200
CONV/VA

Form 310



* 23981 *



* 063482260000001007R *

DOC ID #: 0006348226006004

THIS PLANNED UNIT DEVELOPMENT RIDER is made this **TWENTY-FOURTH** day of **JUNE, 2004**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to **COUNTRYWIDE HOME LOANS, INC.**

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
5316 CLOVER BLOSSOM COURT, NORTH LAS VEGAS, NV 89031-0480
(Property Address)

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

(the "Declaration"). The Property is a part of a planned unit development known as
ARBOR GATE
(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 amount (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.

77 (0008) 01 CHL (08/01)

Page 2 of 4

Initials: 

Form 3150 1/01

AA000137

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

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

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

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

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

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

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

DOC ID #: 1006348226006004

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

Dennis L. Johnson (Seal)
DENNIS L. JOHNSON - Borrower

Geraldine J. Johnson (Seal)
GERALDINE J. JOHNSON - Borrower

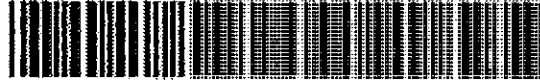
____ (Seal)
- Borrower

____ (Seal)
- Borrower

EXHIBIT B

EXHIBIT B

Recording Requested By:
Bank of America
Prepared By: Diana DeAvila
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036



DocID# 6686348226090044
Tax ID: 12431220092
Property Address:
5316 Clover Blossom Ct
North Las Vegas, NV 89031-0480
NV0-ADT 14157743 6/14/2011

Inst #: 201106200002747
Fees: \$15.00
N/C Fee: \$25.00
06/20/2011 03:24:45 PM
Receipt #: 817961
Requestor:
CORELOGIC
Recorded By: CYV Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

This space for Recorder's use

MIN #: 1000157-0003681336-4

MERS Phone #: 888-679-6377

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34TH AVENUE, SUITE 101 OCALA, FL 34474 does hereby grant, sell, assign, transfer and convey unto U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO LASALLE BANK, N.A., AS TRUSTEE TO THE HOLDERS OF THE ZUNI MORTGAGE LOAN TRUST 2006-OA1, MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES 2006-OA1 whose address is 9062 OLD ANNAPOLIS RD, COLUMBIA, MD 21045 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: COUNTRYWIDE HOME LOANS, INC.
Made By: DENNIS L JOHNSON, AND GERALDINE J JOHNSON, HUSBAND AND WIFE
AS JOINT TENANTS
Trustee: CTC REAL ESTATE SERVICES

Date of Deed of Trust: 6/24/2004 Original Loan Amount: \$147,456.00

Recorded in Clark County, NV on: 6/30/2004, book N/A, page N/A and instrument number 20040630-0002408

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

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

6-15-2011

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.

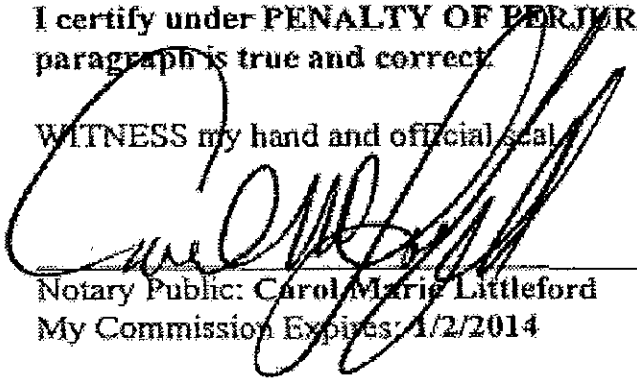
By: Martha Munoz
Martha Munoz, Assistant Secretary

State of California
County of Ventura

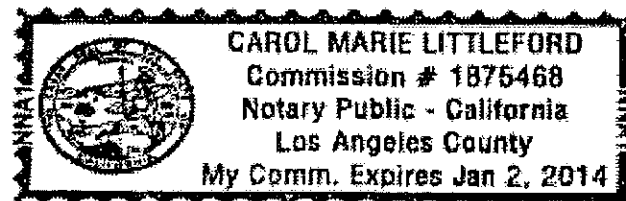
On June 15, 2011 before me, Carol Marie Littleford, Notary Public, personally appeared Martha Munoz, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.


Notary Public: Carol Marie Littleford
My Commission Expires: 1/2/2014

(Seal)



Attached to: Assignment of Deed of Trust

Borrowers: Dennis L Johnson
Geraldine J Johnson

EXHIBIT C

EXHIBIT C

Inet #: 201202220001651
Fees: \$17.00
N/C Fee: \$0.00
02/22/2012 09:17:26 AM
Receipt #: 1073371
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: MSH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 124-31-220-092

Trustee Sale # 29628-5316

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark County, Nevada, Country Gardens Owners' Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031** and more particularly legally described as: **LOT 92 Book 91 Page 71** in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): **DENNIS L & GERALDINE J JOHNSON**

The mailing address(es) is: **5225 ELM GROVE DR, LAS VEGAS, NV 89130**

The total amount due through today's date is: **\$1,095.50**. Of this total amount **\$1,020.50** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **January 11, 2012**

By: _____

Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Country Gardens Owners' Association**

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me **Feb. 17, 2012** ~~January 11, 2012~~

(Seal)



(Signature)

NOTARY PUBLIC

EXHIBIT D

EXHIBIT D

Inst #: 201202220001527
Fees: \$17.00
N/C Fee: \$0.00
02/22/2012 09:17:26 AM
Receipt #: 1073345
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: MSH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 124-31-220-092

Trustee Sale # 30488-5316

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark County, Nevada, Country Gardens Owners' Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031** and more particularly legally described as: **PLAT BOOK 91 PAGE 71 LOT 92 Book 91 Page 71** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **DENNIS L & GERALDINE J JOHNSON**

The mailing address(es) is: **5225 ELM GROVE DR, LAS VEGAS, NV 89130**

The total amount due through today's date is: **\$1,150.50**. Of this total amount **\$1,075.50** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

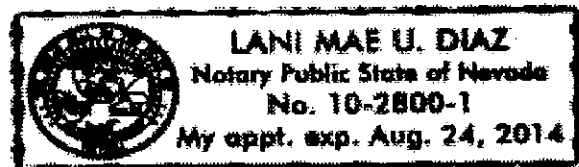
Date: **February 6, 2012**

By: _____

Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Country Gardens Owners' Association**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me February ¹⁷~~6~~, 2012

(Seal)



(Signature) _____

NOTARY PUBLIC

EXHIBIT E

EXHIBIT E

Inst #: 201204200000428
Fees: \$17.00
N/C Fee: \$0.00
04/20/2012 08:27:12 AM
Receipt #: 1136956
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: SAO Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 205
Las Vegas, Nevada 89147
Phone: 702-222-4033

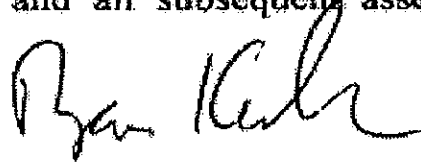
A.P.N. 124-31-220-092

Trustee Sale No. 30488-5316

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **\$3,396.00** as of **March 27, 2012** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Country Gardens Owners' Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.**

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on **February 22, 2012** as document number **0001651**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **DENNIS L & GERALDINE J JOHNSON**, of **PLAT BOOK 91 PAGE 71 LOT 92**, as per map recorded in Book 91, Pages 71, as shown on the Plan and Subdivision map recorded in the Maps of the County of **Clark**, State of Nevada. **PROPERTY ADDRESS: 5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031.** If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated **February 22, 2012**, on behalf of **Country Gardens Owners' Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from **January 10, 2011** and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.
Dated: **March 27, 2012**



Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Country Gardens Owners' Association**

EXHIBIT F

EXHIBIT F

Inst #: 201210310000738

Fees: \$17.00

N/C Fee: \$0.00

10/31/2012 08:04:08 AM

Receipt #: 1354103

Requestor:

ALESSI & KOENIG LLC

Recorded By: MAT Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 124-31-220-092

TSN 30488-5316

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

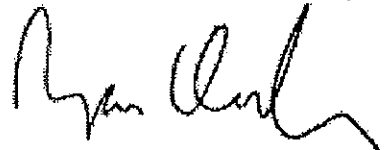
NOTICE IS HEREBY GIVEN THAT:

On November 28, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on February 22, 2012, as instrument number 0001651, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031.** The owner of the real property is purported to be: **DENNIS L & GERALDINE J JOHNSON**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$4,039.00. Payment must be in made in the form of certified funds.

Date: October 15, 2012



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Country Gardens Owners' Association

EXHIBIT G

EXHIBIT G

②-1

Inst #: 201301240002549

Fees: \$17.00 N/C Fee: \$0.00

RPTT: \$43.35 Ex: #

01/24/2013 02:33:00 PM

Receipt #: 1470974

Requestor:

ALESSI & KOENIG LLC

Recorded By: ANI Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
5316 Clover Blossom Ct Trust
PO Box 36208
LAS VEGAS, NV 89133

A.P.N. No. 124-31-220-092

TS No. 30488-5316

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **5316 Clover Blossom Ct Trust**
The Foreclosing Beneficiary herein was: **Country Gardens Owners' Association**
The amount of unpaid debt together with costs: **\$5,021.00**
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$8,200.00**
The Documentary Transfer Tax: **\$43.35**
Property address: **5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031**
Said property is in [] unincorporated area: **City of North Las Vegas**
Trustor (Former Owner that was foreclosed on): **DENNIS L & GERALDINE J JOHNSON**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **February 22, 2012** as instrument number **0001651**, in **Clark County**, does hereby grant, without warranty expressed or implied to: **5316 Clover Blossom Ct Trust** (Grantee), all its right, title and interest in the property legally described as: **LOT 92**, as per map recorded in **Book 91, Pages 71** as shown in the Office of the County Recorder of **Clark County Nevada**.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **January 16, 2013** at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.

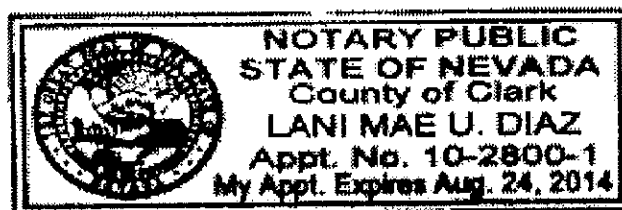
Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me 1/24/13

WITNESS my hand and official seal.
(Seal)

(Signature)



STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 124-31-220-092
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 \$ 8,200.00
b. Deed in Lieu of Foreclosure Only (value of property (_____))
c. Transfer Tax Value: \$ 8,200.00
d. Real Property Transfer Tax Due \$ 43.35

4. If Exemption Claimed:

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

5. Partial Interest: Percentage being transferred: 100 %

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

Signature  Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi & Koenig, LLC
Address: 9500 W Flamingo Rd. Suite 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: 5316 Clover Blossom Ct Trust
Address: PO Box 36208
City: Las Vegas
State: NV Zip: 89133

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

Print Name: Alessi & Koenig, LLC
Address: 9500 W Flamingo Rd. Suite 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT H

EXHIBIT H

MILES, BERGSTROM & WINTERS, LLP AFFIDAVIT

State of California }
 } ss.
Orange County }

Affiant being first duly sworn, deposes and says:

1. I am a managing partner with the law firm of Miles, Bergstrom & Winters, LLP, formerly known as Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2. I am over 18 years of age, of sound mind, and capable of making this affidavit.

3. The information in this affidavit is taken from Miles Bauer's business records. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

4. Bank of America, N.A. (**BANA**) retained Miles Bauer to tender payments to homeowners associations (**HOA**) to satisfy super-priority liens in connection with the following loan:

Loan Number: [REDACTED] 2260

Borrower(s): Dennis L. and Geraldine J. Johnson

Property Address: 5316 Clover Blossom Court, North Las Vegas, Nevada 89031

5. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a November 21, 2012 letter from Paterno C. Jurani, Esq., an attorney with Miles Bauer, to Country Gardens Owners' Association, care of The Alessi & Koenig, LLC.

7. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of a Statement of Account from Alessi & Koenig, LLC dated November 27, 2012 and received by Miles Bauer in response to the November 21, 2012 letter identified above.

8. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a December 6, 2012 letter from Rock K. Jung, an attorney with Miles Bauer, to Alessi & Koenig, LLC enclosing a check for \$1,494.50.

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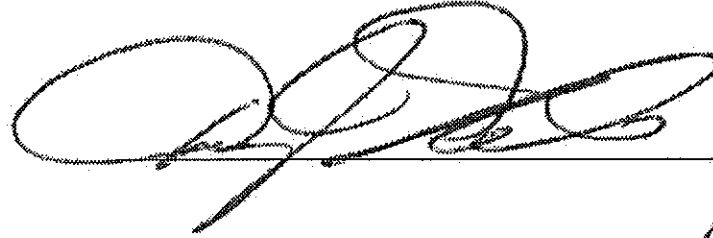
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9. Based on Miles Bauer's business records, Alessi & Koenig, LLC returned the \$1,494.50 check to Miles Bauer. A copy of a screenshot containing the relevant case management note confirming the check was returned is attached as **Exhibit 4**.

FURTHER DECLARANT SAYETH NOT.

Date: 7/14/15



Declarant Douglas E. Miles

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 14th day of July, 2015,

by Douglas E. Miles, proved to me on the basis of satisfactory evidence to be
(Name of Signer)

the person who appeared before me.

Signature Arlene D. Martin (Seal)
(Signature of Notary Public)

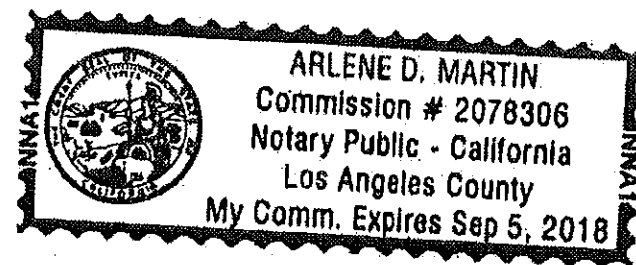


EXHIBIT 1

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



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

2200 Paseo Verde Pkwy., Suite 250
Henderson, NV 89052
Phone: (702) 369-5960
Fax: (702) 942-0411

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

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

November 21, 2012

Country Gardens Owners' Association
c/o The Alessi & Koenig, LLC
9500 West Flamingo Rd., Ste. 205
Las Vegas, NV 89147

Re: *Property Address: 5316 Clover Blossom Court, North Las Vegas, NV 89031*
MBBW File No.: 12-H2280

Dear Sir or Madam:

This letter is written in response to your Notice of Sale with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. BANA is the beneficiary/servicer of the first and second deed of trust loans secured by the property.

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

The association has a lien on a unit for:

...

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

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

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

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

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

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

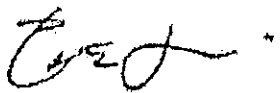
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

Please let me know what the status of the Foreclosure sale that is scheduled for November 28, 2012. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0413. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BANA.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Paterno C. Jurani, Esq.

EXHIBIT 2

DAVID ALESSI*

THOMAS HAYARD*

ROBERT KOENIG**

RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 205

Las Vegas, Nevada 89147

Telephone: 702-222-4033

Facsimile: 702-222-4043

www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-861-8300

\$1,494.50

FACSIMILE COVER LETTER

To:	A Bham	Re:	5316 CLOVER BLOSSOM CT/HO #30488
From:		Date:	Tuesday, November 27, 2012
Fax No.:		Pages:	2, Including cover
		HQ #:	30488

Dear A Bham:

This cover will serve as an amended demand on behalf of Country Gardens Owners' Association for the above referenced escrow; property located at 5316 CLOVER BLOSSOM CT, North Las Vegas, NV. The total amount due through December 15, 2012 is \$4,186.00. The breakdown of fees, interest and costs is as follows:

Pre NOD	\$90.00
Release of Lien	\$30.00
Demand Fee	\$150.00
Attorney Fees (1.5)	\$360.00
Pre-Notice of Trustee Sale	\$90.00
Notice of Delinquent Assessment Lien - Nevada	\$275.00
Notice of Default	\$345.00
Notice of Trustee Sale	\$275.00
Foreclosure Fee	\$150.00
Total	\$1,765.00

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

DAVID ALESSI*

THOMAS BAYARD *

ROBERT KOENIG**

RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 205

Las Vegas, Nevada 89147

Telephone: 702-222-4033

Facsimile: 702-222-4043

www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323
&
DIAMOND BAR CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

1. Attorney and/or Trustees fees:	C \$1,765.00
2. Notary, Recording, Copies, Mailings, and PACER	C \$350.00
3. Assessments Through December 15, 2012	\$1,189.00
4. Late Fees Through December 15, 2012	• \$22.00
5. Fines Through November 27, 2012	\$0.00
6. Interest Through December 15, 2012	\$0.00
7. RPIR-GI Report	C \$85.00
8. Title Research (10-Day Mailings per NRS 116.31163)	C \$275.00
9. Management Company Advanced Audit Fee	C \$200.00
10. Management Account Setup Fee	\$0.00
11. Publishing and Posting of Trustee Sale	C \$175.00
13. Conduct Foreclosure Sale	-\$125.00
14. Capital Contribution	\$0.00
15. Progress Payments:	\$0.00
Sub-Total:	\$4,186.00
Less Payments Received:	\$0.00
Total Amount Due:	\$4,186.00

Please have a check in the amount of \$4,186.00 made payable to the Alessi & Koenig, LLC and mailed to the above listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

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

RUN DATE: 08/06/2012

COUNTRY GARDEN
ACCOUNT HISTORY REPORT
FOR THE PERIOD 01/01/2012 TO 08/31/2012
SINGLE OWNER

PAGE: 1

000029-01 PERFECT STORM, C/O DENNIS&JOANNE JOHNSON
STOP PAYMENT

5316 CLOVER BLOSSOM CT

TRX DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
12/31/2011	BEGINNING BALANCE			490.50
01/01/2012	MONTHLY ASSESSMENTS	55.00		545.50
01/31/2012	LATE FEE	5.50		551.00
02/01/2012	MONTHLY ASSESSMENTS	55.00		606.00
03/01/2012	MONTHLY ASSESSMENTS	55.00		661.00
03/02/2012	LATE FEE	5.50		666.50
03/31/2012	LATE FEE	5.50		672.00
04/01/2012	MONTHLY ASSESSMENTS	55.00		727.00
05/01/2012	MONTHLY ASSESSMENTS	55.00		782.00
05/01/2012	LATE FEE	5.50		787.50
05/31/2012	LATE FEE	5.50		793.00
06/01/2012	MONTHLY ASSESSMENTS	55.00		848.00
07/01/2012	MONTHLY ASSESSMENTS	55.00		903.00
07/01/2012	LATE FEE	5.50		908.50
07/31/2012	LATE FEE	5.50		914.00
08/01/2012	MONTHLY ASSESSMENTS	55.00		969.00

1 OWNERS *

REPORT BALANCE AS OF: 08/31/2012

969.00

Assessment $9 \times 55 = 495$
Late fee $= 9 \times 5.50 = 49.50$
Collection $2,850 \div 3 = 950$

EXHIBIT 3

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



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

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

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

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

December 6, 2012

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

Re: *Property Address:* 5316 Clover Blossom Court
Account ID: 30488
LOAN #: [REDACTED] 2260
MBBW File No. 12-H2280

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$4,186.00. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

...

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

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

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

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

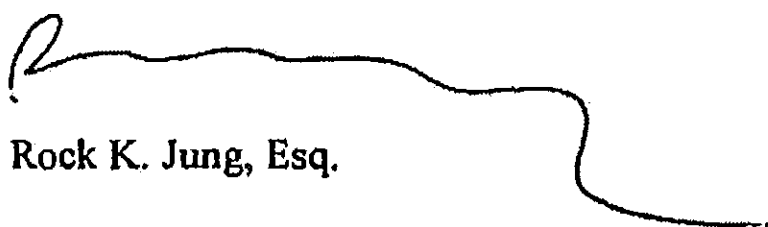
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n). Nevertheless, due to the Nevada Real Estate Division's Advisory Opinion of December 2010, which was recently ratified in the Nevada Supreme Court's *non-published* opinion on May 23, 2012, our client wishes to also make a good-faith tender of your collection costs as part of the super-priority amount. Bear in mind that NRS 116.310313(1) only allows "[a]n association [to] charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation." Here, reasonable collection costs in relation to my client's position as the first deed of trust lienholder, as opposed to a unit owner, is thought to be \$999.50.

Thus, our client has authorized us to make payment to you in the amount of \$1,494.50, which takes into account both the maximum 9 months worth of common assessments as well as reasonable collection costs to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$1,494.50. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 5316 Clover Blossom Court have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

Payee: Alessi & Koenig, LLC

Initials: NEG

Check #: 17657

Date: 12/4/2012 Amount: 1,494.50

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
12/4/2012	30488	To Cure HOA Deficiency	1,494.50			

Bank of America
1100 N. Green Valley Parkway
Henderson, NV 89074
16-66/1220
1020
12-H2280
Loan # [REDACTED] 2260

17657

Date: 12/4/2012

Amount \$~~1,494.50~~ 1,494.50

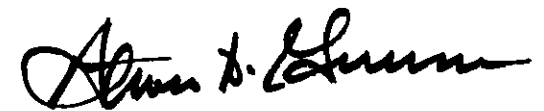
Pay \$*****One Thousand, Four Hundred Ninety-Four & 50/100 Dollars
to the order of

Alessi & Koenig, LLC

Check Void After 90 Days

Security Features Included. Details on back.

EXHIBIT 4



CLERK OF THE COURT

1 **ROPP**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.
7 376 East Warm Springs Road, Ste. 140
8 Las Vegas, Nevada 89119
9 (702) 642-3113/ (702) 642-9766 FAX
10 Attorney for plaintiff

11
12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 5316 CLOVER BLOSSOM CT TRUST

16 Plaintiff,

17 vs.

18 U.S. BANK, NATIONAL ASSOCIATION,
19 SUCCESSOR TRUSTEE TO BANK OF
20 AMERICA, N.A., SUCCESSOR BY MERGER
21 TO LASALLE BANK, N.A., AS TRUSTEE TO
22 THE HOLDERS OF THE ZUNI MORTGAGE
23 LOAN TRUST 2006-OA1, MORTGAGE
24 LOAN PASS-THROUGH CERTIFICATES
25 SERIES 2006-OA1; and CLEAR RECON
26 CORPS

27 Defendants.

CASE NO.: A-14-704412-C
DEPT NO.: XXIV

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**REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND OPPOSITION TO COUNTERMOTION FOR SUMMARY JUDGMENT, OR
ALTERNATIVELY, FOR RULE 56(F) RELIEF**

Plaintiff, 5316 Clover Blossom Ct Trust, by and through its attorney, Michael F. Bohn, Esq., submits the following points and authorities in support of its motion for summary judgment, filed on May 18, 2015, and in opposition to defendant U.S. Bank's counter motion for summary judgment, filed on July 22, 2015.

///

///

1 **POINTS AND AUTHORITIES**

2 **1. NRS Chapter 116 is not facially unconstitutional and does not violate due process**
3 **because “state action” is not involved and because the statute requires that copies**
4 **of the notice of default and the notice of sale be mailed to holders of “subordinate”**
5 **interests.**

6 At page 5 of its opposition and countermotion, defendant asserts that “the Nevada Legislature has
7 provided only a ‘request-notice’ or ‘opt-in’ provision; which requires notice *only* if the junior lienholder
8 – here the holder of a first deed of trust – requests notice in advance.” As discussed at page 12 of
9 plaintiff’s motion for summary judgment and at pages 4 and 5 below, the Nevada Supreme Court
10 recognized in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408,
11 411 (2014) that NRS 116.31168(1) expressly incorporates the provisions of NRS 107.090(3)(b) and NRS
12 107.090(4) that required the HOA’s foreclosure agent to mail copies of both the notice of default and the
13 notice of sale to defendant even if defendant did not “request-notice” or “opt-in” to receive notice.
14 Furthermore, Exhibits 3 and 4 to plaintiff’s motion prove that copies of both the notice of default and the
15 notice of trustee’s sale were mailed to the defendant at the address listed for the defendant in the
16 assignment of deed of trust recorded on June 20, 2011.

17 At page 6 of its opposition and countermotion, defendant asserts that “the Nevada Supreme Court
18 has held that a private party’s deprivation of another private party’s ‘significant property interest’
19 pursuant to a Nevada statute entitles the property owner to ‘federal and state due process’” even where
20 “[n]o state actor was involved in placing the lien.” To the contrary, in the case of J.D. Construction, Inc.
21 v. Ibex International Group, LLC, 126 Nev. Adv. Op. 36, 240 P.3d 1033 (2010), the Court applied due
22 process requirements to the judicial remedy provided by NRS 108.2275 to expunge a frivolous or
23 excessive lien, which required a hearing in the district court. The foreclosure of a mechanic’s lien
24 pursuant to NRS 108.293 also requires the filing of a civil action in “any court of competent jurisdiction
25 that is located within the county where the property upon which the work of improvement is located . .
26 . .” NRS Chapter 116, on the other hand, provides for a non-judicial foreclosure process that does not
27 involve a “state actor.”

28 Defendant also quotes from the case of Connolly Development, Inc. v. Superior Court, 17 Cal.

1 3d 803, 553 P.2d 637 (1976), to argue that the private enforcement procedure to enforce a mechanic's
2 lien was "only made possible, by explicit state authorization." On the other hand, in finding that "the
3 imposition and enforcement of mechanic's liens and stop notices constitute state action," the court stated
4 that the lien "becomes effective only upon recordation with the county recorder, an official of the state;
5 moreover, it can be enforced only by resort to the state courts." 17 Cal. 3d at 815. In footnote 14, the
6 court also stated: "We do not therefore rest our holding that stop notice procedures involve state action
7 merely upon the fact the procedure was created by statute."

8 In Lugar v. Edmondson Oil Co., Inc., 475 U.S. 922 (1982), the Supreme Court recognized that
9 "[o]ur cases have accordingly insisted that the conduct allegedly causing the deprivation of a federal right
10 be fairly attributable to the State" and that "fair attribution" required a two-part approach: 1) "the
11 deprivation must be caused by the exercise of some right or privilege created by the State"; and 2) "the
12 party charged with the deprivation must be a person who may fairly be said to be a state actor." Id. at
13 937. In Lugar, the Court found that "joint participation" between a private party and the Clerk of the state
14 court who issued a writ of attachment, which was then executed by the County Sheriff, satisfied the "state
15 actor" requirement. As noted above, no "state actor" is involved in the nonjudicial foreclosure process
16 provided by NRS 116.31162 to NRS 116.31168, and by incorporation, NRS 107.090.

17 The Court in Lugar cited its prior ruling in Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978), and
18 the Court acknowledged that even where the state was responsible for creating a statute, "[a]ction by a
19 private party pursuant to this statute, without something more, was not sufficient to justify a
20 characterization of that party as a 'state actor.'" 475 U.S. at 939. Similarly, in the case of Apao v. Bank
21 of New York, 324 F.3d 1091, 1092 (9th Cir. 2003), the Court of Appeals rejected a due process challenge
22 to Hawaii's nonjudicial foreclosure statute and stated that there had been "no legal or historical
23 development in the intervening years that would require a departure from prior authority."

24 The decision in Menonite Bd. of Missions v. Adams, 462 U.S. 791 (1983), cited by defendant
25 at page 7 of its opposition and counter-motion, is unlike the present case because that case involved a tax
26 sale conducted by the county treasurer and because the Indiana statute did not require any written notice
27 to be provided by mail or personal service to mortgagees whose liens were inferior to the tax lien. No
28

state action is involved in a nonjudicial foreclosure sale by an HOA, and written notices must be mailed to holders of interests “subordinate” to the HOA’s lien.

At page 7 of its opposition and countermotion, defendant asserts that “Nevada’s HOA Lien Statute does not require that mortgagees be provided with actual notice of the HOA foreclosure sale that can extinguish their property interest,” and defendant focuses only on the language in NRS 116.31162, 116.31163, and NRS 116.311635. NRS 116.31168(1), on the other hand, expressly incorporates the provisions of NRS 107.090 and applies them to an HOA lien foreclosure “as if” the lien were a deed of trust being foreclosed. NRS 107.090(3)(b) and NRS 107.090(4) **require** that written notice be mailed to “each other person with an interest” whose interest is “subordinate” to the HOA’s super priority lien even where the person does not “request” or “opt-in” to receive notice.

At page 9 of its opposition and countermotion, defendant requests that this court adopt the non-binding decisions by Judge Delaney and Judge Tao and find that “[t]he notice provision here renders the HOA Lien Statute unconstitutional. Both of these decisions, however, ignore the express provisions of NRS 107.090, as incorporated by NRS 116.31168(1), that require copies of both the notice of default and the notice of sale to be mailed to holders of “subordinate” interests even if they do not record or mail to the HOA a request for notice.

In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court specifically addressed and rejected the argument that the notice requirements in NRS Chapter 116 are unconstitutional. The Court painstakingly went through each of the foreclosure requirements in NRS Chapter 116 and called the statutory scheme “elaborate.” In rejecting U.S. Bank’s claim that there was a due process violation, the Court stated:

U.S. Bank makes two additional arguments that merit brief discussion. First, the lender contends that the nonjudicial foreclosure in this case violated its due process rights. Second, it invokes the mortgage savings clause in the Southern Highlands CC & Rs, arguing that this clause subordinates SHHOA's lien to the first deed of trust. Neither argument holds up to analysis.

1.

SFR is appealing the dismissal of its complaint for failure to state a claim upon which relief can be granted. NRCP 12(b)(5). The complaint alleges that “the HOA foreclosure sale complied with all requirements of law, including but not limited to, 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.” It further alleges that, “prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion of the HOA Lien representing 9 months of assessments for common expenses.” **In view of the fact that the “requirements of law” include compliance with NRS 116.31162 through NRS 116.31168 and by incorporation, NRS 107.090, see NRS 116.31168(1),** we conclude that U.S. Bank's due process challenge to the lack of adequate notice fails, at least at this early stage in the proceeding. (emphasis added)

334 P.3d at 417-418.

NRS 116.31168 provides in part:

Foreclosure of liens: Requests by interested persons for notice of default and election to sell; right of association to waive default and withdraw notice or proceeding to foreclose.

1. The provisions of NRS 107.090 apply to the foreclosure of an association’s lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit’s owner and the common-interest community. (emphasis added)

NRS 107.090 provides in part:

Request for notice of default and sale: Recording and contents; mailing of notice; request by homeowners’ association; effect of request.

1. As used in this section, “person with an interest” means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. **A person with an interest** or any other person who is or may be held liable for any debt secured by a lien on the property desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property **may at any time after recordation of the deed of trust record in the office of the county recorder** of the county in which any part of the real property is situated **an acknowledged request for a copy of the notice of default or of sale.** The request must state the name and address of the person requesting copies of the notices and 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.

3. The trustee or person authorized to record **the notice of default** shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, 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, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified,

1 return receipt requested and with postage prepaid, containing a copy of **the notice of time**
2 **and place of sale**, addressed to each person described in subsection 3. (emphasis added)

3 NRS 107.090 includes both an “opt in” provision for “any” person with an interest **and** a
4 “mandatory” notice provision for holders of “subordinate” interests. As provided by NRS 107.090(2),
5 any “person with an interest” can record “an acknowledged request for a copy of the notice of default or
6 of sale.”

7 When a deed of trust is foreclosed, NRS 107.090(3)(a) requires that a copy of the notice of default
8 be mailed to each person who has recorded a request for notice. NRS 107.090(3)(b) requires that a copy
9 of the notice of default also be mailed to “[e]ach other person with an interest whose interest or claimed
10 interest is subordinate to the deed of trust.”

11 The definition of “person with an interest” in NRS 107.090(1) includes holders of “any right, title
12 or interest in, or lien or charge upon, the real property.” This definition includes holders of deeds of trust.
13 NRS 107.090(3)(b) therefore requires that notice be mailed to holders of deeds of trust “subordinate” to
14 “the deed of trust” being foreclosed even if they do not record a request for notice.

15 NRS 107.090(4) requires that a copy of the notice of sale be mailed to the same persons.

16 The notice requirements in NRS 107.090(3)(b) and 107.090(4) apply regardless of whether the
17 holder of the subordinate interest (deed of trust) records a request for a copy of the notice in order to
18 qualify to receive the notice required by NRS 107.090(3)(a). **If notice was required only for those**
19 **persons who had recorded a request for notice, there would be no reason for NRS 107.090(3)(b)**
20 **to exist because all such persons would already be covered by NRS 107.090(3)(a).** Because NRS
21 107.090(3)(a) and NRS 107.090(3)(b) are connected by the word “and,” the statute without question
22 requires that notice be provided **both** to holders of interests who have recorded a request for notice **and**
23 to holders of “subordinate” interests even if they have not recorded a request for notice.

24 NRS 116.31168(1) expressly incorporates “[t]he provisions of NRS 107.090” and not just the
25 provisions of NRS 107.090(3) that requires mailing of the notice of default. As noted above, NRS
26 107.090(4), which is without question one of **the** provisions of NRS 107.090, requires that a copy of the
27 notice of sale be mailed to “each person described in subsection 3.” Because a copy of the notice of
28

1 default must be mailed by a foreclosing HOA to every holder of every type of interest “subordinate” to
2 “the association’s lien,” a copy of the notice of sale must also be mailed to each such person.

3 NRS 116.31168(1) states that NRS 107.090 is to be applied to an HOA’s foreclosure of its lien
4 “**as if** a deed of trust were being foreclosed.” (emphasis added) This means that the words “deed of trust”
5 at the end of NRS 107.090(3) need to be read **as if** the words “association’s lien” appeared in their place.
6 The plain intent of NRS 116.31168(1) is that NRS 107.090 be applied to an HOA foreclosure to require
7 that written notice be mailed to each holder of an interest who has recorded a request for notice **and** each
8 holder of an interest “subordinate” to the association’s lien **regardless of whether the holder has**
9 **recorded a request for notice.**

10 In State v. Steven Daniel P. (In re Steven Daniel P.), 129 Nev., Adv. Op. 73, 309 P.3d 1041, 1046
11 (2013), the Nevada Supreme Court applied the concept of incorporating a statute by reference in the
12 context of NRS Chapter 62C and stated:

13 The United States Supreme Court has held that “[w]here one statute adopts the particular
14 provisions of another by a specific and descriptive reference to the statute or provisions
15 adopted, the effect is the same as though the statute or provisions adopted had been
16 incorporated bodily into the adopting statute.” Hassett v. Welch, 303 U.S. 303, 314 (1938)
17 (quoting 2 J.G. Sutherland & John Lewis, *Statutes and Statutory Construction* 787 (2d ed.
1904)); *see also* State ex rel. Walsh v. Buckingham, 58 Nev. 342, 349, 80 P.2d 910, 912
18 (1938) (“A statute by reference made a part of another law becomes incorporated in it and
19 remains so as long as the former is in force.”)

20 Consequently, the provisions of NRS 107.090 requiring that copies of **both** the notice of default **and** the
21 notice of sale be mailed to holders of interests “subordinate” to the HOA’s lien must be read as if they
22 were “incorporated bodily” into NRS Chapter 116.

23 The Nevada Supreme Court has directed that courts must construe statutes to give meaning to **all**
24 **of their parts and language**, and courts are to read **each sentence, phrase, and word** to render it
25 meaningful within the context of the purpose of the legislation. Board of County Comm'rs v. CMC of
26 Nevada, 99 Nev. 739, 744, 670 P.2d 102, 105 (1983). (emphasis added)

27 The Nevada Supreme Court has also stated that a statute should be interpreted to give the terms
28 their plain meaning, **considering the provisions as a whole**, so as to read them in a way that would not
render words or phrases superfluous or make a provision nugatory. Southern Nevada Homebuilders v.

1 Clark County 121 Nev. 446, 117 P.3d 171 (2005). (emphasis added) A statute should be construed so that
2 **no part is rendered meaningless.** Public Employees' Benefits Program v. Las Vegas Metropolitan
3 Police Department 124 Nev. 138, 179 P.3d 542 (2008). (emphasis added) When the language of a statute
4 is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it.
5 City Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989).

6 The Nevada Supreme Court has recognized a general presumption that statutes will be interpreted
7 in compliance with the Constitution. Sereika v. State, 114 Nev. 142, 955 P.2d 175, 180 (1998). The
8 Nevada Supreme Court has stated that “statutes must be construed consistent with the constitution and,
9 where necessary, in a manner supportive of their constitutionality.” Foley v. Kennedy, 110 Nev. 1295,
10 1300, 885 P.2d 583, 586 (1994). Where a statute is susceptible to both a constitutional and an
11 unconstitutional interpretation, the court is obliged to construe the statute so that it does not violate the
12 constitution. Whitehead v. Nevada Commission on Judicial Discipline, 110 Nev. 380, 878 P.2d 913, 919
13 (1994), citing Sheriff v. Wu, 101 Nev. 687, 708 P.2d 305 (1985).

14 In the order entered by Judge Delaney on May 7, 2015, cited at page 9 of defendant’s opposition
15 and countermotion, Judge Delaney adopted the defendant’s argument that “reference to NRS 107.090
16 does not salvage the federal or state constitutionality of the Statute because Plaintiff’s construction of
17 NRS 107.090 as mandating notice to lenders before foreclosure would render superfluous the express
18 ‘opt-in’ notice provisions contained in NRS 116.3116, in violation of rules of statutory construction.”
19 To the contrary, NRS 107.090(3)(b) mandates notice only to holders of “subordinate” liens, while the
20 “opt-in” provisions in NRS 116.31163 and NRS 116.311635 apply to “[e]ach person who has requested
21 notice pursuant to NRS 107.090 or 116.31168.” Because more persons qualify to request notice under
22 NRS 116.31163 and NRS 116.311635 than are automatically required to receive notice under NRS
23 107.090(3)(b), (4), as incorporated by NRS 116.31168(1), the opt-in provisions of NRS 116.31163 and
24 NRS 116.311635 are not made superfluous.

25 Furthermore, NRS 107.090 contains **both** an “opt-in” provision in NRS 107.090(2) and
26 107.090(3)(a) and “mandatory” notice provisions for holders of “subordinate” interests in NRS
27 107.090(3)(b), (4), and no court has found that the “mandatory” notice provisions in NRS 107.090 render

1 the “opt-in” provisions in NRS 107.090 “superfluous.” If defendant’s interpretation were correct, then
2 every nonjudicial foreclosure of a deed of trust would also be unconstitutional.

3 The order entered by Judge Tao on January 6, 2014 focused only on the notice provisions in NRS
4 116.11635 and did not address the notice requirements in NRS 107.090 that are incorporated by NRS
5 116.3168(1).

6 The foreclosure procedures for HOA liens found in NRS Chapter 116 mirror the statutory
7 procedures provided for foreclosures of trust deeds in NRS 107.080. In the case of Charmicor v. Deaner,
8 572 F.2d 694 (9th Cir. 1978), the federal appeals court ruled that the statutory procedure for non-judicial
9 foreclosure sales provided in NRS 107.080 did not transform the private action into state action for due
10 process purposes.

11 The statutory requirements for the foreclosure procedures under NRS Chapter 116 for an HOA
12 foreclosure and under NRS 107.080 for a bank foreclosure are detailed in the following graph:

HOA Foreclosure	Statutory Requirement	Bank Foreclosure
NRS 116.31162(1)(a)	Delinquency by homeowner	NRS 107.080(1)
NRS 116.31162(1)(a)	Mail notice of delinquency to homeowner	No statutory requirement but required by terms of deed of trust
NRS 116.31162(1)(b)	Execute notice of default and election to sell (NOD) that describes the deficiency in payment	NRS 107.080(2)(b)
NRS 116.31162(1)(a)	Record NOD	NRS 107.080(3)
NRS 116.31162(2)(b)	Mail NOD by certified or registered mail, return receipt requested to homeowner	NRS 107.080(3)
NRS 116.31163 and NRS 116.31168(incorporating requirements of NRS 107.090)	Mail NOD to interested parties who request notice	NRS 107.090(3)(a)
NRS 116.31168 (incorporating requirements of NRS 107.090)	Mail NOD to subordinate claim holders	NRS 107.090(3)(b)
NRS 116.31162(1)(c)	Failure to pay for 90 days after NOD is recorded and mailed	NRS 107.080(3)

HOA Foreclosure	Statutory Requirement	Bank Foreclosure
NRS 116.311635(1)(a)	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/posting in a public place and on property	NRS 107.080(4)
NRS 116.311635(1)(a)(1)	Mail Notice of Sale (NOS) to homeowner	NRS 107.080(4)
NRS 116.311635(1)(b)(1) and NRS 116.311635(1)(b)(3)	Mail NOS to interested parties who request notice	NRS 107.090(4)
NRS 116.31168 (incorporating requirements of NRS 107.090)	Mail NOS to subordinate claim holders	NRS 107.090(4)
NRS 116.311635(1)(b)(3)	Mail NOS to Ombudsman	No statutory requirement
NRS 116.311635(2)	Post NOS on property or personally deliver to homeowner	NRS 107.080(4)

The exhibits to plaintiff's motion prove that the HOA's foreclosure agent mailed copies of both the notice of default and the notice of sale to plaintiff. Furthermore, as noted above, NRS 116.31166 expressly provides that the recitals in the foreclosure deed are "conclusive proof" that the HOA's foreclosure agent mailed both of the required notices to defendant.

NRS 116.31168(1) incorporates the exact notice requirements that are used by lenders like plaintiff when they foreclose their deeds of trust. Because these notice requirements are constitutional when used to foreclose a deed of trust, they are also constitutional when used to foreclose an HOA assessment lien.

NRS 116.31168, and by incorporation, NRS 107.090, provide holders of "subordinate" deeds of trust with adequate notice prior to an HOA foreclosure sale. The statutory foreclosure process does not violate due process and is not facially unconstitutional.

2. The defendant's dispute with the HOA's foreclosure agent over the amount of the HOA's "superpriority" lien does not make the HOA lien statute unconstitutional as applied to this case.

At page 11 of its opposition and countermotion, defendant states that "[n]one of the documents

1 recorded by the HOA provided notice of the super-priority amount prior to the foreclosure sale.”
2 However, in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408,
3 418 (2014), the Supreme Court expressly held that “it was appropriate to state the total amount of the
4 lien.”

5 Defendant also asserts that Exhibit H to defendant’s opposition and countermotion states that “the
6 HOA and the HOA Trustee – refused to provide U.S. Bank with the super-priority amount.” To the
7 contrary, Paterno C. Juarani’s letter of November 21, 2012 did not request that the HOA provide U.S.
8 Bank with the superpriority amount of the HOA’s lien. The letter instead includes Mr. Juarani’s
9 arguments as to what amounts should be included in the superpriority lien and offered to pay only that
10 amount. (Exhibit H-1) As evidenced by Exhibit H-2, the HOA’s foreclosure agent provided a full
11 breakdown of fees, interest, and costs totaling \$1,765.00 that were included in the total lien amount of
12 \$4,186.00 listed on page 2 of Exhibit H-2. The HOA also provided an itemized list of the assessments
13 and late fees on page 3 of Exhibit H-2.

14 Instead of paying the amount requested by the HOA foreclosure agent, Exhibit H-3 shows that
15 Mr. Juarani calculated the amount of the superpriority lien without the participation of the HOA or its
16 foreclosure agent. On December 6, 2012, Bank of America tendered the amount of \$1,494.50 to the
17 HOA’s foreclosure agent subject to the following conditions:

18 This is a non-negotiable amount and any endorsement of said cashier’s check on your part,
19 whether express or implied, will be strictly construed as an unconditional acceptance on
20 your part of the facts stated herein and express agreement that BANA’s financial
obligation towards the HOA in regards to the real property located at 5316 Clover
Blossom Court has now been “paid in full”.

21 Exhibit H-4 shows that the check for \$1,494.50 was promptly returned by the HOA.

22 Following the rejection of its attempted tender, however, defendant took no action to prevent the
23 HOA from completing the foreclosure of its superpriority lien at the public auction held on January 16,
24 2013.

25 At page 12 of its opposition and countermotion, defendant states that “[t]he Due Process Clause
26 requires that a party be provided *actual* notice and an *actual* opportunity to be heard prior to the
27 deprivation of that party’s property interest.” As noted above, NRS 107.090(3)(b), (4), as incorporated
28

1 by NRS 116.31168(1), required that the HOA mail to defendant copies of both the notice of default and
2 the notice of sale. Exhibits 3 and 4 attached to plaintiff's motion for summary judgment prove that both
3 of these notices were mailed to defendant within the time periods required by the statute.

4 In J.D. Construction, Inc. v. Ibex International Group, LLC, 126 Nev. Adv. Op. 36, 240 P.3d
5 1033, 1040 (2010), the Nevada Supreme Court rejected a due process challenge to the judicial procedure
6 provided by NRS 108.2275 to expunge a mechanic's lien as frivolous or excessive. The Court stated:

7 As the United States Supreme Court recognized in *Mathews*, due process is not a fixed
8 concept susceptible to rigid definition. 424 U.S. at 334, 96 S.Ct. 893. Instead, "[d]ue
9 process is flexible and calls for such procedural protections as the particular situation
10 demands." *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33
L.Ed.2d 484 (1972)). Due process is satisfied where interested parties are given an
"opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333, 96
S.Ct. 893 (internal quotation omitted).

11 After the HOA's foreclosure agent returned the check for \$1,494.50 tendered by counsel for Bank
12 of America on December 6, 2012, defendant had ample time to either file a legal action to enjoin the
13 foreclosure sale or stop the sale by "paying the entire amount and requesting a refund of the balance" as
14 stated by the Nevada Supreme Court in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv.
15 Op. 75, 334 P.3d 408, 418 (2014). Instead, Defendant knowingly allowed the HOA to complete the
16 foreclosure of its "prior" lien without any notice to bidders that defendant had an undisclosed objection
17 to the sale.

18 **3. Defendant did not make an effective tender to prevent the HOA from foreclosing**
19 **on the super priority lien.**

20 At page 14 of its opposition and countermotion, defendant asserts that "[b]y tendering the full
21 super-priority amount prior to the foreclosure, Bank of America extinguished the super-priority portion
22 of the HOA's lien, thus redeeming the first-priority position of U.S. Bank's Deed of Trust prior to the
23 foreclosure sale." Defendant cites no authority for this argument.

24 As noted above, Exhibit 3 to the affidavit of Douglas E. Miles (Exhibit H to defendant's
25 opposition) reveals that the payment of \$1,494.50 offered by Paterno C. Jurani, Esq. and rejected by Alesi
26 & Koenig was calculated based on number of assumptions by Mr. Jurani for which defendant has
27 produced no evidence. Further, the payment was tendered on the express conditions set forth above at

1 page 11.

2 In the case of Moeller v. Lien, 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994), the respondent
3 allowed a trustee's sale to go forward even though the respondent had available cash deposits to pay off
4 the loan. Id. at 828. The trial court granted the respondent's request to set aside the sale because "[t]he
5 value of the property was four times the amount of the debt/sales price." Id. at 829. Reversing the trial
6 court, the Court of Appeals stated:

7 Since the presumption is rebuttable as to purchasers other than bona fide purchasers, the
8 purchaser's title may in some instances be recovered by the trustor in an attack on the
9 validity of the sale. (4 Miller & Starr, supra, §9:152, pp. 502-503.) As to a bona fide
10 purchaser, however, the presumption is conclusive. Thus **as a general rule, a trustor has**
11 **no right to set aside a trustee's deed as against a bona fide purchaser for value by**
12 **attacking the validity of the sale.** (Homestead Savings v. Damiento, supra, 230 Cal.
13 App. 3d at p. 436.) The conclusive presumption precludes an attack by the trustor on a
14 trustee's sale to a bona fide purchaser **even though there may have been a failure to**
15 **comply with some required procedure which deprived the trustor of his right of**
16 **reinstatement or redemption.** (4 Miller & Starr, supra, § 9:141, p. 463; cf. Homestead
17 v. Damiento, supra, 230 Cal. App. 3d at p. 436.) The conclusive presumption precludes
18 an attack by the trustor on the trustee's sale to a bona fide purchaser **even where the**
19 **trustee wrongfully rejected a proper tender of reinstatement by the trustor.** Where
20 the trustor is precluded from suing to set aside the foreclosure sale, the trustor may recover
21 damages from the trustee. (Munger v. Moore (1970) 11 Cal. App. 3d 1, 9, 11 [89 Cal.
22 Rptr. 323].)

23 Id. at 831-832. (emphasis added)

24 As noted by the court in the case of Gaffney v. Downey Savings & Loan Ass'n, 200 Cal. App. 3d
25 1154, 1165, 246 Cal. Rptr. 421 (1988), "[n]othing short of the full amount due the creditor is
26 **sufficient** to constitute a valid tender, and the debtor must at his peril offer the full amount." (emphasis
27 added) In Gaffney, the court reversed a judgment for wrongful foreclosure entered in favor of the
28 borrowers and held that the lender properly rejected the borrowers' cure payments because the borrowers
29 mailed the July and August payments and late charges in one envelope and the September payment in a
30 separate envelope. The court observed that "it is a debtor's responsibility to make an unambiguous tender
31 of the entire amount due or else suffer the consequences that the tender is of no effect." Id.

32 In Nguyen v. Calhoun, 105 Cal. App. 4th 428, 129 Cal. Rptr. 2d 436 (2003), the defaulting
33 borrower had entered into a contract to sell the subject property to the plaintiff. The trustee's sale was
34 scheduled for July 10, 1998 at noon, and the lender agreed that it would postpone the sale if the borrower

1 could prove that the plaintiff's new loan had funded. The new loan funded on July 9, 1998 and escrow
2 closed on July 10, 1998, but the cure payment was not received by the lender until July 13, 1998.
3 Meanwhile, the trustee's sale was held on July 10, and the defendant purchased the property. Plaintiff
4 sued to quiet title, and the trial court ruled in favor of the plaintiff. The court of appeals reversed because
5 the debt was not paid prior to the foreclosure sale. In particular, the court stated that in the absence of
6 a direction by the lender to mail a payment, "the payment is not effective until received by the creditor."
7 Id. at 449.

8 The court also rejected the plaintiff's argument that the sale could be set aside based on
9 "irregularity in the sale coupled with inadequate price." Id. at 450. The court rejected this argument
10 because "[a] mistake that occurs outside (dehors) the confines of the statutory proceeding does not
11 provide a basis for invalidating the trustee's sale." Id. Because the plaintiff could prove no error in
12 connection with any statutorily required notices or with the bidding process at the sale, the
13 misunderstanding about postponing the sale did not constitute adequate grounds to invalidate the
14 trustee's sale.

15 In the present case, plaintiff is a bona fide purchaser for value of the subject property without
16 notice of the claim by defendant that it attempted to cure the superpriority arrearage prior to the HOA
17 foreclosure sale. The bona fide purchaser doctrine was adopted by the Nevada Supreme Court in the case
18 of Moresi v. Swift, 15 Nev. 215 (1880), where the court stated:

19 The rule that a man who advances money bona fide and without notice, will be protected
20 in equity, applies equally to real estate, chattels, and personal estate.

21 The case of Firato v. Tuttle, 48 Cal.2d 136, 139-140, 308 P.2d 333 (1957), involved a fact pattern
22 where real property was acquired by a third party after the trustee on a deed of trust had reconveyed the
23 trust deed without authority to do so. In ruling for the subsequent purchaser and encumbrancer, the
24 California Supreme Court held that the bona fide purchaser doctrine protected the later purchaser and
25 encumbrancer even though the original trust deed was reconveyed without authority. The court stated:

26 Instruments which are wholly void cannot ordinarily provide the foundation for good title
27 even in the hands of an innocent purchaser, as where a deed has been forged or has not
28 been delivered. Trout v. Taylor, 220 Cal. 652, 656, 32 P.2d 968. It does not appear,
however, that section 870 of the Civil Code should necessarily make the unauthorized

1 reconveyance by a trustee void as to such a purchaser. Section 2243 of that code states:
2 “Everyone to whom property is transferred in violation of a trust, holds the same as an
3 involuntary trustee under such trust, unless he purchased it in good faith, and for a
4 valuable consideration.” (Emphasis added.) This section was also enacted in 1872 and has
5 been treated as correlative to section 870. Chapman v. Hughes, 134 Cal. 641, 657, 58 P.
6 298, 60 P. 974, 66 P. 982.

7 The rule indicated by section 2243, which would **protect innocent purchasers for value**
8 **who take without any notice that the conveyance by the trustee was unauthorized**,
9 is in accord with the rule protecting such purchasers who acquire their interests from one
10 who holds a general power and who makes a conveyance for an unauthorized purpose, see
11 Alcorn v. Buschke, 133 Cal. 655, 66 P. 15, and cases cited, or from a trustee under a
12 secret trust. Ricks v. Reed, 19 Cal. 551; Rafferty v. Kirkpatrick, 29 Cal.App.2d 503, 508,
13 85 P.2d 147; Civil Code, 869. The protection of such purchasers is consistent ‘with the
14 purpose of the registry laws, with the settled principles of equity, and with the convenient
15 transaction of business.’ Williams v. Jackson, 107 U.S. 478, 484, 2 S.Ct. 814, 819, 27
16 L.Ed. 529. **It also finds support in the better reasoned cases from other jurisdictions**
17 **which have dealt with similar problems upon general equitable principles and in the**
18 **absence of statutory provisions.** Simpson v. Stern, 63 App.D.C. 161, 70 F.2d 765,
19 certiorari denied 292 U.S. 649, 54 S.Ct. 859, 78 L.Ed. 1499; Williams v. Jackson, supra,
20 107 U.S. 478, 2 S.Ct. 814; Town of Carbon Hill v. Marks, 204 Ala. 622, 86 So. 903;
21 Lennartz v. Quilty, 191 Ill. 174, 60 N.E. 913; Millick v. O'Malley, 47 Idaho 106, 273 P.
22 947; Day v. Brenton, 102 Iowa 482, 71 N.W. 538; Willamette Collection & Credit Service
23 v. Gray, 157 Or. 79, 70 P.2d 39; Locke v. Andrasko, 178 Wash. 145, 34 P.2d 444.

24 As section 2243 of the Civil Code must be read with section 870 of the same code and
25 because of the obvious desirability of protecting innocent purchasers for value who rely
26 in good faith upon recorded instruments under the circumstances presented here, we
27 conclude that plaintiffs were required to plead that respondents were not such innocent
28 purchasers for value in order to state a cause of action against them. In the absence of such
allegations, the trial court properly sustained respondents' demurrers to plaintiffs' first
amended complaint. (emphasis added)

1 The California statute which is cited in the Firato case, Civil Code 2243, has a specific
2 requirement that the party claiming the statute's protection be a bona fide purchaser. By contrast, the
3 Nevada statute, NRS 116.31166, contains no bona fide purchaser requirement. All that the statute
4 requires is winning the bidding process, tendering the money, and receiving a deed. This all occurred
5 here.

6 Defendant has produced no evidence or even alleged that plaintiff was made aware that defendant
7 claimed that the HOA had wrongfully prevented it from curing the superpriority lien amount prior to the
8 sale. Instead, after defendant's attempted tender was rejected, defendant allowed the HOA foreclosure
9 sale to plaintiff to take place without objection, and defendant allowed a “conclusive” deed to be recorded
10 in plaintiff's favor. The “conclusive presumption” in NRS 116.31166 protects plaintiff's title without

1 requiring that plaintiff prove it is a bona fide purchaser.

2 **4. The “commercial reasonableness” requirements contained in the Uniform**
3 **Commercial Code do not apply to the HOA’s foreclosure sale in this case.**

4 At pages 8 to 12 of its motion for summary judgment, plaintiff explained in detail why the
5 language contained in NRS 104.9610(2) requiring that a disposition of collateral secured by an Article
6 security interest must be “commercially reasonable” cannot be applied to limit the nonjudicial
7 foreclosure procedure expressly prescribed by NRS 116.31162 through NRS 116.31168 and, by
8 incorporation, NRS 107.090.

9 At page 16 of its opposition and countermotion, defendant asserts that the “obligation of good
10 faith” contained in NRS 116.1113 incorporates the definition of “good faith” contained in the Comment
11 to Section 1-113 of the UCIOA. The Comment to Section 1-113 of the UCIOA does not include any
12 requirement of “commercial” reasonableness. The Comment to Section 1-113 of the UCIOA instead
13 states that “good faith” means “observance of two standards: ‘honesty in fact’, and observance of
14 reasonable standards of fair dealing.” The word “commercial” does not appear in the definition.

15 Defendant then asserts that because the Comment to Section 1-113 of the UCIOA states that the
16 definition of “good faith” is “derived from and used *in the same manner as . . .* Sections 2-103(i)(b) and
17 7-404 of the *Uniform Commercial Code*,” the court should ignore the definition actually used in the
18 Comment to Section 1-113 of the UCIOA and instead interpret NRS 116.1113 as incorporating the
19 definition of “good faith” contained in NRS 104.1201(2)(t). On the other hand, NRS 104.1102 expressly
20 provides that Article 1 of the Uniform Commercial Code “applies to a transaction to the extent that is
21 governed by another Article of the Uniform Commercial Code.”

22 Nevada’s version of the Uniform Commercial Code does not contain its definition of “good faith”
23 in NRS 104.2013, so it cannot be incorporated by the reference in the Comment to Section 1-113 of the
24 UCIOA. Nevada’s version of the Uniform Commercial Code also does not include any provision stating
25 that any part of Article 2 of NRS Chapter 104, identified in NRS 104.1201 as “Uniform Commercial
26 Code – Sales,” applies to the foreclosure of an HOA lien.

27 As noted at page 10 of plaintiff’s motion for summary judgment, NRS 104.9109(4)(k) expressly
28

1 provides that Article 9 of the Uniform Commercial Code does not apply to “[t]he creation or transfer of
2 an interest in or lien on real property” except for four specific exceptions. An assessment lien under NRS
3 Chapter 116 is not one of the listed exceptions.

4 In Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963), cert. denied, 382 U.S. 844 (1965), the
5 Nevada Supreme Court refused to adopt the rule that when the inadequacy of price is so great as to shock
6 the conscience, it is sufficient justification to set aside a sale. The Court instead adopted the following
7 rule:

8 **"However, even assuming that the price was inadequate, that fact standing alone**
9 **would not justify setting aside the trustee's sale.** `In California, it is a settled rule that
10 inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a
11 trustee's sale legally made; **there must be in addition proof of some element of fraud,**
12 **unfairness, or oppression as accounts for and brings about the inadequacy of price."**
13 (emphasis added)

14 387 P.2d at 995, quoting Oller v. Sonoma County Land Title Co., 137 Cal. App.2d 633, 290 P.2d
15 880 (1955).

16 In the present case, defendant has not offered any proof of this required “element of fraud,
17 unfairness, or oppression.” The Nevada Supreme Court concluded its opinion in Golden v. Tomiyasu by
18 noting:

19 In virtually all foreclosures the trustor or mortgagor suffers a loss. He has not been able
20 to meet his obligation and loses the property. When the sale is by a trustee, as in the
21 present case, he loses it without an equity of redemption. If the sale is properly, lawfully
22 and fairly carried out, he cannot unilaterally create a right of redemption in himself. . . .
23 We regret, as do all courts facing such a situation, that the mortgagor or trustor must lose
24 his property, but we cannot arbitrarily afford relief under such circumstances as here exist.

25 387 P.2d at 997.

26 The Nevada Supreme Court applied this same rule in Long v. Towne, 98 Nev. 11, 639 P.2d 528,
27 530 (1982); Turner v. Dewco Services, Inc., 87 Nev. 14, 479 P.2d 462 (1971); Brunzell v. Woodbury,
28 85 Nev. 29, 449 P.2d 158 (1969).

At page 16 of its opposition, defendant cites the decision in Jones v. Bank of Nevada, 91 Nev.
368, 535 P.2d 1279 (1975), as authority that “Nevada courts have confirmed that this commercial
reasonableness standard applies to the disposition of collateral.” In Jones v. Bank of Nevada, the Court

1 applied the provisions of NRS 104.9504(3) and NRS 107.9507(2) to a secured party's repossession and
2 sale of an airplane. As noted above, however, NRS 104.9109(4)(k) expressly provides that Article 9 of
3 the Uniform Commercial Code does not apply to the HOA lien foreclosed in this case.

4 In footnote 4 at page 16 of its opposition, defendant cites the decision in Will v. Mill
5 Condominium Owners' Association, 848 A.2d 336, 342 (Vt. 2004), as authority that "the commercial
6 reasonableness provision of UCIOA . . . has been wholly adopted in both Nevada and Vermont. *Compare*
7 NRS 116.1113, *with* 27A V.S.A. § 1-113." As noted above, the definition of "good faith" adopted in
8 NRS 116.1113 does not require "commercial" reasonableness – the definition only requires "honesty in
9 fact" and "observance of reasonable standards of fair dealing."

10 Unlike the nonjudicial foreclosure process provided in NRS 116.31162 to 116.31168, 27A V.S.A.
11 § 3-116(j) in Vermont's version of the UCIOA requires that an association's lien be judicially foreclosed
12 pursuant to 12 V.S.A. chapter 172 or subsection (o) of 27A V.S.A. § 3-116(j). 27A V.S.A. § 3-116(p)
13 expressly provides that "[e]very aspect of a foreclosure, sale, or other disposition under this section,
14 including the method, time, date, place, and terms, must be commercially reasonable." Nevada's version
15 of the UCIOA contains no such language.

16 Vermont's version of the UCIOA also does not contain any statutory language similar to the
17 provision in NRS 116.31166(1) that the recitals in an HOA foreclosure deed "are conclusive proof of the
18 matters recited" or the provision in NRS 116.31166(2) that "[s]uch a deed containing those recitals is
19 conclusive against the unit's former owner, his or her heirs and assigns, **and all other persons.**"
20 (emphasis added)

21 The case of Dennison v. Allen Group Leasing Corp., 110 Nev. 181, 871 P.2d 288 (1994), cited
22 at page 17 of defendant's opposition and countermotion, involved the application of California's version
23 of the Uniform Commercial Code to the repossession and sale of two pieces of automobile repair
24 equipment. The Nevada Supreme Court reversed the summary judgment entered in favor of the secured
25 party because there were errors in the description of the equipment identified in the notice of sale, and
26 the secured party failed to produce proof of the content of the notice published in the L.A. Times. In the
27 present case, there is no dispute regarding the content of the notice of trustee's sale recorded on October

28

31, 2012 as instrument # 201210310000738 (Exhibit 4 to plaintiff's motion) or the posting (Exhibit 5 to plaintiff's motion) and publication (Exhibit 6 to plaintiff's motion) of this notice as required by NRS Chapter 116.

At page 17 of its opposition and countermotion, defendant quotes from Levers v. Rio King Land & Investment Co., 93 Nev. 95, 98-99, 560 P.2d 917, 920 (1977), that "[a] wide discrepancy between the sale price and the value of the collateral compels close scrutiny into the commercial reasonableness of the sale." In Levers, however, the secured party mailed a letter to the debtor only 8 days before the sale, the secured party and a former employee were the only people who attended the sale, there was no evidence that the sale was publicized in any manner, and the secured party purchased the collateral for \$100 at the sale and re-sold the collateral to a third party for \$10,000.

Although the Nevada Supreme Court found that the sale in Levers was not commercially reasonable, the Court reversed the district court's judgment setting aside the sale and held that it was enough that the secured party's judgment be reduced by the \$10,000 fair market value of the collateral. In the present case, the exhibits to plaintiff's motion establish that the HOA complied with every requirement of NRS Chapter 116 to hold a public auction at which a third party, i.e. the plaintiff, purchased the property for the high bid of \$8,200.00.

In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 417 (2014), the Nevada Supreme Court stated:

But the choice of foreclosure method for HOA liens is the Legislature's, and the Nevada Legislature has written NRS Chapter 116 to allow nonjudicial foreclosure of HOA liens, subject to the special notice requirements and protections handcrafted by the Legislature in NRS 116.31162 through NRS 116.31168. (emphasis added)

The Nevada Supreme Court also stated: "If revisions to the foreclosure methods provided for in NRS Chapter 116 are appropriate, **they are for the Legislature to craft, not this court.**" Id. (emphasis added) This court should reject defendant's request that the court judicially impose a "commercial reasonableness" requirement on every HOA foreclosure sale.

5. Defendant's request for a continuance under NRCP 56(f) should be denied because all facts supporting entry of judgment in plaintiff's favor have been discovered.

At page 20 of its opposition and countermotion, defendant asserts that "U.S. Bank has not had the

1 opportunity to develop several issues central to its defense to Plaintiff's quiet title claim." Each of the
2 areas identified by defendant involve discovery of facts relating to the HOA's compliance with the HOA
3 lien statute and whether the HOA conducted a commercially reasonable sale. Under Nevada law,
4 however, none of the facts that defendant seeks to discover can affect the extinguishment of defendant's
5 deed of trust and plaintiff's claim for quiet title.

6 As noted at page 18 above, pursuant to NRS 116.31166(1), the recitals in the HOA foreclosure
7 deed (Exhibit 1 to plaintiff's motion) "are conclusive proof of the matters recited," and pursuant to NRS
8 116.31166(2), "[s]uch a deed containing those recitals is conclusive against the unit's former owner, his
9 or her heirs and assigns, **and all other persons.**" (emphasis added) The exhibits to plaintiff's motion for
10 summary judgment prove that the recitals in the foreclosure deed are true and that the HOA and its
11 foreclosure agent complied with every statutory requirement for the public auction held on January 16,
12 2013.

13 As recognized by the court in Moeller v. Lien, 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994),
14 although the information that defendant seeks to discover regarding the payment rejected by the HOA,
15 the announcements made at the sale, and the particulars of the bidding process could support a claim for
16 wrongful foreclosure against the HOA and its foreclosure agent, they do not provide grounds to void the
17 sale to the plaintiff. Defendant also seeks to discover "whether all payments made to the HOA were
18 properly applied," but NRS 116.31166(2) states: "The receipt for the purchase money contained in such
19 a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the
20 purchase money."

21 CONCLUSION

22 The recitals in the foreclosure deed recorded on January 24, 2013 are "conclusive proof" that the
23 HOA complied with the requirements identified in NRS 116.31166(1) for the issuance of a deed that is
24 "conclusive" against the defendant pursuant to NRS 116.31166(2). The HOA's foreclosure of its
25 superpriority lien extinguished defendant's "subordinate" deed of trust.

26 ///

27 ///

28

1 Any claims arising from alleged defects in the foreclosure sale must be brought against the HOA
2 and its foreclosure agent and do not prevent the extinguishment of defendant's deed of trust. As a result,
3 defendant's request for additional time to conduct discovery provides no basis to deny relief to the
4 plaintiff at this time.

5 It is respectfully submitted that the Court should grant summary judgment in favor of plaintiff and
6 deny defendant's counter-motion for summary judgment, or alternatively, for Rule 56(f) relief.

7 DATED this 29th day of July, 2015

8 LAW OFFICES OF
9 MICHAEL F. BOHN, ESQ., LTD.

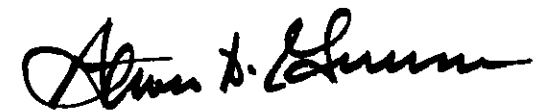
10 By: /s/ Michael F. Bohn, Esq./
11 Michael F. Bohn, Esq.
12 376 E. Warm Springs Rd., Ste. 140
13 Las Vegas, NV 89119
14 Attorney for plaintiff

15 **CERTIFICATE OF SERVICE**

16 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law
17 Offices of Michael F. Bohn., Esq., and on the 29th day of July, 2015, an electronic copy of the REPLY
18 IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO
19 COUNTERMOTION FOR SUMMARY JUDGMENT, OR ALTERNATIVELY, FOR RULE 56(F)
20 RELIEF was served on opposing counsel via the Court's electronic service system to the following
21 counsel of record:

22 Melanie D. Morgan, Esq.
23 Tenesa S. Scaturro, Esq.
24 AKERMAN LLP
25 1160 Town Center Drive
26 Suite 330
27 Las Vegas, NV 89144

28 /s/ Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.



CLERK OF THE COURT

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Bank of America, N.A., Successor by Merger to
LaSalle Bank, N.A., as Trustee to the holders of the
Zuni Mortgage Loan Trust 2006-OA1, Mortgage
Loan Pass-Through Certificates Series 2006-OA1*

DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST,

Plaintiff,

v.

U.S. BANK, N.A., SUCCESSOR TRUSTEE TO
BANK OF AMERICA, N.A. SUCCEsor BY
MERGER TO LASALLE BANK, N.A., AS
TRUSTEE TO THE HOLDERS OF THE ZUNI
MORTGAGE LOAN TRUST 2006-OA1,
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES SERIES 2006-OA1

Defendants.

Case No.: A-14-704412-C

Dept. : XXIV

**U.S. BANK, N.A.'S SUPPLEMENTAL
BRIEFING IN SUPPORT OF ITS
COUNTERMOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

Defendant U.S. Bank, N.A., solely as Successor Trustee to Bank of America, N.A., successor by merger to LaSalle Bank, N.A., as Trustee to the holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**U.S. Bank**), hereby submits this supplemental briefing addressing whether Bank of America's super-priority tender extinguished the HOA's super-priority lien and whether the deed recitals contained in the Trustee's Deed Upon Sale are conclusive proof that all requirements of law were satisfied.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 U.S. Bank's Countermotion for Summary Judgment should be granted because Bank of
4 America tendered the super-priority amount of the HOA's lien prior to the foreclosure sale,
5 extinguishing that portion of the HOA's lien. To the extent the super-priority tender did not
6 extinguish the super-priority lien, the HOA's foreclosure sale was still invalid because the HOA's
7 wrongful rejection of the super-priority tender violated the HOA's obligation of good faith, and
8 caused the HOA Lien Statute to operate unconstitutionally as applied to the facts of this case.

9 Even if U.S. Bank's Countermotion is denied, Plaintiff's Motion for Summary Judgment
10 should also be denied because the Trustee's Deed recitals are insufficient to prove that the HOA
11 complied with the HOA Lien Statute. Even if this Court were to hold that every recital contained in a
12 deed served as conclusive, irrefutable proof that the recited act took place, the Trustee's Deed in this
13 case only contains recitals related to the notice provided by the HOA. If this Court is not inclined to
14 grant U.S. Bank's Countermotion for Summary Judgment on the pure legal issue of the
15 constitutionality of the HOA Lien Statute, or based on the unrefuted evidence that Bank of America
16 tendered the super-priority amount prior to the sale, more discovery is necessary to determine
17 whether the HOA complied with the HOA Lien Statute.

18 **II. ARGUMENT**

19 **A. Bank of America's super-priority tender extinguished that portion of the HOA's lien.**

20 This Court should grant U.S. Bank's Countermotion for Summary Judgment because Bank of
21 America's super-priority tender extinguished that portion of the HOA's lien prior to the foreclosure
22 sale. U.S. Bank has produced unrefuted evidence that it tendered \$1,495.00 to the HOA Trustee prior
23 to the foreclosure sale. U.S. Bank's Countermotion, **Ex. H-3**. This amount included not only the nine
24 months of delinquent assessments that constituted the statutorily-defined super-priority amount, but
25 also \$999.50 for "reasonable collection costs." *Id.* Inexplicably, the HOA Trustee rejected this
26 payment and proceeded with the foreclosure sale.

1 A tender which has been made and rejected precludes foreclosure and discharges the subject
2 lien. *See Bisno v. Sax*, 175 Cal. App. 2d 714, 724, 346 P.2d 814 (Cal. Dist. Ct. App. 1959) (“[T]he
3 acceptance of payment of a delinquent installment of principal or interest cures that particular default
4 and precludes a foreclosure sale based upon such a preexisting delinquency. The same is true of a
5 tender which has been made and rejected.”); *Lichty v. Whitney*, 80 Cal. App. 2d 696, 701, 182 P.2d
6 582, 582 (Cal. Dist. Ct. App. 1947) (“A tender of the amount of a debt, though refused, extinguishes
7 the lien of a pledgee, and will entitle the pledger to recover the property pledged.”)

8 According to Plaintiff itself, the Nevada Supreme Court “said not once, but twice, that ... the
9 bank could have paid the super priority amount to preserve its interest in the property” in *SFR*
10 *Investments*. Pltf’s MSJ, at 14; *see SFR Investments*, 334 P.3d at 414 (“[A]s junior lienholder, [the
11 holder of the first deed of trust] could have paid off the [HOA] lien to avert loss of its security[.]”).
12 Other jurisdictions agree that a tender which has been made, even if rejected, precludes foreclosure
13 and discharges the subject lien. *See Bisno v. Sax*, 346 P.2d 814, 820 (Cal. Dist. Ct. App. 1959)
14 (“[T]he acceptance of payment of a delinquent installment of principal or interest cures that
15 particular default and precludes a foreclosure sale based upon such a preexisting delinquency. The
16 same is true of a tender which has been made and rejected.”); *Lichty v. Whitney*, 182 P.2d 582, 582
17 (Cal. Dist. Ct. App. 1947) (“A tender of the amount of a debt, though refused, extinguishes the lien
18 of a pledgee, and will entitle the pledger to recover the property pledged.”); *Segars v. Classen*
19 *Garage and Service Co.*, 612 P.2d 293, 295 (Okla. Civ. App. 1980) (“A proper and sufficient tender
20 of payment operates to discharge a lien.”).

21 U.S. Bank has produced unrefuted evidence that it tendered the super-priority amount prior
22 to the sale. U.S. Bank’s Countermotion, **Ex. H-3**. By doing so, U.S. Bank “avert[ed] the loss of its
23 security” according to the Nevada Supreme Court. *See SFR Investments*, 334 P.2d at 414. This
24 Court’s analysis should end here, and summary judgment should be entered in favor of U.S. Bank.

25 In retort, Plaintiff contends that “[U.S. Bank] has produced no evidence ... that plaintiff was
26 made aware that defendant claimed that the HOA had wrongfully prevented it from curing the
27 superpriority lien amount prior to the sale.” Pltf’s Opposition, at 15. Plaintiff has failed to explain
28 the relevance of this argument. The *SFR Investments* Court was unequivocal in stating that a pre-

1 foreclosure tender of the super-priority amount preserved the first-priority position of a deed of trust.
2 *See SFR Investments*, 334 P.2d at 414. Whether Plaintiff was aware of the super-priority tender is
3 irrelevant to this action.

4 Even if this Court construes Plaintiff's argument as a good-faith purchaser defense, Plaintiff
5 misconstrues who bears the burden of proof on this point. "In a quiet title action, the burden of proof
6 rests with the plaintiff to prove good title in himself." *Breliant v. Preferred Equities Corp.*, 112 Nev.
7 663, 669, 918 P.2d 314, 318 (1996). As discussed in Section C below, Plaintiff attempts to rely
8 solely on the Trustee's Deed recitals as "conclusive proof" that the HOA sale was properly
9 conducted. However, there are no recitals regarding how the foreclosure sale was conducted, or
10 whether the super-priority amount was properly calculated under NRS 116.3115. Without any deed
11 recitals, there can be no evidentiary presumption favoring Plaintiff on these points. Rather, U.S.
12 Bank and Plaintiff are on an equal evidentiary footing. Therefore, even if Plaintiff's good-faith
13 purchaser defense is valid, it must produce evidence showing that it was unaware of the super-
14 priority tender to prevail on that defense. Plaintiff has produced none. Even if the defense is valid,
15 Plaintiff's summary judgment motion should be denied.

16
17 **B. The HOA Trustee's tender rejection breached the duty of good faith required by the
HOA Lien Statute and violated the Due Process Clause.**

18 Even if Bank of America's super-priority tender did not extinguish the super-priority portion
19 of the HOA's lien, it still invalidated the sale for two additional reasons. First, the HOA's decision to
20 reject payment of an amount exceeding the super-priority portion of the lien and instead sell the
21 property for a miniscule amount was made in bad faith. The HOA Lien Statute imposes an
22 obligation of good faith in the "performance and enforcement" of "every duty governed by" the
23 statute. NRS 116.1113. When Bank of America offered to pay the super-priority amount to the
24 HOA, the HOA had two choices: (1) accept the super-priority payment and forego foreclosure, or (2)
25 reject the super-priority payment and proceed with the foreclosure. Under either scenario, the HOA
26 would receive the same amount—the super-priority portion of its lien. By capriciously choosing to
27 reject the super-priority tender and proceed with foreclosure, the HOA unnecessarily attempted to
28

1 extinguish U.S. Bank's \$147,456.00 lien. This clear violation of the HOA's obligation to act in good
2 faith invalidates the foreclosure sale on which Plaintiff's quiet title claim relies.

3 Second, because (under Plaintiff's theory) U.S. Bank's property interest was extinguished
4 without it or its predecessors having any notice of the super-priority amount of the lien, the HOA
5 Lien Statute operated unconstitutionally under the Due Process Clause. "[W]hen notice is a person's
6 due, process which is a mere gesture is not due process." *Mullane v. Central Hanover Bank & Trust*
7 *Co.*, 339 U.S. 306, 315 (1950). The notice U.S. Bank was provided here was, at most, a "mere
8 gesture" of process. Faced with the potential deprivation of its constitutionally-protected property
9 interest, Bank of America¹ tendered the super-priority amount of HOA's lien. U.S. Bank's
10 Countermotion, **Ex. H-3**. Rather than provide Bank of America with the amount necessary to satisfy
11 the HOA's lien, the HOA Trustee rejected this payment without explanation. Without notice of the
12 super-priority amount, U.S. Bank had no opportunity to protect its property interest prior to the
13 HOA's foreclosure. As applied to the circumstances of this case, the HOA Lien Statute operated
14 unconstitutionally, invalidating the HOA foreclosure sale.

15 By wrongfully rejecting Bank of America's super-priority tender, the HOA breached its duty
16 of good faith and caused the HOA Lien Statute to operate unconstitutionally as applied to the facts
17 of this case. For those reasons, the HOA's foreclosure sale was invalid. Accordingly, this Court
18 should enter summary judgment in favor of U.S. Bank.

19 **C. The Trustee's Deed's recitals are insufficient to show full compliance with the HOA**
20 **Lien Statute.**

21 Even if this Court denies U.S. Bank's Countermotion, Plaintiff's Motion for Summary
22 Judgment should also be denied because the recitals contained in the Trustee's Deed Upon sale are
23 not conclusive proof that all requirements of law have been satisfied, and any presumption arising
24 from the recitals is limited to the matters actually recited. Specifically, Plaintiff's Motion for
25 Summary Judgment should be denied because (1) the Trustee's Deed's recitation of compliance with
26 the HOA Lien Statute is not a substitute for actual compliance, (2) the Trustee's Deed's recitals are
27 unsupported legal conclusions not entitled to the NRS 116.31166 presumption, (3) the Trustee's

28 ¹ Bank of America serviced the loan secured by U.S. Bank's Deed of Trust.

1 Deed contains recitals related solely to notice, and (4) discovery is necessary to determine whether
2 the HOA actually complied with the HOA Lien Statute.

3 **1. The Trustee's Deed's recitation of compliance with the HOA Lien Statute is not**
4 **a substitute for actual compliance.**

5 Plaintiff's contention that recitations of compliance with the HOA Lien Statute excuses the
6 HOA from actually complying with the statute's notice provisions overlooks the requirements of
7 NRS 116.31166(3). Plaintiff's reading of NRS 116.31166 ignores an axiomatic proposition: no part
8 of a statute should be construed to render another void. *See Harris Assocs. v. Clark County Sch.*
9 *Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003); *Banegas v. State Indus. Ins. System*, 117 Nev.
10 222, 229, 19 P.3d 245, 250 (2001) (“[W]ords within a statute must not be read in isolation, and
11 statutes must be construed to give meaning to all of their parts and language within the context of the
12 purpose of the legislation.”). Further, where statutory provisions may be viewed as conflicting, they
13 must be harmonized. *See, e.g. Int'l Game Tech., Inc. v. Second Judicial Dist. Court ex rel. County of*
14 *Washoe*, 124 Nev. 193, 201, 179 P.3d 556, 561 (2008); *Acklin v. McCarthy*, 96 Nev. 520, 523, 612
15 P.2d 219, 220 (1980) (“An entire act must be construed in light of its purpose and as a whole.”).

16 Ignoring these two maxims, Plaintiff reads NRS 116.31166(1–2) to mean that an HOA's
17 compliance with the HOA Lien Statute rests solely on it reciting compliance with the statute's notice
18 provisions in a foreclosure deed. *See* Pltf's MSJ, at 7. According to Plaintiff, because the Trustee's
19 Deed in the instant case contained these recitations, Plaintiff is entitled to summary judgment on its
20 quiet title claim without producing any evidence of actual compliance with the HOA Lien Statute.
21 *See id.* However, Plaintiff's interpretation is flawed because it would render the following
22 subsection—NRS 116.31166(3)—void. NRS 116.31166 provides:

- 23 1. The recitals in a deed made pursuant to NRS 116.31164 of:
24 (a) Default, the mailing of the notice of delinquent assessment, and
25 the recording of the notice of default and election to sell;
(b) The elapsing of the 90 days; and
(c) The giving of notice of sale,
are conclusive proof of the matters recited.

- 26 2. Such a deed containing those recitals is conclusive against the
27 unit's former owner, his or her heirs and assigns, and all other persons.
28 The receipt for the purchase money contained in such a deed is
sufficient to discharge the purchaser from obligation to see to the
proper application of the purchase money.

1 3. The sale of a unit *pursuant to NRS 116.31162, 116.31163 and*
2 *116.31164* vests in the purchaser the title of the unit's owner without
equity or right of redemption.

3 NRS 116.31166 (emphasis added). Plaintiff essentially contends that the recitals in the Trustee's
4 Deed are conclusive proof that the foreclosure extinguished U.S. Bank's Deed of Trust under NRS
5 116.31166(1–2). *See* Pltf's MSJ, at 7. Plaintiff's argument ignores NRS 116.31166(3)'s requirement
6 that the foreclosure sale be conducted *pursuant to NRS 116.31162, 116.31163, and 116.31164* to
7 vest the purchaser at the HOA foreclosure sale with title to the Property. The Nevada Supreme Court
8 has explained that the Legislature's use of "pursuant to" means "in compliance with; in accordance
9 with; under...[a]s authorized by; under...[i]n carrying out." *In re Steven Daniel P.*, 129 Nev. Adv.
10 Op. 73, 309 P.3d 1041, 1044 (2013) (quoting Black's Law Dictionary at 1356 (9th ed. 2009)). The
11 court further explained that "pursuant to" is a "restrictive term" that mandates compliance. *Id.* at
12 1044.

13 Here, by using the phrase "pursuant to" in NRS 116.31166(3) with reference to NRS
14 116.31162, 116.31163 and 116.31164, the Nevada Legislature mandated compliance with those
15 statutes. Consequently, an HOA's foreclosure sale does not vest title without equity or right of
16 redemption unless the HOA actually complied with NRS 116.31162, NRS 116.31163, and NRS
17 116.31164, not just NRS 116.31166(1).

18 In contrast, Plaintiff's interpretation of NRS 116.31166 not only renders the notice
19 requirements of NRS 116.31162, NRS 116.31163, and NRS 116.31164 meaningless, it also would
20 lead to absurd and unjust results. Following Plaintiff's logic, an HOA could fail to record any of the
21 three notices the HOA Lien Statute requires, *falsely* recite that they did in fact send the notices, and
22 the court would be forced to hold that the notices were in fact sent, *even if* the opposing party
23 produced irrefutable evidence that proved the recitals were false. And there is no limiting principle
24 to Plaintiff's position; a dishonest HOA could collude with a dishonest purchaser to sell property
25 without any proper announcement to the current owner or other security holders and still take title to
26 the property free and clear under the aegis of a patently false, yet "irrefutable" recitation. The
27 Nevada Legislature could not have possibly intended such unjust consequences.
28

1 **2. The Trustee's Deed's recitals are unsupported legal conclusions not entitled to**
2 **the NRS 116.31166 presumption.**

3 Additionally, Plaintiff is not entitled to the NRS 116.31166 presumption regarding notice
4 because Plaintiff's Trustee's Deed contains only unsupported legal conclusions. Plaintiff relies on
5 the minimal recitations in the Trustee's Deed that, pursuant to NRS 116.31164 and 1116.31166, are
6 allegedly "conclusive proof" that proper notice was provided and proper procedure was followed.
7 See Pltf's MSJ, at 7. However, Plaintiff's Trustee's Deed provides no facts regarding notice. See
8 U.S. Bank's Countermotion, **Ex. G**. Rather, it contains only legal conclusions not subject to the
9 "conclusive proof" standard of NRS 116.31166(1). *See id.*

10 NRS 116.31166(1) is modeled after the Uniform Common Interest Ownership Act. UCIOA
11 makes clear that "a recital of the *facts* of nonpayment of the assessment and of the giving of the
12 notices required by this subsection are *sufficient proof of the facts recited*. . . ." UCIOA § 3-
13 116(1)(4) (emphasis added). Nothing in UCIOA or NRS 116.31166(1) allows a purchaser to rely on
14 unsupported legal conclusions regarding compliance with the statute.

15 Per NRS 116.31166, the deed recitals² that are conclusive proof of the matters recited are
16 limited to: (a) default, (b) the elapsing of the 90 days, and (c) the giving of notice of sale. NRS
17 116.31166(1). Here, the pertinent "facts," such as actual dates, are not cited in the Trustee's Deed—
18 the presumption described in NRS 116.31166(1) and UCIOA § 3-116(1)(4) is therefore inapplicable.

19 Specifically, Plaintiff's Trustee's Deed does not attest to any facts showing compliance with
20 the following requirements of the HOA Lien Statute: (1) that the Notice of Delinquent Assessment
21 was mailed; (2) that the Notice of Default was served by certified mail on the owners of record and
22 all parties of interest that requested notice; (3) that 90 days passed between the mailing of the notice
23 of default and the publishing of the Notice of Sale; (4) proof of mailing of all notices as required by
24 law; (5) posting of the Notice of Sale on the Property; (6) posting of the Notice of Sale in three
25 public places for twenty consecutive days prior to the foreclosure sale; or (7) the publishing of the

26 ² The common meaning of "recital" is a formal statement of relevant facts. *See* Black's Law Dictionary 1435
27 (Rev. 4th. Ed. 1968) ("Recital: The formal statement or setting forth of some matter of fact, in any deed or
28 writing, in order to explain the reasons upon which the transaction is founded . . . The formal preliminary
 statement in a deed or other instrument, of such deeds, agreements, or matters of fact as are necessary to
 explain the reasons upon which the transaction is founded.").

1 Notice of Sale in a newspaper for three consecutive weeks prior to the sale. *See* U.S. Bank's
2 Countermotion, **Ex. G**; NRS 116.311635(1)(a).

3 For Plaintiff to have summary judgment granted in its favor, all seven of those requirements
4 must be met. Plaintiff has produced no evidence showing compliance with any of the seven. Rather,
5 Plaintiff contends that the following passage in the Trustee's Deed is "conclusive proof" of all seven
6 requirements: "All requirements of law regarding the mailing of copies of notices and the posting
7 and publication of the copies of the Notice of Sale have been complied with." *See* U.S. Bank's
8 Countermotion, **Ex G**. This self-serving, conclusory allegation is entitled to no presumption under
9 NRS 116.31166.

10 The Alaska Supreme Court, interpreting the same UCIOA provision at issue here,³ rejected
11 the argument that conclusory allegations in a foreclosure deed are entitled to any presumption in
12 *Rosenberg v. Smidt*, 727 P.2d 778 (Alaska 1986). There, the appellants alleged that under Alaska's
13 applicable statute, the recitals in the foreclosure deed were conclusive evidence of compliance in
14 favor of bona fide purchasers. *Id.* at 783. The deed in that case—strikingly similar to the Trustee's
15 Deed at issue here—stated:

16 All other requirements of law regarding the mailing, publication and personal
17 delivery of copies of the Notice of Default and all other notices have been complied
18 with, and said Notice of Sale was publicly posted as required by law and published in
the Anchorage Times on August 26 and September 2, 9, and 16, 1980.

19 *Id.* The parties disputed whether the deed barred the respondents from overturning the sale based on
20 lack of notice. *Id.* While the appellants alleged that the court should accept the recitals as
21 "conclusive proof," the respondents alleged that only recitals of fact, not conclusions of law, were
22 subject to this standard.⁴ Agreeing with the respondents, the court held:

24 ³ The *SFR Investments* Court noted that other states' cases interpreting UCIOA provisions are particularly
25 persuasive because one purpose of adopting a uniform act is "to make uniform the law with respect to its
26 subject matter among states enacting it." *SFR Investments*, 334 P.3d at 410 ("[I]n addition to the usual tools of
27 statutory construction, we have available ... other states' cases to explicate NRS Chapter 116."). Like
Nevada, Alaska has adopted and currently uses the 1982 version of UCIOA. *See e.g.*,
[http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Common%20Interest%20Ownership%20Act%20\(1982\)](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Common%20Interest%20Ownership%20Act%20(1982)).

28 ⁴ ALASKA STAT. 3.20.080(c) provides: The deed shall recite the date and the book and page of the recording
of default, and the mailing or delivery of the copies of the notice of default, the true consideration for the

1 The fact that .080(c) explicitly calls for factual details in the deed recital concerning
2 recording, price, publication, and sale suggests that facts are also called for
3 concerning mailing or delivery. *Further, requiring a factual recital tends to assure*
4 *that the requirements of law concerning mailing or delivery are complied with.* A
5 conclusory statement can be a matter placed in a form, or a programmed deed, and
6 will not require the trustee to review what was actually done. A factual recital does
7 require review in each case. While a factual recital requirement does not protect
8 against fraud in all cases, it does tend to prevent the more common failings of
9 oversight and neglect. A conclusory recital, on the other hand, accomplishes little or
10 nothing.

11 *Id.* at 786 (emphasis added). The court also reasoned that one of UCIOA's primary purposes was to
12 "require that effective notice of default and sale be given to parties in interest, and to provide a self-
13 effecting method of assuring that such notice is given."⁵ *Id.* To further the intended purpose of the
14 statutory presumption, the court held that "what is required is a recital of fact specifying what the
15 trustee has done, not a mere conclusory statement that the trustee has complied with the law." *Id.* at
16 785.

17 Like the foreclosure deed in *Rosenberg*, the Trustee's Deed in this case presents *no facts*
18 entitled to the presumption that the HOA complied with the notice provisions of the HOA Lien
19 Statute. It does not provide, for example, what notice was given, when notices were given, the facts
20 concerning the default which led to the foreclosure, or any detail regarding the conduct of the sale.

21 Because Plaintiff's Trustee's Deed does not provide the proper factual recitations, it is not entitled to
22 any presumption under NRS 116.31166(1). Since Plaintiff is not entitled to the NRS 116.31166(1)

23 conveyance, the time and place of the publication of notice of sale, and the time, place and manner of sale,
24 and refer to the deed of trust by reference to the page, volume and place of record.

25 ⁵ The line of cases that disallow an expert witness to give an opinion as to legal conclusions provide a helpful illustration.
26 *See, e.g., Mukhtar v. Cal. State Univ.*, 299 F.3d 1053, 1066 (9th Cir. 2002); *McHugh v. United Serv. Auto. Ass'n*, 164
27 F.3d 451, 454 (9th Cir. 1999); *United States v. Duncan*, 42 F.3d 97, 101 (2d Cir. 1994). An expert may not state legal
28 conclusions by applying the law to the facts. *Oakland Oil Co. v. Conoco, Inc.*, 144 F.3d 1308, 1328 (10th Cir. 1991).
"In no instance can a witness be permitted to define the law of the case." *Specht v. Jensen*, 853 F.2d 805, 810 (10th Cir.
1988). The law is for a court to determine. *Marx & Co., Inc. v. Diner's Club, Inc.*, 550 F.2d 505, 509-10 (2d Cir. 1977).
Just as an expert witness is not allowed to apply the law to facts or to determine the law of the case, a trustee is similarly
barred from attempting to accomplish the same result through the mechanism of the trustee's deed upon sale. A
legislature may not legislate away a court's power to apply facts to law without also violating the separation of powers
contemplated under the Nevada and United States' Constitutions.

1 presumption on which it solely relied, Plaintiff has failed to show that it complied with the HOA
2 Lien Statute. Accordingly, Plaintiff's Motion for Summary Judgment should be denied.

3 **3. The Trustee's Deed's only recites compliance with the HOA Lien Statute's**
4 **notice provisions.**

5 The Trustee's Deed in the instant case contains the following recitation: "All requirements of
6 law *regarding the mailing of copies of notices and the posting and publication of the copies of the*
7 *Notice of Sale have been complied with.*" U.S. Bank's Countermotion, **Ex. G**. Even if this recital is
8 deemed conclusive proof of the matter recited, the only matter recited concerns the mailing of the
9 required notices. There are no recitals regarding the myriad other requirements of the HOA Lien
10 Statute, including, but not limited to: (1) whether the HOA lien's assessments were "based on a
11 periodic budget adopted by the association pursuant to NRS 116.3115," as required by NRS
12 116.3116; or (2) whether the foreclosure sale was conducted in a commercially reasonable manner,
13 as required by NRS 116.1113.⁶ Without a recital that provides Plaintiff with some presumption
14 regarding the HOA's compliance with these two requirements, Plaintiff must produce some evidence
15 of such compliance to prevail on its instant motion for summary judgment. Plaintiff has produced
16 none. Accordingly, Plaintiff's motion for summary judgment should be denied.

17 **4. Discovery is necessary to determine whether the HOA complied with the HOA**
18 **Lien Statute.**

19 The minimal recitals in Plaintiff's Trustee's Deed are insufficient to provide the HOA's
20 foreclosure sale with any presumption of validity. But even if the deed recitals in this case were
21 sufficient to presume Plaintiff's Deed to be valid, U.S. Bank would still be entitled to discovery
22 regarding whether the HOA actually complied with the HOA Lien Statute. Nevada's Legislature did
23 not intend NRS 116.3116 to render the HOA Lien Statute's notice provisions toothless. This was
24 confirmed by the *SFR Investments* Court, which remanded that case for further fact-finding despite

25 ⁶ By way of example, many of the foreclosure deeds arising from HOA sales contain a recital similar to the following:
26 "Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing
27 of 90 days, mailing of copies of the Notice of Delinquent Assessment and Notice of Default and the posting and
28 publication of the Notice of Sale." In contrast, the Trustee's Deed in the present case does not state that the HOA Trustee
"has complied with all requirements of law. U.S. Bank's Countermotion, **Ex. G**. Even if this Court determines that a
deed's recitals are granted a conclusive presumption, this conclusive presumption surely cannot arise for matters that are
not even recited in the deed.

1 the fact that the foreclosure deed in that case recited compliance with the HOA Lien Statute's notice
2 provisions. 334 P.3d at 419. By its own terms, *SFR Investments* explained that factual development
3 is necessary for several of a first deed of trust holder's defenses,⁷ including whether the HOA
4 provided all required notices prior to the sale, whether the HOA authorized the sale, whether there
5 was any collusion related to the sale, and whether the sale was commercially reasonable.

6 As in *SFR Investments*, discovery is necessary in this case to determine whether the
7 foreclosure sale complied with the HOA Lien Statute, and Plaintiff's Motion for Summary Judgment
8 should be denied on that basis alone. But more importantly, Plaintiff has not met its burden to show
9 that the HOA complied with the HOA Lien Statute, and has thus failed to show that it is entitled to
10 judgment as a matter of law on its quiet title claim. *Breliant v. Preferred Equities Corp.*, 112 Nev.
11 663, 669, 918 P.2d 314, 318 (1996) ("In a quiet title action, the burden of proof rests with the
12 plaintiff to prove good title in himself."). Accordingly, this Court should deny Plaintiff's Motion for
13 Summary Judgment.

14 **III. CONCLUSION**

15 This Court should grant U.S. Bank's Countermotion for Summary Judgment because Bank of
16 America's pre-foreclosure tender extinguished that portion of the HOA's lien. Even if the tender was
17 ineffective to extinguish the lien, the HOA sale was still invalid because the HOA's wrongful
18 rejection of the super-priority tender breached the HOA's obligation of good faith, and caused the
19 HOA Lien Statute to operate unconstitutionally as applied to the facts of this case.

20 Even if U.S. Bank's Countermotion is denied, Plaintiff's Motion for Summary Judgment
21 should also be denied because the Trustee's Deed's recitals are insufficient to prove that the HOA
22 complied with the HOA Lien Statute. Accordingly, should this Court deny U.S. Bank's
23

24
25 ⁷ See *SFR Investments*, 334 P.3d at 418 n. 6 (stating: "we note but do not resolve U.S. Bank's suggestion that
26 we could affirm by deeming SFR's purchase 'void as commercially unreasonable' because "[o]n a motion to
27 dismiss, a court must take all factual allegations in the complaint as true and not delve into matters asserted
28 defensively that are not apparent from the face of the complaint); at 417-18 (stating only that the court would
assume statutorily notices were provided consistent with the standard for deciding a motion to dismiss,
without finding that the notices were provided or sufficient); and at 419 (stating that a "proper" foreclosure
sale is required to extinguish a first deed of trust).

1 Countermotion for Summary Judgment, more discovery is necessary to determine if the HOA's
2 foreclosure complied with the HOA Lien Statute.

3
4 DATED this 13th day of August, 2015.

5 AKERMAN LLP

6
7 /s/ Tenesa S. Scaturro

8 MELANIE D. MORGAN, ESQ.

9 Nevada Bar No. 8215

10 TENESA S. SCATURRO

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12 1160 Town Center Drive, Suite 330

13 Las Vegas, Nevada 89144

14 *Attorneys for U. S. Bank, N.A., successor trustee*
15 *to Bank of America, N.A., Successor by Merger*
16 *to LaSalle Bank, N.A., as Trustee to the holders*
17 *of the Zuni Mortgage Loan Trust 2006-OA1,*
18 *Mortgage Loan Pass-Through Certificates*
19 *Series 2006-OA1*

CERTIFICATE OF SERVICE

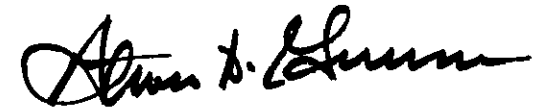
I HEREBY CERTIFY that on the 13th day of August, 2015 and pursuant to NRCP 5, I served through this Court's electronic service notification system (Wiznet) a true and correct copy of the foregoing **U.S. BANK, N.A.'S SUPPLEMENTAL BRIEFING IN SUPPORT OF ITS COUNTERMOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** on all parties and counsel as identified on the Court generated notice of electronic filing.

Eserve Contact
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Las Vegas, Nevada 89119
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Attorneys for Plaintiff

/s/ Rebecca L. Thole
An employee of AKERMAN LLP



CLERK OF THE COURT

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10 Attorney for plaintiff

11
12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 5316 CLOVER BLOSSOM CT TRUST

16 Plaintiff,

17 vs.

18 U.S. BANK, NATIONAL ASSOCIATION,
19 SUCCESSOR TRUSTEE TO BANK OF
20 AMERICA, N.A., SUCCESSOR BY MERGER
21 TO LASALLE BANK, N.A., AS TRUSTEE TO
22 THE HOLDERS OF THE ZUNI MORTGAGE
23 LOAN TRUST 2006-OA1, MORTGAGE
24 LOAN PASS-THROUGH CERTIFICATES
25 SERIES 2006-OA1; and CLEAR RECON
26 CORPS

27 Defendants.

CASE NO.: A-14-704412-C
DEPT NO.: XXIV

28
SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO
DEFENDANT'S COUNTERMOTION FOR SUMMARY JUDGMENT

Plaintiff, 5316 Clover Blossom Ct Trust, by and through its attorney, Michael F. Bohn, Esq., submits the following points and authorities in support of its motion for summary judgment, filed on May 18, 2015, and in opposition to defendant U.S. Bank's counter motion for summary judgment, filed on July 22, 2015.

///

///

1 POINTS AND AUTHORITIES

2 **The recitals in the foreclosure deed are “conclusive proof” of the matters**
3 **recited in the deed, and the foreclosure deed is “conclusive” against defendant**
4 **U.S. Bank pursuant to NRS 116.31166(2).**

5 NRS 116.31166 provides:

6 **Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper**
7 **application of purchase money; title vested in purchaser without equity or right of**
8 **redemption.**

9 1. The recitals in a deed made pursuant to NRS 116.31164 of:

10 (a) Default, the mailing of the notice of delinquent assessment, and the recording of
11 the notice of default and election to sell;

12 (b) The elapsing of the 90 days; and

13 (c) The giving of notice of sale,

14 are conclusive proof of the matters recited.

15 2. Such a deed containing those recitals is conclusive against the unit’s former owner,
16 his or her heirs and assigns, and all other persons. The receipt for the purchase money
17 contained in such a deed is sufficient to discharge the purchaser from obligation to see to
18 the proper application of the purchase money.

19 3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in
20 the purchaser the title of the unit’s owner without equity or right of redemption.

21 NRS 116.31166(1) requires that the recitals in an HOA foreclosure deed include five statements
22 of fact: 1) default; 2) mailing of the notice of delinquent assessment; 3) recording of the notice of default
23 and election to sell; 4) the elapsing of 90 days; and 5) the giving of the notice of sale. NRS 116.31166(1)
24 states that the recitals are “conclusive proof” of the “matters recited.” The statute does not require that
25 the recitals include the dates or the names and addresses to whom the notices were provided.

26 NRS 116.31166(2) states that “[s]uch a deed containing those recitals is **conclusive against** the
27 unit’s former owner, his or her heirs and assigns, **and all other persons.**” (emphasis added) The statute
28 makes the deed “conclusive” and not just the recitals in the deed. The statute also does not require that
the grantee be a bona fide purchaser in order to receive the benefit of the “conclusive” deed.

In comparison to NRS 116.31166, California’s Civil Code §2924(6)(c), which applies to the
foreclosure of deeds of trust, requires more recitals and is conclusive only in favor of bona fide

1 purchasers:

2 A recital in the deed executed pursuant to the power of sale of compliance with all
3 requirements of law regarding the **mailing** of copies of notices or the **publication** of a
4 copy of the notice of default or the **personal delivery** of the copy of the notice of default
5 or the **posting of** copies of the notice of sale or the **publication of** a copy thereof shall
6 constitute prima facie evidence of compliance with these requirements and **conclusive**
7 **evidence thereof in favor of bona fide purchasers and encumbrancers for value and**
8 **without notice.** (emphasis added)

9 In Alaska, AS 34.20.080(c) governs the nonjudicial foreclosure of a deed of trust and requires
10 specific recitals of date, time, place, and manner:

11 The deed shall recite **the date and the book and page** of the recording of default, and the
12 mailing or delivery of the copies of the notice of default, the true consideration for the
13 conveyance, **the time and place of the publication** of notice of sale, and **the time, place**
14 **and manner** of sale, and refer to the deed of trust by reference to the page, volume and
15 place of record. (emphasis added)

16 Like California's statute, AS 34.20.090 (c) states that the recitals in an Alaskan foreclosure deed
17 are "conclusive" only in favor of a bona fide purchaser:

18 A recital of compliance with all requirements of law regarding the mailing or personal
19 delivery of copies of notices of default, in the deed executed under a power of sale is
20 prima facie evidence of compliance with the requirements. **The recital is conclusive**
21 **evidence of compliance** with the requirements **in favor of a bona fide purchaser or**
22 **encumbrancer for value and without notice.** (emphasis added)

23 Similarly, under Washington's statute, the conclusive presumption in RCW 61.24.040(7) is only
24 "conclusive evidence" in favor of a bona fide purchaser, and the recitals do not affect the lien or interest
25 of certain persons if the trustee fails to give the required notice:

26 (7) The purchaser shall forthwith pay the price bid and on payment the trustee shall
27 execute to the purchaser its deed; the deed shall recite the facts showing that the sale was
28 conducted in compliance with all of the requirements of this chapter and of the deed of
trust, which recital shall be prima facie evidence of such compliance and **conclusive**
evidence thereof in favor of bona fide purchasers and encumbrancers for value, **except**
that these recitals shall not affect the lien or interest of any person entitled to notice
under subsection (1) of this section, if the trustee fails to give the required notice to
such person. In such case, the lien or interest of such omitted person shall not be affected
by the sale and such omitted person shall be treated as if such person was the holder of the
same lien or interest and was omitted as a party defendant in a judicial foreclosure
proceeding. . . . (emphasis added)

The foreclosure deed in this case (Exhibit 1 to plaintiff's motion) includes the following recitals:

Default occurred as set forth in a Notice of Default and Election to Sell which was
recorded in the office of the recorder of said county. All requirements of law regarding

1 the mailing of copies of notices and the posting and publication of the copies of the Notice
2 of Sale have been complied with.

3 Pursuant to NRS 116.31166(1), the recitals in he HOA foreclosure deed “are conclusive proof
4 of the matters recited.” Pursuant to NRS 116.31166(2), because the foreclosure deed contains the required
5 recitals, the “deed containing those recitals is conclusive against the unit’s former owner, his or her heirs
6 and assigns, **and all other persons.**” (emphasis added)

7 Furthermore, exhibit 1 attached hereto proves that the notice of delinquent assessment lien was
8 mailed to the unit owners on February 6, 2012. The exhibits attached to plaintiff’s motion for summary
9 judgment prove that the notice of delinquent assessment (lien) was recorded on February 22, 2012
10 (Exhibit 2), that more than 30 days later, the notice of default and election to sell was recorded on April
11 20, 2012 and mailed to all required parties by first-class mail on April 30, 2012 (Exhibit 3), that after the
12 90 day period provided by NRS 116.311635 had expired, the notice of trustee’s sale was mailed to all
13 required parties by certified mail on October 25, 2012 and was recorded on October 31, 2012 (Exhibit
14 4), that the notice of trustee’s sale was posted on the property and in three public places in Las Vegas
15 (Exhibit 5), and that the notice of trustee’s sale was published in the Clark County Legal News on three
16 dates of publication (Exhibit 6).

17 CONCLUSION

18 The recitals in the foreclosure deed recorded on January 24, 2013 are “conclusive proof” that the
19 HOA complied with the requirements identified in NRS 116.31166(1) for the issuance of a deed that is
20 “conclusive” against the defendant pursuant to NRS 116.31166(2).

21 Plaintiff respectfully submits that the Court should grant summary judgment in favor of plaintiff
22 and deny defendant’s countermotion for summary judgment, or alternatively, for Rule 56(f) relief.

23 DATED this 13th day of August, 2015

24 LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

25 By: /s/ /Michael F. Bohn, Esq./
26 Michael F. Bohn, Esq.
27 376 E. Warm Springs Rd., Ste. 140
Las Vegas, NV 89119
Attorney for plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 13th day of August, 2015, an electronic copy of the SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT’S COUNTERMOTION FOR SUMMARY JUDGMENT was served on opposing counsel via the Court’s electronic service system to the following counsel of record:

Melanie D. Morgan, Esq.
Tenesa S. Scaturro, Esq.
AKERMAN LLP
1160 Town Center Drive
Suite 330
Las Vegas, NV 89144

/s/ Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

EXHIBIT 1

EXHIBIT 1

DAVID ALESSI*
 THOMAS BAYARD*
 ROBERT KOENIG**
 RYAN KERBOW***
 HUONG LAM***
 * Admitted to the California Bar
 ** Admitted to the California, Nevada
 and Colorado Bar
 *** Admitted to the Nevada Bar
 **** Admitted to the Nevada and California Bar

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 &
 DIAMOND BAR CA
 PHONE: 909-843-6590

January 30, 2012

LIEN LETTER
VIA REGULAR AND CERTIFIED MAIL

DENNIS L & GERALDINE J JOHNSON
 5316 CLOVER BLOSSOM CT
 North Las Vegas, NV 89031

Re: Country Gardens Owners' Association/5316 CLOVER BLOSSOM CT/HO #29628

Dear DENNIS L & GERALDINE J JOHNSON:

Our office has been retained by **Country Gardens Owners' Association** to collect the past due assessment balance on your account. Please find the enclosed Notice of Delinquent Assessment (Lien), signed and dated on behalf of **Country Gardens Owners' Association** on **January 11, 2012**. The total amount due as of the date of this letter is **\$1,095.50**. To verify the total of unpaid charges please contact **Alessi & Koenig, LLC**. Please submit payment to our Nevada mailing address listed above. Payment must be in the form of a cashier's check or money order and made payable to **Alessi & Koenig**. Cash will not be accepted.

Unless you, within thirty days after receipt of this notice, dispute the validity of this debt, or any portion thereof, our office will assume the debt is valid. If you notify our office in writing within the thirty-day period that you dispute the debt, or any portion thereof, we will obtain verification of the debt and a copy of such verification will be mailed to you. Upon receipt of your written request within the thirty-day period, we will provide you with the name and address of the original creditor. Please note the law does not require our office to wait until the next step in the collection process. If, however, you of the original creditor within the thirty-day period that begins to require us to suspend efforts to collect the debt until we are advised that you have the right to inspect the association records.

In the event Alessi & Koenig, LLC does not receive payment of costs of **\$1,095.50**, a Notice of Default will be recorded in the public records. If you have any questions regarding this matter please contact my legal assistant, Naomi Eden, at (702) 222-4043. If you do not pay the amount due by the date specified, you could lose ownership of your property.

Sincerely,

Ryan Kerbow
 ALESSI & KOENIG

U.S. Postal Service TM	
CERTIFIED MAILTM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total	
Sent To	DENNIS L & GERALDINE J JOHNSON
Street or PO	5316 CLOVER BLOSSOM CT
City, St.	North Las Vegas, NV 89031
PS Form 3800, August 2006 See Reverse for Instructions	

Please be advised that Alessi & Koenig, LLC is a debt collector. Any information obtained will be used for that purpose.

A&K0006

AA000212

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 124-31-220-092

Trustee Sale # 29628-5316

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark County, Nevada, Country Gardens Owners' Association** has a lien on the following legally described property.

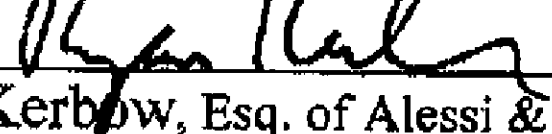
The property against which the lien is imposed is commonly referred to as **5316 CLOVER BLOSSOM CT, North Las Vegas, NV 89031** and more particularly legally described as: **LOT 92 Book 91 Page 71** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **DENNIS L & GERALDINE J JOHNSON**

The mailing address(es) is: **5225 ELM GROVE DR, LAS VEGAS, NV 89130**

The total amount due through today's date is: **\$1,095.50**. Of this total amount **\$1,020.50** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **January 11, 2012**

By: 
Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Country Gardens Owners' Association**

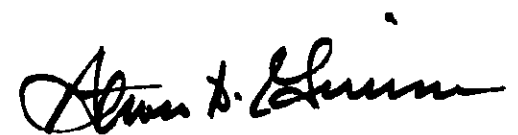
State of Nevada
County of Clark
SUBSCRIBED and SWORN before me January 11, 2012

(Seal)

(Signature)

NOTARY PUBLIC

A&K0007



CLERK OF THE COURT

1 **JUDG**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 LAW OFFICES OF

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9 (702) 642-3113/ (702) 642-9766 FAX

10 Attorney for plaintiff

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 5316 CLOVER BLOSSOM CT TRUST

14 Plaintiff,

15 vs.

16 U.S. BANK, NATIONAL ASSOCIATION,
17 SUCCESSOR TRUSTEE TO BANK OF
18 AMERICA, N.A., SUCCESSOR BY MERGER
19 TO LASALLE BANK, N.A., AS TRUSTEE TO
20 THE HOLDERS OF THE ZUNI MORTGAGE
21 LOAN TRUST 2006-OA1, MORTGAGE
22 LOAN PASS-THROUGH CERTIFICATES
23 SERIES 2006-OA1; and CLEAR RECON
24 CORPS

25 Defendants.

CASE NO.: A704412
DEPT NO.: XXIV

Date of hearing: August 20, 2015
Time of hearing: 9:00 a.m.

26 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**
27 **JUDGMENT GRANTING QUIET TITLE**

28 The motion of plaintiff 5316 Clover Blossom Ct Trust for summary judgment and defendant U.S. Bank's National Association's countermotion for summary judgment having come before the court on August 20, 2015, Michael F. Bohn, Esq. appearing on behalf of the plaintiff and Melanie Morgan, Esq. appearing on behalf of defendant U.S. Bank, and the court, having reviewed the motion and countermotion and the oppositions thereto, and having heard the arguments of counsel, the court makes its findings of fact, conclusion of law and judgment as follows.

FINDINGS OF FACT

1. The plaintiff acquired the property commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada, at foreclosure sale conducted January 16, 2013, as evidenced by the foreclosure deed recorded on January 24, 2013.

2. Defendant U.S. Bank is the current beneficiary of a trust deed which was recorded as an encumbrance to the subject property on June 30, 2004.

3. Defendant U.S. Bank acquired its interest in the deed of trust by assignment which was recorded on June 20, 2011.

4. Prior to the foreclosure sale, the foreclosure agent recorded the notice of delinquent assessment lien on February 22, 2012.

5. On April 20, 2012, the foreclosure agent recorded a notice of default and election to sell under homeowners association lien. The foreclosure agent also mailed the notice to U.S. Bank National Association.

6. On October 31, 2012, the foreclosure agent recorded a notice of trustee's sale. The foreclosure agent also mailed a copy of the notice of sale by certified mail to U.S. Bank National Association.

7. The foreclosure agent also posted the notice on the property and in three locations throughout the county.

8. The foreclosure agent also published the notice of sale in the Nevada Legal News.

9. The HOA foreclosure agent issued a deed upon sale which was recorded on January 24, 2013.

The deed contains the following recitals:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on January 16, 2013 at the place indicated on the Notice of Trustee's Sale.

11. Prior to the HOA foreclosure sale, the defendant tendered what it believed the super priority amount of the lien. The tender was rejected by the foreclosure agent, and the defendant failed to take any

1 additional steps to protect it's interest in the property.

2 12. Any findings of fact which should be considered to be a conclusion of law shall be treated
3 as such.

4 CONCLUSIONS OF LAW

5 1. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and
6 other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving
7 party is entitled to judgment as a matter of law. See NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724,
8 729, 121 P.3d 1026 (2005).

9 2. To defeat a motion for summary judgment the non-moving party bears the burden to "do more
10 than simply show there is some metaphysical doubt: as to the operative facts. Wood, 121 Nev. at 732
11 (citing Matsushita Electric Industrial Co. v. Zenith Radio, 475 U.S. 574, 586 (1983)). Moreover, the non-
12 moving party must come forward with specific facts showing a genuine issue exists for trial. Matsushita,
13 475 U.S. at 587; Wood P.3d at 1130.

14 3. When ruling on a motion for summary judgment, the court may take judicial notice of the
15 public records attached to the motion. See Harlow v. MTC Financial, Inc., 865 F. Supp 2d 1095 (D. Nev.
16 2012). The recorded documents attached to the plaintiffs motion are referenced in the complaint and/or
17 are public records of which the Court may, and did take judicial notice. See NRS 47.150; Lemel v.
18 Smith, 64 Nev. 545 (1947) (Judicial Notice takes the place of proof and is of equal force.") "Documents
19 accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take
20 acknowledgments are presumed to be authentic." NRS 52.165.

21 4. The defendant did not object to the authenticity of any of the exhibits attached to the plaintiff's
22 motion for summary judgment.

23 5. Plaintiff's complaint alleges three claims for relief against defendant U.S. Bank, for
24 declaratory relief, injunctive relief, and quiet title. Summary judgment in favor of the plaintiff on all of
25 plaintiff's claims for relief are appropriate.

26 6. The HOA foreclosure sale complied with all requirements of law, including but not limited
27 to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the
28

1 recording, posting and publication of the Notice of Sale.

2 7. There is a public policy which favors a final and conclusive foreclosure sale as to the
3 purchaser. See 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d
4 711 (2011); McNeill Family Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2003); In re Suchy, 786 F.2d
5 900 (9th Cir. 1985); and Miller & Starr, California Real Property 3d §10:210.

6 8. There is a common law presumption that a foreclosure sale was conducted validly. Fontenot
7 v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien 25 Cal. App.
8 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353 (2014); Timm v.
9 Dewsnup 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v. McQueen, 804 S.W.
10 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American Bank and Trust Co v.
11 Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208 Ga. App. 702, 431 S.E. 2d
12 475 (Ga. App 1993).

13 9. Nevada has a disputable presumption that “the law has been obeyed.” See NRS 47.250(16).
14 This creates a disputable presumption that the foreclosure sale was conducted in compliance with the law.

15 10. The recitals in the foreclosure deed are sufficient and conclusive proof that the required
16 notices were mailed by the HOA. See NRS 116.31166 and NRS 47.240(6) which also provides that
17 conclusive presumptions include “[a]ny other presumption which, by statute, is expressly made
18 conclusive.” Because NRS 116.31166 contains such an expressly conclusive presumption, the recitals
19 in the foreclosure deed are “conclusive proof” that defendant bank was served with copies of the required
20 notices for the foreclosure sale.

21 11. The court also finds that commercial reasonableness is not an issue in an HOA foreclosure
22 sale. NRS Chapter 116 does not contain a commercial reasonableness requirement, and the court will
23 not read a requirement into a statute which is not expressly stated in the statute. Pro-Max Corp. v.
24 Feenstra, 117 Nev. 90, 16 P.3d 1074 (2001).

25 12. The defendants constitutional challenge to the foreclosure sale is also without merit. NRS
26 116.31168 specifically incorporates the notice requirements of NRS 107.090 into the foreclosure
27 procedure and requires that copies of both the notice of default and the notice of sale be mailed to holders
28

1 of subordinate interests.

2 13. NRS 116.31168(a) provides in part that the “provisions of NRS 107.090 apply to the
3 foreclosure of an association’s lien as if a deed of trust were being foreclosed.” Likewise NRS 107.090
4 provides in part:

5 **Request for notice of default and sale: Recording and contents; mailing of notice;**
6 **request by homeowners’ association; effect of request.**

7

8 3. The trustee or person authorized to record **the notice of default** shall, within 10 days
9 after the notice of default is recorded and mailed pursuant to NRS 107.080, 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:

10 (a) Each person who has recorded a request for a copy of the notice; and

11 (b) Each other person with an interest whose interest or claimed interest is subordinate to
12 the deed of trust.

13 4. The trustee or person authorized to make the sale shall, at least 20 days before the date
14 of sale, 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 of time
and place of sale, addressed to each person described in subsection 3.

15 14. There is no issue of fact regarding whether the former owner was in default in payment of the
16 assessments as well as whether the lien and foreclosure notices were properly served and posted. The
17 recitals in the foreclosure deed are conclusive as to these issues. Furthermore, the plaintiff presented
18 proof, which was not controverted that the notices were mailed, published, and posted.

19 15. There is no issue regarding whether or not the association foreclosed on the “super-priority”
20 portion of it’s lien. As stated in the Nevada Supreme Court in the case of SFR Investments Pool 1, LLC
21 v. U.S. Bank, N.A., 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014) as to first deeds of trust, NRS
22 116.3116(2) splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. Unless the
23 superpriority piece has been satisfied prior to the foreclosure sale, the HOA foreclosure sale on it’s
24 assessment lien would necessarily include both the superpriority piece and a subpriority piece of the lien.
25 The defendant failed to present any evidence that the superpriority portion of the lien was satisfied prior
26 to the foreclosure sale.

27 16. There is no requirement in NRS Chapter 116 that a purchaser be a bonafide purchaser.
28

1 17. The tender of the amount the defendant believed to be the super priority amount does not
2 affect the title received by the plaintiff because once the tender was rejected, the defendant failed to take
3 any further steps to protect it's interest.

4 18. Any conclusion of law which should be a finding of fact shall be considered as such.

5 **ORDER and JUDGMENT**

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff 5316 Clover Blossom
7 Ct Trust motion for summary judgment is granted.

8 IT IS FURTHER ORDERED that defendant U.S. Bank National Association counter motion for
9 summary judgment is denied.

10 IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff 5316 Clover
11 Blossom Ct Trust and against defendant U.S. Bank National Association .

12 IT IS FURTHER ORDERED that title to the real property commonly known 5316 Clover
13 Blossom Ct., North Las Vegas, Nevada and legally described as:

14 All that certain real property situated in the County of Clark, State of Nevada, described
15 as follows:

16 Parcel I:

17 Lot Ninety two (92) of the Plat of Arbor Gate as shown by map thereof on file in Book
18 91 of Plats, page 71, in the office of the County Recorder of Clark County, Nevada

19 Parcel II

20 A non-exclusive easement for ingress and egress and enjoyment in and to the Association
21 property as set forth in the Declaration of Covenants, Conditions and Restrictions for
22 Country Garden (Arbor Gate) a common interest community recorded February 25, 2000
in Book 200000225 as Document No. 00963, of Official Records of Clark County,
Nevada, as the same may from time to time be amended and/or supplemented, which
easement is appurtenant to Parcel One.

23 is hereby quieted in the name of plaintiff 5316 Clover Blossom Ct Trust

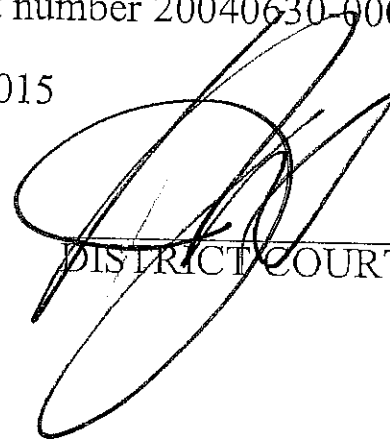
24 IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on January 16,
25 2013, and the foreclosure deed recorded on January 24, 2013 as instrument number 201301240002549,
26 the interests of defendant U.S. Bank National Association as well as it's heirs or assigns in the property
27 commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada are extinguished.

1 IT IS FURTHER ORDERED that defendant U.S. Bank National Association as well as it's heirs
2 and assigns have no further right, title or claim to the real property commonly known as 5316 Clover
3 Blossom Ct., North Las Vegas, Nevada.

4 IT IS FURTHER ORDERED that defendant U.S. Bank National Association as well as it's heirs
5 and assigns, or anyone acting on their behalf are forever enjoined from asserting any estate, right, title or
6 interest in the real property commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada
7 as a result of the deed of trust recorded on June 30, 2004 as instrument number 20040630-0002408.


8 IT IS FURTHER ORDERED that defendant U.S. Bank National Association as well as it's heirs
9 and assigns or anyone acting on it's behalf are forever barred from enforcing any rights against the real
10 property commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada as a result of the deed
11 of trust recorded on June 30, 2004 as instrument number 20040630-0002408.

12 DATED this 10 day of September, 2015

13
14 
DISTRICT COURT JUDGE


15 Respectfully submitted by:

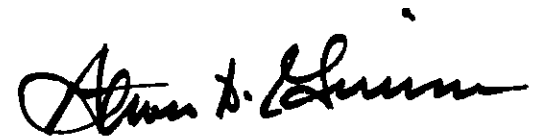
16 LAW OFFICES OF
17 MICHAEL F. BOHN, ESQ., LTD.

18 By: 
19 Michael F. Bohn, Esq.
20 376 East Warm Springs Road, Suite 140
21 Las Vegas, Nevada 89119
Attorney for plaintiff

22 Reviewed by:

23 AKERMAN LLP

24
25 By: 
26 Melanie Morgan, Esq.
27 1160 Town Center Drive, Suite 330
28 Las Vegas, Nevada 89144
Attorney for U.S. Bank National Association



CLERK OF THE COURT

1 **NJUD**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.
7 376 East Warm Springs Road, Ste. 140
8 Las Vegas, Nevada 89119
9 (702) 642-3113/ (702) 642-9766 FAX

6 Attorney for plaintiff

DISTRICT COURT
CLARK COUNTY NEVADA

10 5316 CLOVER BLOSSOM CT TRUST

11 Plaintiff,

12 vs.

13 U.S. BANK, NATIONAL ASSOCIATION,
14 SUCCESSOR TRUSTEE TO BANK OF AMERICA,
15 N.A., SUCCESSOR BY MERGER TO LASALLE
16 BANK, N.A., AS TRUSTEE TO THE HOLDERS OF
17 THE ZUNI MORTGAGE LOAN TRUST 2006-OA1,
18 MORTGAGE LOAN PASS-THROUGH
19 CERTIFICATES SERIES 2006-OA1; and CLEAR
20 RECON CORPS

17 Defendants.

CASE NO.: A704412
DEPT NO.: XXIV

NOTICE OF ENTRY OF JUDGMENT

20 TO: Parties above-named; and

21 TO: Their Attorney of Record

22 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **FINDINGS OF FACT,**
23 **CONCLUSIONS OF LAW, AND JUDGMENT GRANTING QUIET TITLE** has been entered on

24 ///

25 ///

26 ///

1 the 10th day of September, 2015, in the above captioned matter, a copy of which is attached hereto.

2 Dated this 10th day of September, 2015.

3 LAW OFFICES OF
4 MICHAEL F. BOHN, ESQ., LTD.

5 By: /s/ /Michael F. Bohn, Esq./
6 MICHAEL F. BOHN, ESQ.
7 376 E. Warm Springs Rd., Ste. 140
8 Las Vegas, NV 89119
9 Attorney for plaintiff

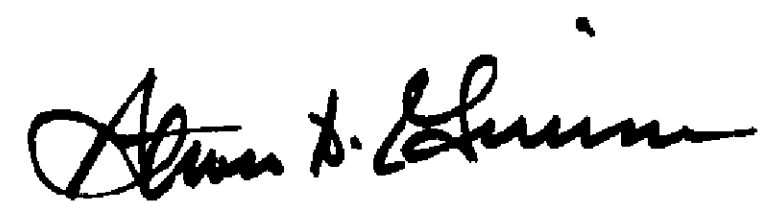
10 **CERTIFICATE OF SERVICE**

11 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW
12 OFFICES OF MICHAEL F. BOHN., ESQ., and on the 10th day of September, 2015, an electronic
13 copy of the **NOTICE OF ENTRY OF JUDGMENT ORDER** was served on opposing counsel via the
14 Court's electronic service system to the following counsel of record:

15
16 Melanie Morgan, Esq.
17 AKERMAN LLP
18 1160 Town Center Drive, Suite 330
19 Las Vegas, Nevada 89144
20 Attorney for U.S. Bank National
21 Association

22 /s/ /Marc Sameroff/
23 An Employee of the LAW OFFICES OF
24 MICHAEL F. BOHN, ESQ., LTD.

25
26
27
28



CLERK OF THE COURT

1 **JUDG**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 LAW OFFICES OF

6 MICHAEL F. BOHN, ESQ., LTD.

7 376 East Warm Springs Road, Ste. 140

8 Las Vegas, Nevada 89119

9 (702) 642-3113/ (702) 642-9766 FAX

10 Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST

Plaintiff,

vs.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
CORPS

Defendants.

CASE NO.: A704412
DEPT NO.: XXIV

Date of hearing: August 20, 2015
Time of hearing: 9:00 a.m.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT GRANTING QUIET TITLE

The motion of plaintiff 5316 Clover Blossom Ct Trust for summary judgment and defendant U.S. Bank's National Association's countermotion for summary judgment having come before the court on August 20, 2015, Michael F. Bohn, Esq. appearing on behalf of the plaintiff and Melanie Morgan, Esq. appearing on behalf of defendant U.S. Bank, and the court, having reviewed the motion and countermotion and the oppositions thereto, and having heard the arguments of counsel, the court makes it's findings of fact, conclusion of law and judgment as follows.

FINDINGS OF FACT

1. The plaintiff acquired the property commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada, at foreclosure sale conducted January 16, 2013, as evidenced by the foreclosure deed recorded on January 24, 2013.

2. Defendant U.S. Bank is the current beneficiary of a trust deed which was recorded as an encumbrance to the subject property on June 30, 2004.

3. Defendant U.S. Bank acquired its interest in the deed of trust by assignment which was recorded on June 20, 2011.

4. Prior to the foreclosure sale, the foreclosure agent recorded the notice of delinquent assessment lien on February 22, 2012.

5. On April 20, 2012, the foreclosure agent recorded a notice of default and election to sell under homeowners association lien. The foreclosure agent also mailed the notice to U.S. Bank National Association.

6. On October 31, 2012, the foreclosure agent recorded a notice of trustee's sale. The foreclosure agent also mailed a copy of the notice of sale by certified mail to U.S. Bank National Association.

7. The foreclosure agent also posted the notice on the property and in three locations throughout the county.

8. The foreclosure agent also published the notice of sale in the Nevada Legal News.

9. The HOA foreclosure agent issued a deed upon sale which was recorded on January 24, 2013.

The deed contains the following recitals:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on January 16, 2013 at the place indicated on the Notice of Trustee's Sale.

11. Prior to the HOA foreclosure sale, the defendant tendered what it believed the super priority amount of the lien. The tender was rejected by the foreclosure agent, and the defendant failed to take any

1 additional steps to protect it's interest in the property.

2 12. Any findings of fact which should be considered to be a conclusion of law shall be treated
3 as such.

4 CONCLUSIONS OF LAW

5 1. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and
6 other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving
7 party is entitled to judgment as a matter of law. See NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724,
8 729, 121 P.3d 1026 (2005).

9 2. To defeat a motion for summary judgment the non-moving party bears the burden to "do more
10 than simply show there is some metaphysical doubt: as to the operative facts. Wood, 121 Nev. at 732
11 (citing Matsushita Electric Industrial Co. v. Zenith Radio, 475 U.S. 574, 586 (1983)). Moreover, the non-
12 moving party must come forward with specific facts showing a genuine issue exists for trial. Matsushita,
13 475 U.S. at 587; Wood P.3d at 1130.

14 3. When ruling on a motion for summary judgment, the court may take judicial notice of the
15 public records attached to the motion. See Harlow v. MTC Financial, Inc., 865 F. Supp 2d 1095 (D. Nev.
16 2012). The recorded documents attached to the plaintiffs motion are referenced in the complaint and/or
17 are public records of which the Court may, and did take judicial notice. See NRS 47.150; Lemel v.
18 Smith, 64 Nev. 545 (1947) (Judicial Notice takes the place of proof and is of equal force.") "Documents
19 accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take
20 acknowledgments are presumed to be authentic." NRS 52.165.

21 4. The defendant did not object to the authenticity of any of the exhibits attached to the plaintiff's
22 motion for summary judgment.

23 5. Plaintiff's complaint alleges three claims for relief against defendant U.S. Bank, for
24 declaratory relief, injunctive relief, and quiet title. Summary judgment in favor of the plaintiff on all of
25 plaintiff's claims for relief are appropriate.

26 6. The HOA foreclosure sale complied with all requirements of law, including but not limited
27 to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the
28

1 recording, posting and publication of the Notice of Sale.

2 7. There is a public policy which favors a final and conclusive foreclosure sale as to the
3 purchaser. See 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d
4 711 (2011); McNeill Family Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2003); In re Suchy, 786 F.2d
5 900 (9th Cir. 1985); and Miller & Starr, California Real Property 3d §10:210.

6 8. There is a common law presumption that a foreclosure sale was conducted validly. Fontenot
7 v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien 25 Cal. App.
8 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353 (2014); Timm v.
9 Dewsnup 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v. McQueen, 804 S.W.
10 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American Bank and Trust Co v.
11 Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208 Ga. App. 702, 431 S.E. 2d
12 475 (Ga. App 1993).

13 9. Nevada has a disputable presumption that “the law has been obeyed.” See NRS 47.250(16).
14 This creates a disputable presumption that the foreclosure sale was conducted in compliance with the law.

15 10. The recitals in the foreclosure deed are sufficient and conclusive proof that the required
16 notices were mailed by the HOA. See NRS 116.31166 and NRS 47.240(6) which also provides that
17 conclusive presumptions include “[a]ny other presumption which, by statute, is expressly made
18 conclusive.” Because NRS 116.31166 contains such an expressly conclusive presumption, the recitals
19 in the foreclosure deed are “conclusive proof” that defendant bank was served with copies of the required
20 notices for the foreclosure sale.

21 11. The court also finds that commercial reasonableness is not an issue in an HOA foreclosure
22 sale. NRS Chapter 116 does not contain a commercial reasonableness requirement, and the court will
23 not read a requirement into a statute which is not expressly stated in the statute. Pro-Max Corp. v.
24 Feenstra, 117 Nev. 90, 16 P.3d 1074 (2001).

25 12. The defendants constitutional challenge to the foreclosure sale is also without merit. NRS
26 116.31168 specifically incorporates the notice requirements of NRS 107.090 into the foreclosure
27 procedure and requires that copies of both the notice of default and the notice of sale be mailed to holders
28

1 of subordinate interests.

2 13. NRS 116.31168(a) provides in part that the “provisions of NRS 107.090 apply to the
3 foreclosure of an association’s lien as if a deed of trust were being foreclosed.” Likewise NRS 107.090
4 provides in part:

5 **Request for notice of default and sale: Recording and contents; mailing of notice;**
6 **request by homeowners’ association; effect of request.**

7

8 3. The trustee or person authorized to record **the notice of default** shall, within 10 days
9 after the notice of default is recorded and mailed pursuant to NRS 107.080, 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:

10 (a) Each person who has recorded a request for a copy of the notice; and

11 (b) Each other person with an interest whose interest or claimed interest is subordinate to
12 the deed of trust.

13 4. The trustee or person authorized to make the sale shall, at least 20 days before the date
14 of sale, 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 of time
and place of sale, addressed to each person described in subsection 3.

15 14. There is no issue of fact regarding whether the former owner was in default in payment of the
16 assessments as well as whether the lien and foreclosure notices were properly served and posted. The
17 recitals in the foreclosure deed are conclusive as to these issues. Furthermore, the plaintiff presented
18 proof, which was not controverted that the notices were mailed, published, and posted.

19 15. There is no issue regarding whether or not the association foreclosed on the “super-priority”
20 portion of it’s lien. As stated in the Nevada Supreme Court in the case of SFR Investments Pool 1, LLC
21 v. U.S. Bank, N.A., 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014) as to first deeds of trust, NRS
22 116.3116(2) splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. Unless the
23 superpriority piece has been satisfied prior to the foreclosure sale, the HOA foreclosure sale on it’s
24 assessment lien would necessarily include both the superpriority piece and a subpriority piece of the lien.
25 The defendant failed to present any evidence that the superpriority portion of the lien was satisfied prior
26 to the foreclosure sale.

27 16. There is no requirement in NRS Chapter 116 that a purchaser be a bonafide purchaser.
28

1 17. The tender of the amount the defendant believed to be the super priority amount does not
2 affect the title received by the plaintiff because once the tender was rejected, the defendant failed to take
3 any further steps to protect it's interest.

4 18. Any conclusion of law which should be a finding of fact shall be considered as such.

5 **ORDER and JUDGMENT**

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff 5316 Clover Blossom
7 Ct Trust motion for summary judgment is granted.

8 IT IS FURTHER ORDERED that defendant U.S. Bank National Association counter motion for
9 summary judgment is denied.

10 IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff 5316 Clover
11 Blossom Ct Trust and against defendant U.S. Bank National Association .

12 IT IS FURTHER ORDERED that title to the real property commonly known 5316 Clover
13 Blossom Ct., North Las Vegas, Nevada and legally described as:

14 All that certain real property situated in the County of Clark, State of Nevada, described
15 as follows:

16 Parcel I:

17 Lot Ninety two (92) of the Plat of Arbor Gate as shown by map thereof on file in Book
18 91 of Plats, page 71, in the office of the County Recorder of Clark County, Nevada

19 Parcel II

20 A non-exclusive easement for ingress and egress and enjoyment in and to the Association
21 property as set forth in the Declaration of Covenants, Conditions and Restrictions for
22 Country Garden (Arbor Gate) a common interest community recorded February 25, 2000
23 in Book 200000225 as Document No. 00963, of Official Records of Clark County,
24 Nevada, as the same may from time to time be amended and/or supplemented, which
25 easement is appurtenant to Parcel One.

26 is hereby quieted in the name of plaintiff 5316 Clover Blossom Ct Trust

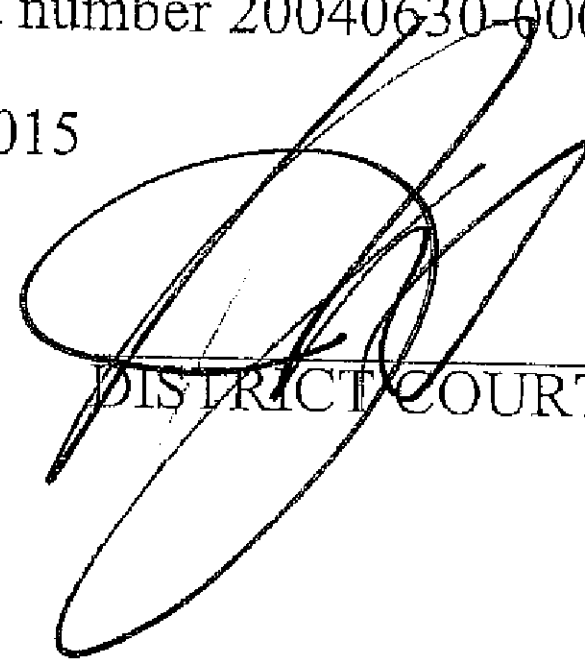
27 IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on January 16,
28 2013, and the foreclosure deed recorded on January 24, 2013 as instrument number 201301240002549,
the interests of defendant U.S. Bank National Association as well as it's heirs or assigns in the property
commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada are extinguished.

1 IT IS FURTHER ORDERED that defendant U.S. Bank National Association as well as it's heirs
2 and assigns have no further right, title or claim to the real property commonly known as 5316 Clover
3 Blossom Ct., North Las Vegas, Nevada.

4 IT IS FURTHER ORDERED that defendant U.S. Bank National Association as well as it's heirs
5 and assigns, or anyone acting on their behalf are forever enjoined from asserting any estate, right, title or
6 interest in the real property commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada
7 as a result of the deed of trust recorded on June 30, 2004 as instrument number 20040630-0002408.


8 IT IS FURTHER ORDERED that defendant U.S. Bank National Association as well as it's heirs
9 and assigns or anyone acting on it's behalf are forever barred from enforcing any rights against the real
10 property commonly known as 5316 Clover Blossom Ct., North Las Vegas, Nevada as a result of the deed
11 of trust recorded on June 30, 2004 as instrument number 20040630-0002408.

12 DATED this 10 day of September, 2015

13
14 
DISTRICT COURT JUDGE


15 Respectfully submitted by:

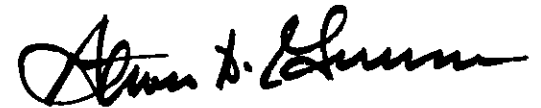
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18 By: 
19 Michael F. Bohn, Esq.
20 376 East Warm Springs Road, Suite 140
21 Las Vegas, Nevada 89119
Attorney for plaintiff

22 Reviewed by:

23 AKERMAN LLP

24
25 By: 
26 Melanie Morgan, Esq.
27 1160 Town Center Drive, Suite 330
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CLERK OF THE COURT

NOAS

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Bank of America, N.A., Successor by Merger to
LaSalle Bank, N.A., as Trustee to the holders of the
Zuni Mortgage Loan Trust 2006-OA1, Mortgage
Loan Pass-Through Certificates Series 2006-OA1*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST,

Plaintiff,

v.

U.S. BANK, N.A., SUCCESSOR TRUSTEE TO
BANK OF AMERICA, N.A. SUCCESSION BY
MERGER TO LASALLE BANK, N.A., AS
TRUSTEE TO THE HOLDERS OF THE ZUNI
MORTGAGE LOAN TRUST 2006-OA1,
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES SERIES 2006-OA1

Defendants.

Case No.: A-14-704412-C

Dept. : XXIV

U.S. BANK, N.A.'S NOTICE OF APPEAL

Notice is hereby given that U.S. Bank, N.A., solely as Successor Trustee to Bank of America, N.A., successor by merger to LaSalle Bank, N.A., as Trustee to the holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**U.S. Bank**), appeal to the Supreme Court of Nevada from this Court's order of September 10, 2015 granting

Plaintiff Clover Blossom Ct Trust’s Motion for Summary Judgment and Denying U.S. Bank’s
Counter-motion for Summary Judgment.

DATED this 28th day of September, 2015.

AKERMAN LLP

/s/ Matthew I. Knepper

MELANIE D. MORGAN, ESQ.

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*Attorneys for U. S. Bank, N.A., successor trustee
to Bank of America, N.A., Successor by Merger
to LaSalle Bank, N.A., as Trustee to the holders
of the Zuni Mortgage Loan Trust 2006-OA1,
Mortgage Loan Pass-Through Certificates
Series 2006-OA1*

CERTIFICATE OF SERVICE

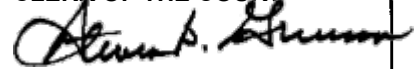
I HEREBY CERTIFY that on the 28th day of September, 2015 and pursuant to NRCP 5, I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **U.S. BANK, N.A.'S NOTICE OF APPEAL** on all parties and counsel as identified on the Court generated notice of electronic filing.

Michael F. Bohn, Esq.
LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.
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office@bohnlawfirm.com

Attorneys for Plaintiff

/s/ Lucille Chiusano

An employee of AKERMAN LLP



1 ORDR

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 5316 CLOVER BLOSSOM CT TRUST, ET AL.,
5 Plaintiff(s),

CASE NO. A704412
DEPT NO. 24

6 vs.

7 US BANK NATIONAL ASSOCIATION, ET AL.
8 Defendant(s).

9 **ORDER VACATING JUDGMENT AND SETTING FURTHER**
10 **PROCEEDINGS RE: THE COURT OF APPEALS COURT**
11 **ORDER VACATING JUDGMENT AND REMANDING**

12 The Court having recently received the Court of Appeals of the State of Nevada order
13 Vacating Judgment and Remanding dated 30th day of June, 2017, and good cause appearing, it is
14 hereby

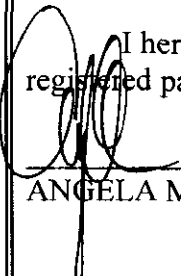
15 ORDERED that the Court's prior Finding of Fact, Conclusions of Law, and Judgment
16 Granting Quiet Title filed on September 10, 2015, is hereby VACATED.

17 IT IS FURTHER ORDERED that this matter is set for hearing on **Tuesday, October 3,**
18 **2017, at 9:00 AM** before the Honorable Jim Crockett in District Court XXIV located in the Phoenix
19 Building, 330 South Third Street, 11th Floor, Courtroom A, for further proceedings regarding this
20 matter.

21
22 DATED: August 1, 2017

23
24 
JIM CROCKETT, District Judge

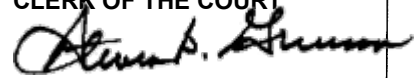
25 I hereby certify that on or about the date filed, a copy of this Order was served upon all
26 registered parties in the case no. A-14-704412-C.

27 
28 ANGELA MCBRIDE, Judicial Executive Assistant

AA000233

HEARING DATE
ALREADY ENTERED
IN ODYSSEY

DISTRICT JUDGE JIM CROCKETT
DEPARTMENT XXIV



1 **SAO**

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16 *Attorneys for U.S. Bank, N.A., solely as*
17 *Successor Trustee to Bank of America, N.A.,*
18 *successor by merger to LaSalle Bank, N.A.,*
19 *as Trustee to the Holders of the Zuni*
20 *Mortgage Loan Trust 2006-OA1, Mortgage*
21 *Loan Pass-Through Certificates Series*
22 *2006-OA1*

23 **EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 5316 CLOVER BLOSSOM CT TRUST;

26 Plaintiff,

27 v.

28 U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE LOAN
PASS-THROUGH CERTIFICATES SERIES
2006-OA1; and CLEAR RECON CORPS,

Defendants.

Case No.: A-14-704412-C

Dept. No.: XXIV

**STIPULATION AND ORDER TO AMEND
PLEADING AND ADD PARTIES**



Plaintiff 5316 Clover Blossom CT Trust (**Plaintiff**) and U.S. Bank, N.A., solely as Successor Trustee to Bank of America, N.A., successor by merger to LaSalle Bank, N.A., as Trustee to the holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**U.S. Bank**) hereby stipulate and agree as follows:

1. Plaintiff agrees to allow U.S. Bank to join Country Garden Owners' Association (**HOA**) as a party and to amend its pleading to assert counterclaims, cross-claims against the HOA,

and additional affirmative defenses. U.S. Bank's proposed amended pleading containing these additional claims and additional affirmative defenses is attached as **Exhibit A**.

2. U.S. Bank shall file this amended pleading within ten (10) days of the Court's entry of this Order.

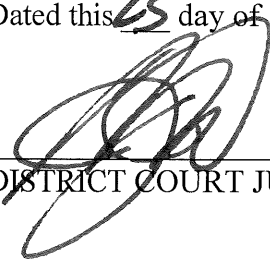
DATED this 14 day of September, 2017. DATED this _____ day of September, 2017.

LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.	AKERMAN LLP
	
MICHAEL F. BOHN, ESQ. Nevada Bar No. 1641 ADAM R. TRIPPIEDI, ESQ. Nevada Bar No. 12294 376 East Warm Springs Road, Suite 140 Las Vegas, Nevada 89119 Telephone: (702) 641-3113 Facsimile: (702) 642-9766	DARREN T. BRENNER, ESQ. Nevada Bar No. 8386 REBEKKAH B. BODOFF, ESQ. Nevada Bar No. 12703 KAREN A. WHELAN, ESQ. Nevada Bar No. 10466 1160 Town Center Drive, Suite 330 Las Vegas, Nevada 89144 Telephone: (702) 634-5000 Facsimile: (702) 380-8572
<i>Attorney for 5316 Clover Blossom Trust</i>	<i>Attorneys for U.S. Bank, N.A., solely as Successor Trustee to Bank of America, N.A., successor by merger to LaSalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1</i>

ORDER

IT IS SO ORDERED.

Dated this 25 day of September, 2017.


DISTRICT COURT JUDGE

AKERMAN LLP

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LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-8572