

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

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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 5**
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

INDEX TO APPENDIX 5

Volume	Date Filed	Document	Bates Stamp
5	10/01/20	Motion for Summary Judgment (Part 2)	AA000981-AA000998
5	10/01/20	U.S. Bank, N.A., as Trustee's Renewed Motion for Summary Judgment (Part 1)	AA000999-AA001191

ALPHABETICAL INDEX TO APPELLANT'S APPENDIXES

		Document	Bates Stamp
1	08/26/14	Affidavit of Service for Clear Recon Corps	AA000009
1	08/13/14	Affidavit of Service for U.S. Bank	AA000007-AA000008
1	04/23/15	Amended Complaint	AA000019-AA000021
4	02/24/20	Answer to Defendant U.S. Bank, National Association's Counterclaims	AA000952-AA000957
7	01/28/21	Case Appeal Statement	AA001514-AA001516
1	07/25/14	Complaint	AA000001-AA000006
3	11/09/17	Country Garden Owners' Association's Motion to Dismiss the Crossclaims of U.S. Bank, National Association	AA000500-AA000510
3	12/07/17	Country Garden Owners' Association's Reply in Support of Motion to Dismiss the Crossclaims of U.S. Bank, National Association	AA000658-AA000674
7	12/07/20	Court Minutes	AA001484-AA001485
3	02/07/18	Findings of Fact, Conclusions of Law, and Judgment	AA000675-AA000688
1	09/10/15	Findings of Fact, Conclusions of Law, and Judgment Quieting Title	AA000214-AA000220
7	12/29/20	Findings of Fact, Conclusions of Law, and Order	AA001486-AA001496

1	2	10/23/17	Motion to Dismiss Counterclaim	AA000339- AA000394
2				
3	1	05/18/15	Motion for Summary Judgment	AA000024- AA000082
4	4&5	10/01/20	Motion for Summary Judgment	AA000958- AA000998
5				
6	4	05/10/18	Notice of Appeal	AA000936- AA000938
7	7	01/28/21	Notice of Appeal	AA001512- AA001513
8				
9	3	02/08/18	Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment	AA000689- AA000704
10	7	12/29/20	Notice of Entry of Findings of Fact, Conclusions of Law, and Order	AA001497- AA001511
11	1	09/10/15	Notice of Entry of Judgment	AA000221- AA000229
12				
13	4	01/07/20	Notice of Entry of Order	AA000944- AA000951
14	4	04/16/18	Notice of Entry of Order Granting Country Garden Owners' Association's Motion to Dismiss the Crossclaims of U.S. Bank, National Association, Findings of Fact, Conclusions of Law, and Judgment	AA00917- AA000931
15				
16				
17	7	10/15/20	Opposition U.S. Bank's Motion for Summary Judgment	AA001434- AA001441
18	4	01/07/20	Order	AA000939- AA000943
19				
20	4	05/01/18	Order Denying U.S. Bank, N.A., as Trustee's Motion for Reconsideration Under NRCP 59	AA000932- AA000935
21				
22	1	05/06/15	Order Granting Motion to Amend Complaint	AA000022- AA000023
23				
24	1	08/03/17	Order Vacating Judgment and Setting Further Proceedings	AA000233
25	4	03/14/18	Plaintiff's Opposition to U.S. Bank, N.A., as Trustee's Motion for Reconsideration Under NRCP 59	AA000907- AA000916
26				
27	7	12/03/20	Plaintiff's Reply in Support of Motion for Summary Judgment	AA001464- AA001474
28				

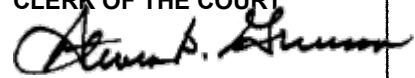
1	3	11/21/17	Reply in Support of Motion to Dismiss Counterclaim	AA000511-AA000522
2				
3	1	07/29/15	Reply in Support of Plaintiff's Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment, or Alternatively, for Rule 56(F) Relief	AA000171-AA000191
4				
5	1	09/28/17	Stipulation and Order to Amend Pleadings and Add Parties	AA000234-AA000235
6				
7	1	09/30/14	Stipulation and Order for Non-Monetary Judgment Between Clear Recon Corp and 5316 Clover Blossom Ct Trust	AA000016-AA000018
8				
9	3	11/29/17	Supplemental Authority in Support of Motion to Dismiss Counterclaim	AA000631-AA000657
10	1	08/13/15	Supplemental Points and Authorities in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendant's Countermotion for Summary Judgment	AA000206-AA000213
11				
12	1	09/25/14	U.S. Bank's Answer to Complaint	AA000010-AA000015
13				
14	2	10/10/17	U.S. Bank's Answer to 5316 Clover Blossom Trust's Amended Complaint, Counterclaims, and Cross-Claims	AA000237-AA000338
15				
16	3&4	02/26/18	U.S. Bank, N.A., as Trustee's Motion for Reconsideration Under NRCP 59	AA000705-AA000906
17	1	09/28/15	U.S. Bank's Notice of Appeal	AA000230-AA000232
18				
19	2&3	11/09/17	U.S. Bank's Opposition to 5316 Clover Blossom Trust's Motion to Dismiss Counterclaim	AA000395-AA000499
20				
21	3	11/27/17	U.S. Bank's Opposition to Country Garden Owners Association's Motion to Dismiss	AA000523-AA000630
22	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 Alternratively, for Rule 56(F) Relief	AA000083-AA000170
23				
24				
25	7	10/15/20	U.S. Bank, N.A., as Trustee's Opposition to Plaintiff 5316 Clover Blossom Ct Trust's Motion for Summary Judgment	AA001442-AA001463
26				
27	5,6 & 7	10/01/20	U.S. Bank, N.A., as Trustee's Renewed Motion for Summary Judgment	AA000999-AA001433
28				

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7	12/03/20	U.S. Bank, N.A., as Trustee's Reply in Support of Its Renewed Motion for Summary Judgment	AA001475-AA001483
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

EXHIBIT 2

EXHIBIT 2



1 **FFCL**

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

3 ADAM R. TRIPPIEDI, ESQ.

Nevada Bar No. 12294

4 atrippiedi@bohnlawfirm.com

LAW OFFICES OF

5 MICHAEL F. BOHN, ESQ., LTD.

376 E. Warm Springs Rd., Ste. 140

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

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
19 LOAN PASS-THROUGH CERTIFICATES
20 SERIES 2006-OA1; and CLEAR RECON
21 CORPS

22 Defendants.

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

Counterclaimant,

vs.

5316 CLOVER BLOSSOM CT TRUST

Counterdefendant.

CASE NO.: A-14-704412-C
DEPT NO.: XXIV

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

Date of Hearing: December 12, 2017
Time of Hearing: 9:00 a.m.

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,

Cross-claimant,

vs.

5316 CLOVER BLOSSOM CT TRUST

Cross-defendant.

Plaintiff 5316 Clover Blossom Ct Trust's motion to dismiss having come before the court on the 12th day of December, 2017, at 9:00 a.m., Adam R. Trippiedi, Esq. appearing on behalf of plaintiff; Scott Lachman, Esq. appearing on behalf of 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 ("US Bank"); and Elizabeth B. Lowell, Esq. appearing on behalf of cross-defendant Country Garden Owners' Association, and the court, having reviewed plaintiff's motion and defendant's opposition, and having heard the arguments of counsel, makes its findings of fact, conclusion of law and judgment as follows.

FINDINGS OF FACT

1. 5316 Clover Blossom Ct Trust is the owner of real property commonly known as 5316 Clover Blossom Court, North Las Vegas, Nevada (hereinafter referred to as "the Property").

2. The property is encumbered by a Declaration of Covenants, Conditions, and Restrictions for Country Garden (Arbor Gate) (hereinafter referred to as the "CC&Rs").

3. 5316 Clover Blossom Ct Trust acquired the Property from Country Garden Owners' Association (hereinafter the "HOA") at a foreclosure sale conducted on January 16, 2013.

4. The foreclosure sale arose from a delinquency in assessments due from the former owners to the HOA pursuant to NRS Chapter 116.

5. US Bank is the beneficiary of a deed of trust that was originally recorded as an encumbrance against the Property on June 30, 2004.

6. On June 20, 2011, an assignment of the deed of trust was recorded which assigned the beneficial interest in the deed of trust to US Bank.

7. At some point, the former owner of the property became delinquent in paying assessments and the HOA and its foreclosure agent, Alessi & Koenig, LLC (hereinafter “the foreclosure agent”), began foreclosure proceedings based on the delinquent assessments.

8. On January 30, 2012, and again on February 6, 2012, the foreclosure agent served a Notice of Delinquent Assessment Lien on the former owners of the property via regular and certified mail.

9. On February 22, 2012, the foreclosure agent recorded a Notice of Delinquent Assessment Lien against the property.

10. On April 20, 2012, the foreclosure agent recorded a Notice of Default and Election to Sell under homeowners association lien against the property.

11. On April 30, 2012, the foreclosure agent mailed copies of the notice of default to the former owner, to MERS, to US Bank, and to other interested parties.

12. On October 31, 2012, a Notice of Foreclosure Sale was recorded against the property.

13. On October 25, 2012, the foreclosure agent mailed copies of the notice of foreclosure sale to the former owner, US Bank, and other interested parties.

14. The foreclosure agent also served the notice of foreclosure sale on the former owners by posting a copy of the notice in a conspicuous place on the Property, and also posted copies of the notice in three public locations throughout Clark County.

15. The foreclosure agent also published the notice of sale in the Nevada Legal News.

16. As reflected by the conclusive recitals in the foreclosure deed, 5316 Clover Blossom Ct Trust entered the high bid of \$8,200.00 at the public auction conducted on January 16, 2013, to purchase the Property.

17. The foreclosure agent issued a deed upon sale, which was recorded on January 24, 2013, and contains the following recitals:

1 This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116
2 et seq., and that certain Notice of Delinquent Assessment Lien, described herein.
3 Default occurred as set forth in a Notice of Default and Election to Sell which was
4 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.

5 18. US Bank alleges that on November 21, 2012, US Bank, by way of its agent, sent
6 correspondence to the foreclosure agent requesting an accounting of the HOA arrears.

7 19. In response, the foreclosure agent sent a letter to US Bank's agent. The foreclosure
8 agent's letter stated that the total amount due was \$4,186.00.

9 20. On December 6, 2012, US Bank, by way of its agent, mailed a check in the amount of
10 \$1,494.50 to the foreclosure agent, along with an accompanying letter, in an effort to satisfy the
11 HOA's super-priority lien.

12 21. There is no evidence to indicate the HOA or foreclosure agent accepted or otherwise
13 responded to the \$1,494.50 check.

14 22. After sending the letter and \$1,494.50 check to the foreclosure agent, US Bank made no
15 other efforts to pay off the lien or otherwise prevent the foreclosure sale from going forward.

16 23. Prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion
17 of the HOA lien representing 9 months of assessments for common expenses.

18 24. US Bank did not present evidence of any fraud, oppression or unfairness in regards to the
19 foreclosure sale which would account for or bring about an unreasonably low purchase price.

20 25. 5316 Clover Blossom Ct Trust is a bona fide purchaser, and the US Bank has failed to
21 present sufficient proof to disprove that the 5316 Clover Blossom Ct Trust was a bona fide purchaser.

22 26. Any findings of fact which should be considered to be a conclusion of law shall be treated
23 as such.

24 CONCLUSIONS OF LAW

25 1. If, in a motion under NRCP 12(b)(5), matters outside the pleading are presented to and not
26 excluded by the court, the motion shall be treated as one for summary judgment and disposed of as
27 provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made

1 pertinent to such a motion by Rule 56. See NRCP 12(b).

2 2. This Court finds that, by virtue of the arguments presented in 5316 Clover Blossom Ct
3 Trust's motion to dismiss, US Bank's opposition, and 5316 Clover Blossom Ct Trust's reply, matters
4 outside the counterclaim were presented and, thus, 5316 Clover Blossom Ct Trust's motion to dismiss
5 was converted into a motion for summary judgment and this court is treating it as such.

6 3. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings
7 and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the
8 moving party is entitled to judgment as a matter of law. See NRCP 56(c); Wood v. Safeway, Inc.,
9 121 Nev. 724, 729, 121 P.3d 1026 (2005).

10 4. To defeat a motion for summary judgment the non-moving party bears the burden to "do
11 more than simply show there is some metaphysical doubt: as to the operative facts. Wood, 121 Nev.
12 at 732 (citing Matsushita Electric Industrial Co. v. Zenith Radio, 475 U.S. 574, 586 (1983)).
13 Moreover, the non-moving party must come forward with specific facts showing a genuine issue
14 exists for trial. Matsushita, 475 U.S. at 587; Wood P.3d at 1130. Further, in ruling upon a motion for
15 summary judgment, the Court must view all evidence and inferences in the light most favorable to the
16 non-moving party. Torrealba v. Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008).

17 5. When ruling on a motion for summary judgment, the court may take judicial notice of the
18 public records attached to the motion. Harlow v. MTC Financial Inc. 865 F. Supp.2d 1095 (D. Nev.
19 2012). The recorded exhibits to US Bank's counterclaim are public records of which the Court may,
20 and did take judicial notice. See NRS 47.150; Lemel v. Smith, 64 Nev. 545 (1947) (Judicial Notice
21 takes the place of proof and is of equal force.") "Documents accompanied by a certificate of
22 acknowledgment of a notary public or officer authorized by law to take acknowledgments are
23 presumed to be authentic." NRS 52.165.

24 6. Summary judgment in favor of 5316 Clover Blossom Ct Trust is proper.

25 7. The HOA foreclosure sale complied with all requirements of law, including but not limited
26 to, recording and mailing of copies of notice of delinquent assessment lien and notice of default and
27 election to sell under homeowners association lien, and the recording, mailing, posting, and

28

1 publication of the notice of foreclosure sale.

2 8. The law presumes foreclosure notices are received upon proof of mailing, and does not
3 require proof that the notices be received. Actual notice is not necessary as long as the statutory
4 requirements are met. Mailing of the notices is all that the statute requires. Hankins v. Administrator
5 of Veterans Affairs v. Administrator of Veterans Affairs 92 Nev. 578, 555 P.2d 483 (1976); Turner v.
6 Dewco 87 Nev. 14, 479 P.2d 462 (1971).

7 9. There is a public policy which favors a final and conclusive foreclosure sale as to the
8 purchaser. See 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr.
9 2d 711 (2011); McNeill Family Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2003); In re Suchy, 786
10 F.2d 900 (9th Cir. 1985); and Miller & Starr, California Real Property 3d §10:210.

11 10. There is a common law presumption that a foreclosure sale was conducted validly.
12 Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien
13 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353
14 (2014); Timm v. Dewsnap 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v.
15 McQueen, 804 S.W. 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American
16 Bank and Trust Co v. Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208
17 Ga. App. 702, 431 S.E. 2d 475 (Ga. App 1993).

18 11. Nevada has a disputable presumption that “the law has been obeyed.” See NRS
19 47.250(16). This creates a disputable presumption that the foreclosure sale was conducted in
20 compliance with the law.

21 12. 5316 Clover Blossom Ct Trust, as the record title holder of the property, has a
22 presumption of validity in its favor, and US Bank “has the burden to show that the sale should be set
23 aside in light of” 5316 Clover Blossom Ct Trust’s status as the record title holder. Nationstar
24 Mortgage v. Saticoy Bay, LLC Series 2227 Shadow Canyon, 133 Nev. Adv. Op. 91 (2017).

25 13. The recitals in the foreclosure deed are sufficient and conclusive proof that the required
26 notices were mailed by the HOA. See NRS 116.31166 and NRS 47.240(6) which also provide that
27 conclusive presumptions include “[a]ny other presumption 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 US Bank bank was served with copies of the required notices for the foreclosure sale.

14. US Bank has not presented any evidence to show that equitable relief is warranted in this case or to disprove any of the recitals in the foreclosure deed.

15. US Bank has not presented any evidence to show any defect with the foreclosure sale or the recording and service of the notices prior to the foreclosure sale.

16. US Bank further argues that the low price when combined with fraud, unfairness, or oppression is sufficient to void said sale. However, US Bank failed to present any evidence of fraud, unfairness, or oppression in regards to the foreclosure sale.

17. US Bank argues there was fraud, oppression, or unfairness in the conduct of the sale because the foreclosure agent rejected US Bank’s tender. However, the fraud, oppression, or unfairness must bring about or account for the low purchase price. See Shadow Wood, et al. Examples would be collusion between the auctioneer and the purchaser to keep the price artificially low or an effort to prevent public notice of the auction. US Bank never explains how rejection of a tender accounts for a low purchase price.

18. Nevada Rule of Civil Procedure 9(b) requires that “[i]n all averments of fraud..., the circumstances constituting fraud... shall be stated with particularity.” US Bank, in alleging fraud in this matter, has not stated the basis for its fraud allegation with sufficient particularity or factual support.

19. There is no issue regarding whether the association foreclosed on the “super-priority” portion of its lien. The evidence and deed recitals show that both the notice of default and the notice of sale were properly mailed to US Bank. The language in both the notice of default and notice of sale shows that the HOA was foreclosing on a lien comprised of monthly assessments. As such, there is no genuine issue of material fact that the HOA possessed a super priority lien at the time of the foreclosure sale, and that the super priority lien was foreclosed upon. As stated in SFR, as to first deeds of trust, NRS 116.3116(2) splits an HOA lien into two pieces, a superpriority piece and a

1 subpriority piece. Unless the superpriority piece has been satisfied prior to the foreclosure sale, the
2 HOA foreclosure sale on its assessment lien would necessarily include both the superpriority piece
3 and a subpriority piece of the lien. US Bank failed to present any evidence that the superpriority
4 portion of the lien was satisfied prior to the foreclosure sale.

5 20. In considering whether equity supports setting aside the sale in question, the Court is to
6 consider any other factor bearing on the equities, including actions or inactions of both parties seeking
7 to set aside the sale and the impact on a bona fide purchaser for value. Shadow Wood at 1114
8 (finding “courts must consider the entirety of the circumstances that bear upon the equities”).

9 21. The attempted tender of assessments made by US Bank for \$1,494.50, does not affect
10 5316 Clover Blossom Ct Trust’s title to the property because US Bank had several different options to
11 prevent the sale from going forward and failed to do so. Specifically, US Bank could have “pa[id] the
12 entire amount and request[ed] a refund of the balance.” SFR at 418. US Bank also could have sought
13 “a temporary restraining order and preliminary injunction and fil[ed] a lis pendens on the property.”
14 Shadow Wood at 1114 n.7. US Bank failed to avail itself of any of these options and instead allowed
15 the HOA to foreclose.

16 22. US Bank’s tender letter contains conditions, including that the tender amount is “non-
17 negotiable”; that endorsement of the check “will be strictly construed as an unconditional
18 acceptance... of the facts” stated in the tender letter; and acceptance of the check is an
19 acknowledgment that the lien has been ““paid in full.”” Because of these conditions, the tender was
20 not valid and had no effect on the foreclosure sale of the HOA’s lien. Smith v. School Dist. No. 64
21 Marion County, 89 Kan. 225, 131 P. 557, 558 (1913) (“A conditional tender is not valid. Where it
22 appears that a larger sum than that tendered is claimed to be due, the offer is not effectual as a tender
23 if coupled with such conditions that acceptance of it as tendered involves an admission on the part of
24 the person accepting it that no more is due.”)

25 23. US Bank’s tender also contains conditions that were not consistent with Commission for
26 Common Interest Communities and Condominium Hotels’ (hereinafter “CCICCH”) Advisory
27 Opinion 2010-01 issued on December 8, 2010:

1 An association may collect as a part of the super priority lien (a) interest permitted by NRS
2 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any
3 statements of unpaid assessments and (d) the “costs of collecting” authorized by NRS
4 116.310313.

5 ...
6 Accordingly, both a plain reading of the applicable provisions of NRS 116.3116 and
7 the policy determinations of commentators, the state of Connecticut and lenders
8 themselves support the conclusion that **associations should be able to include
9 specified costs of collecting as part of the association’s super priority lien.**

10 (emphasis added)

11 24. Furthermore, effective as of May 5, 2011, the CCICCH adopted NAC 116.470 in order to
12 set limits on the costs assessed in connection with a notice of delinquent assessment. NAC
13 116.470(4)(b) authorizes “[r]easonable attorney’s fees and actual costs, without any increase or
14 markup, incurred by the association for any legal services which do not include an activity described
15 in subsection 2.”

16 25. The fact that the foreclosure agent did not accept the tender does not affect 5316 Clover
17 Blossom Ct Trust’s title to the property because US Bank failed to take any steps to protect its interest
18 aside from mailing the letter and check, which was in an amount less than the full amount of the
19 HOA’s lien. Accordingly, US Bank is not entitled to equitable relief. Shadow Wood at 1114 n.7.

20 26. Specifically, the Nevada Supreme Court decision of Horizons at Seven Hills v. Ikon
21 Holdings, LLC, 132 Nev. Adv. Op. 35, 373 P.3d 66 (2016) did not exist on December 6, 2012, when
22 US Bank sent its tender, so the HOA and the foreclosure agent could not have relied upon that
23 authority.

24 27. To the contrary, the December 8, 2010, CCICCH opinion existed on December 6, 2012,
25 and the HOA and foreclosure agent could have relied upon that authority.

26 28. Furthermore, effective as of May 5, 2011, the CCICCH adopted NAC 116.470 in order to
27 set limits on the costs assessed in connection with a notice of delinquent assessment. NAC
28 116.470(4)(b) authorizes “[r]easonable attorney’s fees and actual costs, without any increase or
markup, incurred by the association for any legal services which do not include an activity described
in subsection 2.”

29. US Bank's further argues that the presence of a mortgage protection clause within the CC&Rs, which represents that the HOA lien "shall not affect the rights of the mortgagee under any first mortgage upon such Lot, Unit or Parcel," was evidence of fraud, oppression, and/or unfairness that rendered the foreclosure sale a subpriority sale. However, the mortgage protection language cited by US Bank was determined to be legally ineffective by the Nevada Supreme Court in SFR based on NRS 116.1104, which states that the provisions of NRS 116 "may not be varied by agreement, and rights conferred by it may not be waived." Based on SFR, this court finds the mortgage protection clause was invalid and thus was also not evidence of fraud, oppression, or unfairness.

30. Therefore, because US Bank's has failed to set forth material issues of fact demonstrating some fraud, unfairness, or oppression which led to the low purchase price, the Court finds that the price of the sale is not a legitimate basis to overturn the sale.

31. There is no issue of fact regarding whether the former owner was in default in payment of the assessments as well as whether the lien and foreclosure notices were properly served. The recitals in the foreclosure deed are conclusive as to these issues. Furthermore, 5316 Clover Blossom Ct Trust presented proof, which was not controverted, that the notices were mailed, published, and posted.

32. 5316 Clover Blossom Ct Trust is a bona fide purchaser ("BFP"). A subsequent purchaser is bona fide under common law principles if it takes the property "for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." Bailey v. Butner, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947) (emphasis omitted); see also Moore v. De Bernardi, 47 Nev. 33, 54, 220 P. 544, 547 (1923) ("The decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive.").

33. The evidence shows 5316 Clover Blossom Ct Trust purchased said property for valuable consideration in the amount of \$8,200.00 and had no actual, constructive, or inquiry notice of any dispute of title or defect in the sales process. Such evidence is clear from the fact US Bank did not pay

1 off the super-priority lien, attend the sale in question, record notice with the Clark County Recorder,
2 or attempt to take any other action to put potential buyers on notice of any dispute. US Bank was in
3 the position to take any number of simple steps to avoid a BFP issue and simply failed to take such
4 action. After being fully apprised of the pending foreclosure sale and taking no action, US Bank looks
5 now to enforce its rights. The Court notes that all that was required of US Bank to defeat BFP status
6 was to put purchasers on notice of their claim to the property by either showing up to the sale to
7 announce their claim of title, record a legal tender, file a lis pendens, or seek a temporary restraining
8 order. US Bank's argument that 5316 Clover Blossom Ct Trust cannot be a BFP based on the mere
9 fact that a Deed of Trust was recorded is not supported under the law.

10 34. In the absence of evidence to the contrary, US Bank had the burden of proving 5316
11 Clover Blossom Ct Trust was not a BFP because for 5316 Clover Blossom Ct Trust to prove it was a
12 BFP would be akin to proving a negative, i.e., proving 5316 Clover Blossom Ct Trust was not aware
13 of information which would defeat BFP status. See Shadow Wood at 1112 ("The question remains
14 whether NYCB demonstrated sufficient grounds to justify the district court in setting aside Shadow
15 Wood's foreclosure sale on NYCB's motion for summary judgment."); First Fidelity Thrift & Loan
16 Ass'n v. Alliance Bank, 60 Cal. App. 4th 1433, 1442, 71 Cal. Rptr. 2d 295 (1998) ("That Alliance
17 had knowledge of First Fidelity's equitable claim for reinstatement of its reconveyed deed of trust was
18 an element of First Fidelity's case.... Showing that Alliance was not an innocent purchaser for value
19 was hence an element of First Fidelity's claim.")

20 35. Equitable relief is only available when no adequate remedy at law exists. One who seeks
21 equitable relief cannot merely sit on its hands to its detriment. It would be a gross injustice for 5316
22 Clover Blossom Ct Trust, an innocent third party who paid valuable consideration, to have its
23 equitable rights subordinate to US Bank, who did nothing to protect itself at the foreclosure sale. See
24 generally Holmberg v. Armbrecht, 66 S. Ct. 582, 584 (1946)(quoting Russell v. Todd, 60 S. Ct. 527,
25 532 (1940)) (finding "[t]here must be conscience, good faith, and reasonable diligence, to call into
26 action the [equitable] powers of the court."). Therefore, the Court finds 5316 Clover Blossom Ct
27 Trust is a BFP, undisturbed by any issue raised in US Bank's opposition, as 5316 Clover Blossom Ct

1 Trust's equitable interest as an innocent purchaser cannot be outweighed by the inaction of US Bank.

2 36. US Bank is not entitled to equitable relief because it was on notice of the foreclosure sale
3 and failed to take adequate steps to protect its interest in the property. The Nevada Supreme Court
4 has stated, that "[w]here the complaining party has access to all the facts surrounding the questioned
5 transaction and merely makes a mistake as to the legal consequences of his act, equity should
6 normally not interfere, especially where the rights of third parties might be prejudiced thereby."
7 Shadow Wood, 366 P.3d at 1116 (quoting Nussbaumer v. Sup. Ct. in & for Yuma Cty., 107 Ariz.
8 504, 489 P.2d 843, 846 (1971)). In Shadow Wood, the Nevada Supreme Court held that
9 "[c]onsideration of harm to potentially innocent third parties is especially pertinent where [the lender]
10 did not use the legal remedies available to it to prevent the property from being sold to a third party,
11 such as by seeking a temporary restraining order and preliminary injunction and filing a lis pendens
12 on the property." Shadow Wood, 366 P.3d at 1114 fn. 7.

13 37. The policies and equities favor the 5316 Clover Blossom Ct Trust. In balancing the
14 equities, 5316 Clover Blossom Ct Trust's interest as the successor to a bona fide purchaser is not
15 outweighed by the inaction of US Bank.

16 38. US Bank shall take nothing by way of its counterclaim.

17 39. Any conclusion of law which should be a finding of fact shall be considered as such.

18 **ORDER and JUDGMENT**

19 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff 5316 Clover
20 Blossom Ct Trust's motion to dismiss, converted to a motion for summary judgment, is granted.

21 IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff 5316 Clover
22 Blossom Ct Trust and against defendant US Bank.

23 IT IS FURTHER ORDERED that title to the real property commonly known as 5316 Clover
24 Blossom Ct, North Las Vegas, Nevada 89031, and legally described as:

25 PARCEL I

26 LOT NINETY TWO (92) OF THE PLAT OF ARBOR GATE AS SHOWN BY MAP
27 THEREOF ON FILE IN BOOK 91 OF PLATS, PAGE 71, IN THE OFFICE OF THE
COUNTY RECORDER OF CLARK COUNTY, NEVADA.

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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.

APN 124-31-220-092

is hereby quieted in the name of 5316 Clover Blossom Ct Trust.

IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on January 16, 2013, as evidenced by the foreclosure deed recorded January 24, 2013, the interests of defendant US Bank, as well as its successors and assigns in the property commonly known as 5316 Clover Blossom Ct, North Las Vegas, Nevada 89031, are extinguished.

IT IS FURTHER ORDERED that defendant US Bank, as well as its successors and assigns, have no further right, title or claim to the real property commonly known as 5316 Clover Blossom Ct, North Las Vegas, Nevada 89031.

IT IS FURTHER ORDERED that defendant US Bank, as well as its successors and assigns, or anyone acting on their behalf. are forever enjoined from asserting any estate, right, title or interest in the real property commonly known as 5316 Clover Blossom Ct, North Las Vegas, Nevada 89031 as a result of the deed of trust recorded on June 30, 2004, as instrument number 20040630-0002408.

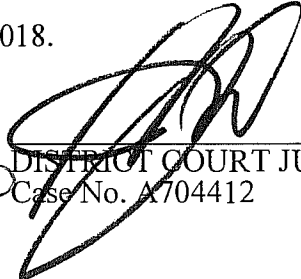
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1 IT IS FURTHER ORDERED that defendant US Bank, as well as its successors and assigns or
2 anyone acting on their behalf, are forever barred from enforcing any rights against the real property
3 commonly known as 5316 Clover Blossom Ct, North Las Vegas, Nevada 89031 as a result of the
4 deed of trust recorded on June 30, 2004, as instrument number 20040630-0002408.

5 DATED this 5 day of February, 2018.

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7 
8 DISTRICT COURT JUDGE
9 Case No. A704412

10 Respectfully submitted by:

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

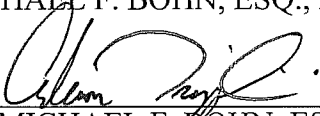
13 By: 
14 MICHAEL F. BOHN, ESQ.
15 ADAM R. TRIPPIEDI, ESQ.
16 376 East Warm Springs Road, Ste. 140
17 Las Vegas, Nevada 89119
18 Attorney for plaintiff
19
20
21
22
23
24
25
26
27
28

EXHIBIT 3

EXHIBIT 3

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

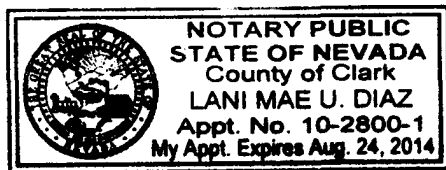
State of Nevada)
County of **Clark**)

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

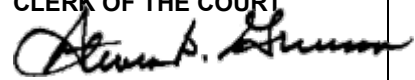
Escrow # N/A Foreclosure

Address: 9500 W Flamingo Rd. Suite 205

City: Las Vegas

State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



MSJD

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

NICHOLAS E. BELAY, ESQ.

Nevada Bar No. 15175

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: melanie.morgan@akerman.com

Email: nicholas.belay@akerman.com

*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*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST;

Plaintiff,

v.

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

**U.S. BANK, N.A., AS TRUSTEE'S
RENEWED MOTION FOR SUMMARY
JUDGMENT**

Hearing Requested

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 (**U.S. Bank**), by and through its counsel of record, moves for summary judgment on 5316 Clover Blossom CT Trust's (**Clover Blossom**) quiet title and declaratory relief claims and U.S. Bank's counterclaims for quiet title and declaratory relief. This renewed motion is based upon the memorandum of points and authorities and attached exhibits, and any oral argument as may be entertained at the hearing of this matter.

...

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

U.S. Bank's deed of trust survived Country Gardens Owners Association's (the **HOA**) foreclosure sale. Before that sale, Bank of America, N.A. (**BANA**), through Miles, Bauer, Bergstrom & Winters, LLP, tendered payment for an amount in excess of the superpriority amount to the HOA's collection agent, Alessi & Koenig, LLC, even though Miles Bauer knew Alessi rejected Miles Bauer's superpriority tenders as a matter of course. This tender protected U.S. Bank's deed of trust as a matter of law. But even if BANA had not successfully tendered (which it did), Alessi's known policy of rejecting these tenders likewise cured the superpriority default and protected the deed of trust as a matter of law. Accordingly, this Court should grant summary judgment in U.S. Bank's favor.

II. STATEMENT OF FACTS

A. Dennis and Geraldine Johnson borrow \$147,456.00 to purchase property.

On or about June 24, 2004, borrowers Dennis and Geraldine Johnson executed a promissory note in the amount of \$147,456.00 to purchase property located at 5316 Clover Blossom Court, North Las Vegas, Nevada 89031 (**property**). The note is secured by a deed of trust executed in favor of Countrywide Home Loans, Inc., and recorded on June 30, 2004 (**deed of trust**). **Exhibit A.** The deed of trust was assigned to U.S. Bank via an assignment of deed of trust recorded on June 20, 2011.

Exhibit B.

B. The HOA retains Alessi to foreclose.

The property is governed by the HOA's Declaration of Covenants, Conditions, and Restrictions, which require the property's owner to pay certain assessments to the HOA. Borrowers defaulted on those obligations. To recover this delinquency and foreclose if necessary, the HOA retained Alessi. **Exhibit C** (Deposition of David Alessi, 30(b)(6) representative for Alessi & Koenig, LLC (**Alessi Depo.**)), at 7:21–8:1, 16:13–20; *see also* **Exhibit D** (Deposition of Gerald Marks, 30(b)(6) representative for Country Garden Owners Association (**Marks Depo.**)), at 27:23–28:9.

On February 22, 2012, Alessi recorded a notice of delinquent assessment (lien). **Exhibit E.** The notice stated the total amount of the borrowers' delinquency was \$1,095.50. *Id.*

...

1 On April 20, 2012, Alessi recorded a notice of default and election to sell. **Exhibit F.** On
2 October 31, 2012, Alessi recorded a notice of trustee's sale, which set the sale for November 28, 2012.
3 **Exhibit G.**

4 **C. Miles Bauer tenders payment to protect the deed of trust, and Alessi rejects it.**

5 Upon being notified of the HOA's lien, BANA – who serviced the loan secured by the deed of
6 trust at the time – retained Miles Bauer to protect the deed of trust by satisfying the lien's superpriority
7 portion. *See Exhibit H*, at ¶ 4. On November 21, 2012, Miles Bauer sent a letter to Alessi requesting
8 a payoff ledger showing the superpriority amount and "offer[ing] to pay that sum upon presentation
9 of adequate proof of the same[.]" **Exhibit H-1**; *see also Exhibit I* (Alessi status report showing
10 Alessi's receipt of this letter).

11 Alessi provided Miles Bauer with a payoff ledger on or about November 27, 2012. **Exhibit**
12 **H-2**; *see also Ex. I*. The ledger showed the HOA had not incurred any maintenance or nuisance-
13 abatement charges, and its monthly assessments were \$55.00 each. *See Ex. H-2*, at 227; *see also Ex.*
14 **D** (Marks Depo.), at 15:23-25. Nine months of delinquent assessments thus totaled \$495.00. *See Ex.*
15 **H-2**, at 227.

16 Miles Bauer tendered a \$1,494.50 check to Alessi on or about December 6, 2012. **Exhibit H-**
17 **3**. It was enclosed by a letter explaining that the tendered amount was composed of the \$495.00
18 constituting "9 months' worth of common assessments" in addition to \$999.50 "in reasonable
19 collection costs," and was meant "to satisfy [U.S. Bank's] obligations to the HOA as a holder of the
20 first deed of trust[.]" *See id.*, at 230. Alessi rejected this superpriority-plus tender by refusing delivery
21 and returning the check to Miles Bauer. **Ex. H**, at ¶ 9; *see also Ex. H-4*; **Exhibit J**, at 7 (Clover
22 Blossom's appellate brief stating the check was delivered to Alessi and returned to Miles Bauer).

23 Approximately one month later, Alessi foreclosed on the HOA's lien, selling the property to
24 Clover Blossom for \$8,200.00. **Exhibit K.**

25 **D. Alessi had a known policy of rejecting Miles Bauer's tenders.**

26 Alessi rejected Miles Bauer's superpriority-plus tender because of what it viewed as "restrictive
27 language" regarding the composition of the HOA's superpriority lien in the letter that accompanied
28 the check. *See Ex. C* (Alessi Depo.), at 39:6-25. Alessi incorrectly believed its collection costs were

1 secured by the superpriority portion of its association-clients' liens. *See Exhibit L*, at 688-89; *see also*
2 **Ex. C** (Alessi Depo.), at 42:10-25. Further, Alessi incorrectly believed the superpriority portion of an
3 association's lien did not exist until the senior deed of trust encumbering the same property was
4 foreclosed. *See Ex. L*, at 688-89.

5 In fact, Alessi asserted these positions against BANA in *BAC Home Loans Servicing, LP v.*
6 *Stonefield II Homeowners Ass'n*, Case No. 2:11-cv-JCM-RJJ (D. Nev.), a case in which BANA sought
7 a declaratory judgment against Alessi and other associations and collection agents establishing its right
8 to tender superpriority payments to protect senior deeds of trust. *See Exhibit M*. In its motion to
9 dismiss BANA's complaint, Alessi argued that it had "every right to refuse" Miles Bauer's
10 superpriority tenders because BANA "refuses to include attorneys' fees and collection costs in" them.
11 **Exhibit N**, at 875-76. Alessi asserted the same position in a brief filed after dispute was referred to
12 NRED arbitration. **Exhibit O**, at 725-27.

13 Because of these mistaken beliefs, Alessi rejected Miles Bauer's superpriority tenders as a
14 matter of course. *See Ex. C* (Alessi Depo.), at 29:24–30:8, 41:23–42:2.

15 **F. Procedural history.**

16 Clover Blossom filed its complaint on July 25, 2014, seeking to quiet title to the property.
17 Clover Blossom moved for summary judgment on May 18, 2015, arguing the recitals contained in the
18 Trustee's deed were sufficient to show that it obtained title free and clear through the HOA's
19 foreclosure sale. In its opposition, U.S. Bank argued that Miles Bauer's super-priority-plus tender
20 satisfied that portion of the HOA's lien before the sale, meaning Clover Blossom took title subject to
21 the deed of trust. This Court granted summary judgment in Clover Blossom's favor on
22 September 10, 2015.

23 The Nevada Court of Appeals reversed and remanded on June 30, 2017. The Court of Appeals
24 held that this Court had not considered the effect of Miles Bauer's tender and how the equities bore on
25 the HOA's sale.

26 On remand, U.S. Bank filed an answer and counterclaims for quiet title and declaratory relief.
27 Clover Blossom moved to dismiss U.S. Bank's counterclaims on October 23, 2017. At the hearing on
28 Clover Blossom's motion, this Court converted the motion to dismiss into a motion for summary

1 judgment and announced judgment would be entered in Clover Blossom's favor. The Court entered
2 findings of fact, conclusions of law, and judgment to that effect on February 8, 2018. **Exhibit P.** The
3 Court found that Miles Bauer "mailed a check in the amount of \$1,494.50 to" Alessi, which Alessi did
4 not "accept[] or otherwise respond to[.]" *Id.* at 4. This Court concluded the HOA's sale extinguished
5 the deed of trust because Miles Bauer's tender was conditional, U.S. Bank did not take further actions
6 to protect the deed of trust after the tender was rejected, and Clover Blossom was a bona fide purchaser.
7 *See id.*, at 8-11. U.S Bank appealed.

8 The Nevada Court of Appeals reversed the judgment in Clover Blossom's favor. **Exhibit Q.**
9 The Court of Appeals found that U.S. Bank had "produced evidence showing that it tendered an
10 amount in excess of the superpriority portion of the HOA's lien to [Alessi] prior to the sale," which,
11 viewed "in the light most favorable to U.S. Bank ... would have extinguished the superpriority lien
12 such that [Clover Blossom] took the property subject to U.S. Bank's deed of trust." *Id.*, at 3. The
13 Court of Appeals remanded "for proceedings consistent with [its] order." *Id.*, at 6.¹

14 **III. STANDARD OF REVIEW**

15 Summary judgment is appropriate if "no genuine issue of material fact exists, and the moving
16 party is entitled to judgment as a matter of law." NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724,
17 730, 121 P.3d 1026, 1030 (2005). Factual disputes are genuine "if the evidence is such that a rational
18 trier of fact could return a verdict in favor of the nonmoving party." *Id.*, at 731.

19 **IV. LEGAL ARGUMENT**

20 The Nevada Supreme Court has established binding precedent regarding Miles Bauer's efforts
21 to protect senior deeds of trust from association-lien foreclosures. In *Bank of America, N.A. v. SFR*

22
23 ¹ This Court should take judicial notice of the following recorded land records, **Exhibits A, B, E, F,**
24 **G, and K**, the following pleadings from the *Stonefield* matter, **Exhibits M, N**, and the following
25 pleadings and orders from this matter, **Exhibits J, P, Q.** *See Whitehead v. Nevada Comm'n on Judicial*
26 *Discipline*, 110 Nev. 380, 418, 873 P.2d 946, 970 n.35 (1994) ("[A] court may appropriately take
27 judicial notice of facts capable of accurate and ready determination by resort to sources whose
28 accuracy cannot reasonably be questioned."); *see also Garcia v. Regional Trustee Servs. Corp.*, 669
Fed. Appx. 918 (9th Cir. 2016) (citing *Ormsby v. First Am. Title Co. of Nev.*, 591 F.3d 1199, 1203
(9th Cir. 2010) (explaining recorded property records are "official public records")). **Exhibit I** was
produced by Alessi and accompanied by an affidavit from Alessi's custodian of records, which is
attached as **Exhibit R.**

1 *Investments Pool 1, LLC (Diamond Spur)*, the Supreme Court held that Miles Bauer's tenders "cure[]"
2 the default as to the superpriority portion of [an association's] lien" such that the foreclosure-sale
3 purchaser's title is "subject to [the senior] deed of trust." 134 Nev. 604, 612, 427 P.3d 113, 121 (2018).
4 In *7510 Perla Del Mar Ave. Trust v. Bank of America, N.A. (Perla Trust)*, the Court held that Miles
5 Bauer was "excused" from tendering superpriority payments to collection agents that "had a known
6 policy of rejecting such payments." 136 Nev. 62, 63, 458 P.3d 348, 349 (2020).

7 Here, the deed of trust survived under *Diamond Spur* because Miles Bauer tendered a
8 superpriority-plus payment to Alessi before the foreclosure sale. Further, even if Miles Bauer had not
9 tendered, the deed of trust would have still survived under *Perla Trust* because Alessi had a known
10 policy of rejecting Miles Bauer's tenders.² For both of these independent reasons, U.S. Bank is entitled
11 to summary judgment.

12 **A. The deed of trust survived under *Diamond Spur*.**

13 This case is controlled by *Diamond Spur*, where the Supreme Court held that one of Miles
14 Bauer's superpriority tenders substantively identical to the tender in this case was a "valid tender [that]
15 cured the default as to the superpriority portion of the HOA's lien[.]" *See Diamond Spur*, 134 Nev. at
16 612. Under *Diamond Spur*, so long as the amount Miles Bauer tenders is sufficient to satisfy the
17 superpriority amount of the foreclosing association's lien, the foreclosure-sale purchaser takes title
18 subject to the senior deed of trust. *See id.*

19 Here, there is no genuine dispute that Miles Bauer tendered a sufficient amount. Before the
20 foreclosure sale, Alessi provided Miles Bauer with a payoff ledger showing the HOA's monthly
21 assessments were \$55.00 each and that the HOA had not incurred any maintenance or nuisance-
22 abatement charges.³ *See Ex. H-2*, at 227; *see also Ex. D* (Marks Depo.), at 15:23-25. The maximum
23 super-priority portion of the HOA's lien – nine months of delinquent assessments – thus totaled
24 \$495.00. *See Diamond Spur*, 134 Nev. at 606 ("A plain reading of this statute indicates that the
25 superpriority portion of an HOA lien includes only charges for maintenance and nuisance abatement,

26 ² U.S. Bank is not waiving the arguments it has previously asserted, including its argument that the
27 deed of trust survived because the sale was inequitable.

28 ³ Clover Blossom admitted in its answering brief on appeal that Alessi sent this payoff ledger to Miles
Bauer. *See Ex. J*, at 6.

1 and nine months of unpaid assessments."). Miles Bauer sent Alessi a check in the amount of
2 \$1,494.50, which included not only the \$495.00 superpriority amount but also \$999.50 in "reasonable
3 collection costs." See **Ex. H-3**.

4 There is no doubt that a \$1,494.50 tender is sufficient to satisfy a \$495.00 lien. And Clover
5 Blossom admitted on appeal that Alessi received Miles Bauer's tender. See **Ex. J**, at 7 ("Miles Bauer
6 sent a letter to the foreclosure agent and enclosed a check for \$1,494.50 ... The foreclosure agent
7 returned the check to Miles Bauer."); see also **Ex. H**, at ¶ 9; **Ex. H-4**. Like the agent in *Diamond*
8 *Spur*, Alessi rejected the tender because it incorrectly believed the superpriority amount included all
9 of its collection costs. See **Ex. C** (Alessi Depo.), at 39:6-25. Alessi's unjustified rejection is irrelevant
10 – the fact that Miles Bauer tendered an amount sufficient to satisfy the superpriority portion of the
11 HOA's lien renders all other facts immaterial under *Diamond Spur*. See *Wood v. Safeway, Inc.*, 121
12 Nev. 724, 731, 121 P.3d 1026, 1030 (2005) ("The substantive law controls which factual disputes are
13 material and will preclude summary judgment; other factual disputes are irrelevant."). Clover
14 Blossom thus purchased "the [P]roperty subject to the deed of trust" as a matter of law. See *Diamond*
15 *Spur*, 134 Nev. at 612. Accordingly, U.S. Bank is entitled to summary judgment and an order stating
16 the deed of trust encumbers Clover Blossom's title to the property.

17 **B. The deed of trust survived under *Perla Trust*.**

18 Alessi's "known policy" of rejecting Miles Bauer's tenders provides an independent basis to
19 grant summary judgment in U.S. Bank's favor under *Perla Trust*. There, the Supreme Court held
20 Miles Bauer was excused from tendering superpriority payments to Nevada Association Services, Inc.
21 (NAS) because "NAS's policy [was] to have its receptionist reject any check for less than the full lien
22 amount if it was accompanied by a condition." *Id.*, at 64. Since "NAS would have rejected" a "check
23 for the superpriority portion of the lien," Miles Bauer was "excused from making a formal tender[.]"
24 *Id.*, at 67. This excused tender had the same effect as a formal superpriority tender – it "cured the
25 default as to that portion of [the association's] lien by operation of law" such that the HOA-sale
26 purchaser took title subject to the senior deed of trust. *Id.*, at 65 n.1.

27 Like NAS, Alessi had a known policy of rejecting Miles Bauer's superpriority tenders. In
28 response to BANA's January 31, 2011 lawsuit seeking a declaratory judgment establishing its right to

1 tender superpriority payments to protect its deeds of trust (**Ex. M**), Alessi argued that it had "every
2 right to refuse" Miles Bauer's superpriority tenders because BANA "refuse[d] to include attorneys'
3 fees and collection costs in" them. **Ex. N**, at 875; **Ex. O**, at 725-27.⁴ On February 27, 2012 and July
4 26, 2012, Alessi sent Miles Bauer letters stating that it would not accept Miles Bauer's tenders because
5 "nine-month super-priority is not triggered until the beneficiary under the first deed of trust
6 forecloses," and once that portion is triggered, it includes Alessi's "costs of collecting[.]" See **Ex. L**,
7 at 688-89. When asked why Alessi did not "inform Miles Bauer [why] it was rejecting" the
8 superpriority tender it submitted for this property in December 2012, Mr. Alessi testified that "Miles
9 Bauer knew" the reason because Alessi had "engaged in this dance with Miles Bauer for ... several
10 years[.]" See **Ex. C** (Alessi Depo.), at 41:23–42:2.

11 There can be no genuine dispute that Alessi had a known policy of rejecting Miles Bauer's
12 tenders during the time of the foreclosure here in 2012. See *Bank of Am., N.A. v. Lakeview Owners'*
13 *Ass'n*, 2020 WL 4586861, at *2 (D. Nev. Aug. 7, 2020) ("[T]here is no genuine dispute that Alessi had
14 a known policy that it would not accept a check for only nine months of assessments that was
15 accompanied by a letter containing conditional language identical to that at issue in [*Perla Trust*].").
16 Consequently, U.S. Bank's deed of trust would have survived even if Miles Bauer had not tendered a
17 superpriority payment. U.S. Bank is thus entitled to summary judgment.

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24
25 ⁴ The Nevada Supreme Court held that the arbitration brief filed by NAS in this matter – which stated
26 the same incorrect position as Alessi regarding when a superpriority lien arises (after a deed of trust
27 foreclosure) – established "that NAS had a 'known policy of reject[ion]' sufficient to excuse formal
28 tender under [*Perla Trust*]." See *U.S. Bank N.A. Tr. to Wachovia Bank, N.A. v. SFR Invs. Pool 1, LLC*,
2020 WL 3003017, at *1 (Nev. June 4, 2020) (explaining that "the necessary implication" of NAS's
position was "that NAS would not accept a superpriority tender before the first deed of trust
was foreclosed").

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DATED October 1, 2020.

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 I am an employee of AKERMAN LLP, and that on this 1st day of October 2020, I caused to be served a true and correct copy of the foregoing **U.S. BANK, N.A., AS TRUSTEE'S RENEWED MOTION FOR SUMMARY JUDGMENT (*Hearing Requested*)**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

Brandon Lopipero	blopipero@wrightlegal.net
Dana J. Nitz	dnitz@wrightlegal.net
Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq.	mbohn@bohnlawfirm.com
Chris Schnider	cschnider@pengillylawfirm.com
Olivia Schulze	oschulze@pengillylawfirm.com

/s/ Patricia Larsen
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



20040630-0002408

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

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

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

52 (circled 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.

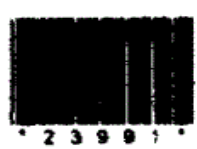
NEVADA Single Family- Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

3-8A(NV) (0307) CHL (07/03)(d)

Page 1 of 16

VMP Mortgage Solutions - (800)521-7291

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



(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
(D) "Trustee" is
CTC REAL ESTATE SERVICES

Lender's address is

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.

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Form 3029 1/01

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

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.

8A(NV) (0307) CHL (07/03)

Page 4 of 16

Initials: *JP*

Form 3029 1/01
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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

Initials: 

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

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

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

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

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

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

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

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

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

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

Initials: 

Form 3029 1/01

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

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

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

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

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

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

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

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

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

Initials:

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Form 3029 1/01

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

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

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

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

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

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

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

Initials:  Form 3029 1/01

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

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

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

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

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

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

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

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

Initials:

Form 3029 1/01

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

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

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

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

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

Initials: 

Form 3029 1/01

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

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

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

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

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

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

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

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

DOC ID #: 0006348226006004

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
DENNIS L. JOHNSON

_____(Seal)
-Borrower

Geraldine J. Johnson
GERALDINE J. JOHNSON

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower



SA(NV) (0307)

CHL (07/03)

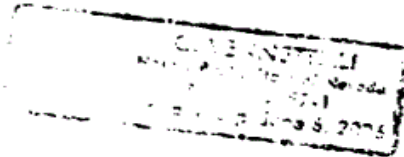
Page 15 of 16

Form 3029 1/01

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. Kennethiti", written over a horizontal line.

C. Kennethiti

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)

Page 1 of 7

Initials: 



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DOC ID #: 0006348226006004

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 Borrower's 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 89031-0480
[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
1D729-US (07/02) 01

Page 2 of 7

Initials: 

(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 %.

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

DOC ID #: 0006348226006004

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.

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

Page 5 of 7

Initials: 

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 escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

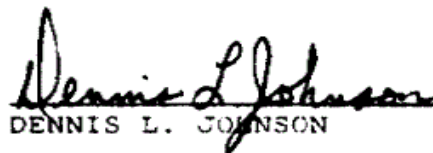
If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this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

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

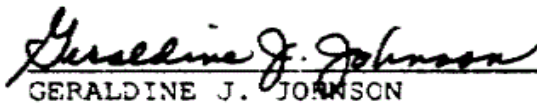
If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security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

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

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

Page 7 of 7

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. WILSON

04050200
(Escrow/Closing #)

0006348226006004
(Doc ID #)

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

Page 1 of 4

379 (0008) 01 CHL (09/01)(d)
CON/VA

VMP MORTGAGE FORMS - (800)521-7291

Initials: *[Signature]*
Form 3170 1/01



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.

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.

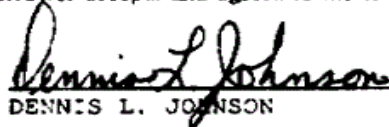
Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.


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 #: 0306348226006004

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

 (Seal)
DENNIS L. JOHNSON - Borrower

 (Seal)
GERALDINE J. JOHNSON - 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]

PLANNED UNIT DEVELOPMENT RIDER

PARCEL ID #:
12431220092

Prepared By:
KARLA R. WILSON

04050200

[Pacrow/Closing #]

0006348226006004

[Doc ID #]

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Page 1 of 4

Initials: *[Signature]*
Form 380

7R (0008) 01 CHL (08/01)(d) VMP MORTGAGE FORMS - (800)521-7291
CONV/VA



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 amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

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

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

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

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

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

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

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

DOC ID #: 0006348226006004

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 ANNAPOLISRD, 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.**

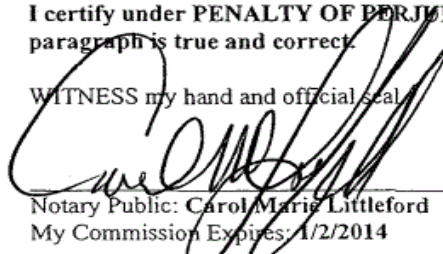
By: *Martha Munoz*
Martha Munoz, Assistant Secretary

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

1 EIGHTH JUDICIAL DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 * * * * *
4 5316 CLOVER BLOSSOM CT TRUST,)
5)
6 Plaintiff,)
7 vs.) Case No.: A-14-704412-C
8) Dept. No.: XXIV
9 U.S. BANK, NATIONAL)
10 ASSOCIATION, SUCCESSOR)
11 TRUSTEE TO BANK OF AMERICA,)
12 N.A., SUCCESSOR BY MERGER TO)
13 LASALLE BANK, N.A., AS)
14 TRUSTEE TO THE HOLDERS OF THE)
15 ZUNI MORTGAGE LOAN TRUST)
16 2006-OA1, MORTGAGE LOAN)
17 PASS-THROUGH CERTIFICATES)
18 SERIES 2006-OA1; and CLEAR)
19 RECON CORPS,)
20)
21 Defendants.)
22 _____)

**CERTIFIED
COPY**

19 DEPOSITION OF DAVID ALESSI
20 30(b)(6) REPRESENTATIVE OF ALESSI & KOENIG, LLC
21 Taken at Akerman, LLP
22 On Friday, January 19, 2018
23 At 2:27 p.m.
24 Taken at 1635 Village Center Circle
25 Suite 200
Las Vegas, Nevada

Reported By: Terri M. Hughes, CCR No. 619

David Alessi ~ January 19, 2018
30(b)(6) Representative of Alessi & Koenig, LLC

Page 2

1 DEPOSITION OF DAVID ALESSI, 30(b)(6) REPRESENTATIVE OF
2 ALESSI & KOENIG, LLC, taken at Akerman, LLP, 1635 Village
3 Center Circle, Suite 200, Las Vegas, Nevada, on Friday,
4 January 19, 2018, at 2:27 p.m., before Terri M. Hughes,
5 Certified Court Reporter, in and for the State of Nevada.

6 APPEARANCES:

7 For the Defendants, U.S. Bank, N.A., Successor Trustee to
8 Bank of America, N.A., successor by merger to LaSalle
9 Bank, N.A., as Trustee to the Holders of the Zuni Mortgage
Loan Trust 2006-OA1, Mortgage Loan Pass-Through
Certificates, Series 2006-OA1:

10 SCOTT R. LACHMAN, ESQ.
11 Akerman LLP
12 1635 Village Center Circle
13 Suite 200
14 Las Vegas, Nevada 89134
15 (702) 634-5000

16 For Country Garden Owners Association:

17 GIANNA M. ORLANDI, ESQ.
18 Pengilly Law Firm
19 1995 Village Center Circle
20 Suite 190
21 Las Vegas, Nevada 89134
22 (702) 889-6665

David Alessi ~ January 19, 2018
30(b)(6) Representative of Alessi & Koenig, LLC

Page 3

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I N D E X

Witness: DAVID ALESSI

	Examination	Further Examination
By Mr. Lachman	4	--

E X H I B I T S

Page

A - Subpoena for Deposition.....	4
B - US BANK (JOHNSON) 0340-US BANK (JOHNSON) 0531..	4
C - Miles, Bergstrom & Winters, LLP Correspondence.	4
D - US BANK (JOHNSON) 0686-US BANK (JOHNSON) 0689..	4
E - Authorization to Conclude Non-Judicial Foreclosure and Conduct Trustee Sale.....	4
F - Excerpt of CC&Rs.....	4

1 (Exhibits A, B, C, D, E and F were marked for
2 identification.)

3 (In an off-the-record discussion held prior to the
4 commencement of the deposition proceedings, counsel
5 agreed to waive the court reporter requirements under
6 Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)
7 Whereupon --

8 DAVID ALESSI,
9 being first duly sworn to tell the truth, the whole truth,
10 and nothing but the truth, was examined and testified as
11 follows:

12 EXAMINATION

13 BY MR. LACHMAN:

14 Q. All right. Good afternoon, Mr. Alessi. My name
15 is Scott Lachman. I represent U.S. Bank in this action.
16 The witness has been sworn in.

17 For the record, can you spell your name?

18 A. David Alessi, A-L-E-S-S-I.

19 Q. And, for the record, counsel for the HOA stepped
20 out for a second, and prior to this deposition I contacted
21 counsel for the trust, and they indicated that they will
22 not be coming to the deposition.

23 Before today how many depositions have you been a
24 witness to regarding HOA foreclosure litigation?

25 A. Approximately 200.

1 Q. Are you okay with skipping the preliminary
2 questions?

3 A. Yes.

4 Q. All right. Attached as Exhibit A is a Subpoena
5 Duces Tecum -- or Subpoena for Deposition of Rule 30(b)(6)
6 Witness for Alessi & Koenig. David, have you reviewed
7 this notice prior to the deposition?

8 A. I'm sure I did. I don't have a specific
9 recollection, but I'm sure I did.

10 Q. And attached to the notice is 25 topics. Have you
11 reviewed these topics?

12 A. Yes.

13 Q. All right. You're the person most knowledgeable
14 regarding these topics?

15 A. Yes.

16 Q. How did you prepare for today's deposition?

17 A. I went onto our program and reviewed the
18 electronic file, I opened up the status report and
19 reviewed that and reviewed the Trustee's Deed Upon Sale,
20 the Notice of Default and the lien and the mailings.

21 Q. All right. A few definitions before we start.
22 "HOA" means Country Garden Owners Association, "Alessi"
23 means Alessi & Koenig, LLC. When I say "the trust," that
24 means 5316 Clover Blossom Court Trust. When I say Exhibit
25 D, that's -- or when I say "property," that means 5316

1 Clover Blossom Court, North Las Vegas, 89031.

2 Any questions before we start?

3 A. No.

4 Q. What's your highest level of education completed?

5 A. I have a law degree.

6 Q. And what do you do for a living?

7 A. Well, I'm the PMK for HOA LG. So right now I'm
8 doing a lot of depositions.

9 Q. When you say "A&K, LLC," that's Alessi & Koenig,
10 LLC?

11 A. HOA, LLC.

12 Q. Oh, HOA, LLC?

13 A. HOA, yeah, LG, LLC.

14 Q. What's LG?

15 A. Lawyers Group. HOA Lawyers Group.

16 Q. Oh, okay.

17 A. So I'm currently the 30(b)(6) for HOA Lawyers
18 Group on behalf of Alessi Koenig.

19 Q. Okay. And what's your business address?

20 A. 9500 West Flamingo, Number 204, Las Vegas, Nevada
21 89147.

22 Q. And besides being the PMK, what's your actual job
23 title?

24 A. I don't have one.

25 Q. As part of this litigation Alessi produced its

1 collection file for the property; is that correct?

2 A. Yes.

3 Q. Okay. And the collection file was the complete
4 file for the property?

5 A. Yes.

6 Q. Okay. And in your preparation of the file what
7 steps did you take?

8 A. I reviewed the documents.

9 Q. Okay. What was your ownership interest in Alessi?

10 A. I was an owner with Robert Koenig, one of the
11 founding members.

12 Q. 50/50?

13 A. I'm not going to answer the percentages.

14 Q. Okay. That's fine. And what did Alessi do?

15 A. We provided assessment collection and general
16 counsel services to homeowners associations throughout the
17 State of Nevada and California.

18 Q. And that would include non-judicial foreclosure
19 sales?

20 A. Yes.

21 Q. Okay. What was the relationship between the HOA
22 and Alessi?

23 A. The HOA was obviously a client of Alessi Koenig's.
24 I do not know if we performed general counsel services for
25 this HOA, but it does appear from the file that we

1 performed assessment collection services.

2 Q. Do you know if this HOA had a collections policy?

3 A. I'm sure it did. I mean, my understanding is that
4 they all do, all HOAs do. I have not seen this HOA's
5 collection policy, or at least I don't have a recollection
6 of seeing it.

7 Q. Okay.

8 A. I don't believe it's in the file.

9 Q. Okay. But when you have collection policies for
10 each HOA, that would not necessarily make it into the
11 collection file; correct?

12 A. Correct.

13 Q. This HOA that we're here for today, does Alessi
14 have any relationship with the HOA besides being the
15 collection agent?

16 A. No.

17 Q. How long did Alessi act as the collection agent
18 for this HOA?

19 A. I don't know.

20 Q. Is HOA Lawyers Group the collection agent for this
21 HOA today?

22 A. I don't know.

23 Q. Was Alessi acting as the agent for the HOA for the
24 collections and foreclosure of the real property in this
25 case?

1 A. Yes.

2 Q. Okay. How many HOAs did Alessi act as the
3 collection agent for in 2012?

4 MR. LACHMAN: Go off for a second.

5 (Discussion off the record.)

6 MR. LACHMAN: Okay. Let's keep going.

7 THE WITNESS: Okay. We represented
8 approximately four or 500 HOAs, Alessi Koenig.

9 BY MR. LACHMAN:

10 Q. Okay. How does Alessi get paid for its collection
11 services?

12 A. We get paid by the delinquent homeowner most of
13 the time, and some of the time we get paid by the HOA.

14 Q. If a property doesn't sell at an HOA foreclosure
15 auction, how does Alessi get paid?

16 A. Either by the HOA or at a secondary sale.

17 Q. Okay. How does the HOA notify Alessi regarding
18 amounts owed?

19 A. We have online status reports that have checks
20 payable reports. With them my understanding is that those
21 reports are included in the Board packets for the HOAs to
22 review. We also invoice HOAs.

23 Q. So the status report, and we'll go to the actual
24 status report in a bit, but that's put in a packet for the
25 HOA at their meeting?

1 A. Yes. My understanding, and what I did when I was
2 a manager is you put the status report in the Board
3 packet, you place that item on the agenda to be discussed
4 in executive session.

5 Q. Okay. Who communicates with the homeowners
6 directly; is it the community manager, board members?

7 A. When the account is transferred to collections,
8 all correspondence is between our firm and the delinquent
9 homeowner.

10 Q. Okay.

11 A. So if a delinquent homeowner calls the management
12 company, that call is to be referred to our office.

13 Q. All right. Let's look at Exhibit B, Alessi's
14 collection file.

15 A. I have it.

16 Q. And I'll represent to you that this is a
17 collection file provided by you to my client in response
18 to subpoena duces tecum. I will note that it appears that
19 your summary is located on page 530 and 531.

20 A. Okay.

21 Q. And what's the purpose of this affidavit?

22 A. Which one? Which affidavit?

23 Q. On page 340.

24 A. Well, I think the document speaks for itself.

25 Q. And these documents were kept in the ordinary

1 course of Alessi & Koenig?

2 A. Yes.

3 Q. Okay. 341, that's your signature?

4 A. Yes.

5 Q. Page 342 looks like a printout from the assessor's
6 page dated February 6th, 2012. Why did Alessi print this
7 page on this date?

8 A. We would obtain from this document the homeowner's
9 mailing address if different than their property address,
10 which here, as you can see, it is. Their mailing address
11 would be at the Elm Grove address. We would also obtain
12 the legal description of the lot number, book and page
13 that the legal description is recorded in and we would
14 also obtain the APN. We would enter that information into
15 data fields in our electronic program.

16 Q. And that would get fed into your notices?

17 A. Correct.

18 Q. Page 345, any reason why you print out the
19 bankruptcy PACER page?

20 A. Yes. As you probably know, a Chapter 13, a
21 bankruptcy creates an automatic stay on a foreclosure, so
22 we would want to know if the delinquent homeowner was in
23 bankruptcy.

24 Q. Throughout this file there's draft notices. Is it
25 typical you throw in the draft and sometimes you'd throw

1 in the actual recorded notice as well?

2 A. Yes. When we print a notice, it automatically
3 saves into the letters and notices tab of our program, and
4 then that -- so that would have been an automatic
5 function. And then when we get the recorded document
6 back, we usually would scan that into the program as well.

7 Q. All right. 348, this looks like -- it's called a
8 lien letter?

9 A. Yeah. This would be the cover letter, and
10 enclosed with this cover letter would be the Notice of
11 Delinquent Assessment.

12 Q. Is this letter also sent to the first deed of
13 trust holder?

14 A. No.

15 Q. Looking at 350, it appears that the monthly
16 assessments were \$55; is that correct?

17 A. Yes.

18 Q. So if you add these numbers up, and the beginning
19 balance, that appears to be three months of assessments,
20 that's about approximately nine months of assessments
21 minus the pre-lien charge?

22 A. Yes.

23 Q. The pre-lien charge, is that something that the
24 association implements or is that something that goes to
25 the trustee?

1 A. Some management companies do the pre-lien in-house
2 and some management companies the Board has us do the pre-
3 liens. So it's really up to the Board. On this file, as
4 you can see, that notation indicates that that charge was
5 a charge levied by the management company, and that charge
6 would have been billed to the association.

7 Q. Okay.

8 MS. ORLANDI: Thank you.

9 BY MR. LACHMAN:

10 Q. And page 354, a letter dated March 12th, 2012,
11 what's the pre-notice of default letter?

12 A. So the pre-notice of default is sort of a courtesy
13 notice. It's not required by statute, but it is kind of a
14 last ditch effort to try to get the homeowner's attention
15 before moving to the next step. As you can see, the
16 notice indicates that the next step is going to include a
17 minimum of 750 additional charges. So I think we charged
18 \$95 or something for this pre-notice. So it was just a
19 step to try to avoid -- to try to get the homeowner's
20 attention before moving to the next step.

21 Q. All right. Looking at 357, another Clark County
22 Real Property Record. Is there any reason why Alessi
23 would look at the Clark County Real Property Records again
24 two months later? This looks like it's before the Notice
25 of Default based on the dates.

1 A. Yeah. I don't know.

2 Q. Page 362, what kind of document is this?

3 A. This is -- I don't know.

4 Q. It looks like something from First American Title
5 Company?

6 A. Yeah. It might have been part of the title report
7 that we got from First American. The date is --

8 Q. It states that the taxes are current through
9 3/28/12, so maybe around March 2012. There is a title
10 report in here, and we'll get to that in a second.

11 A. I'm just wondering if it's the same date on that
12 report, if this was just an attachment. So I'm looking at
13 the title report, 446, dated March 28th, 2012. So I
14 believe that this might have been part of that, as you
15 could say, current taxes through March 28, 2012, as I
16 suspect that the title report has the same date on it.

17 Q. Okay.

18 A. So this would have been part of that order --

19 Q. Okay.

20 A. -- from First American.

21 Q. And we'll get to the title report in a second.

22 A. Okay.

23 Q. Let's go to 373.

24 A. Yes.

25 Q. This appears to be a deed of trust from June 2004?

1 A. Uh-huh.

2 Q. Is there a reason why this would be in the file?

3 A. It's part of our title research, you know, to try
4 to ascertain the parties in interest, looking for deeds of
5 trust, assignments of deeds of trust. This would probably
6 be used to help ascertain who to mail the NOD to.

7 Q. Let's go to 405. This is an assignment of deed of
8 trust dated June 2011. Same reason why this would be
9 included in --

10 A. Yes.

11 Q. So that you would know who to mail the recorded
12 notices to?

13 A. Yes. It's part of that research to find out who
14 the current holder of the deed of trust is.

15 Q. Now, when you mail the recorded notices, what
16 addresses do you use? Do you use the addresses listed in
17 the actual recorded documents or do you use other
18 addresses that the title company gives you?

19 A. As you could see on 451, we've mailed to a whole
20 bunch of different entities. I won't take the time up by
21 going through them, but our mailing department, which was
22 primarily a lady named Azra, was very thorough I find from
23 my 200 depositions, and we mailed to more parties than
24 required usually. And I've seen where -- and it looks
25 like here we have a case where we mailed to the former

1 holder of the deed of trust as well as the current.

2 Q. Okay. Turning to 436, it says Quitclaim Deed.

3 A. Yes.

4 Q. Any knowledge regarding this quitclaim deed?

5 A. No.

6 Q. Okay. 442. This appears to be the actual Notice
7 of Delinquent Assessment?

8 A. Yes.

9 Q. It has the recorded information at the top.
10 What's the date on this one?

11 A. February 6th, 2012 is when it was signed. It was
12 recorded February 22nd, 2012.

13 Q. And Alessi was acting as the HOA collection agent
14 at this time?

15 A. When I think of the word "collection agent," I
16 think of an entity licensed by the Financial Institutions
17 Division. Alessi Koenig was a law firm. So it's
18 semantics, but we were certainly engaged as an agent for
19 the HOA to collect past due assessments utilizing the
20 non-judicial foreclosure process.

21 Q. All right. Did the Board authorize Alessi to
22 record this document and did it have to?

23 A. Yes, it did authorize us to record this document.
24 I would defer to a court to answer the second question.

25 Q. And how much was owed at this time?

1 A. 1,150.50.

2 Q. How did Alessi verify that this amount was
3 correct?

4 A. This amount would be taken from the account ledger
5 that we referenced earlier. Added to that number would be
6 the -- and we received the account ledger from the
7 management company on behalf of the HOA. We would add to
8 that number an audit fee, which by statute currently is
9 set at \$200, that's a fee that goes to the management
10 company for preparation of the file to send it to
11 collections, and then the \$325 lien fee and then mailing
12 costs and recording of the Notice of Delinquent Assessment
13 and the release of the Notice of Delinquent Assessment
14 costs.

15 Q. Is there any reason why this document doesn't
16 mention the word "super priority"?

17 A. No.

18 Q. Let's turn to 444. Well, actually, stay on 442
19 for a second. Who's Ryan Kerbow?

20 A. Ryan Kerbow is an attorney who worked for Alessi
21 Koenig. I don't know the firm he currently works for, but
22 he lives in Vegas, and I still am in touch with him, but
23 he no longer works, obviously, for Alessi Koenig.

24 Q. What was his position at Alessi; attorney?

25 A. He was an attorney. He's an attorney, Nevada

1 attorney.

2 Q. Okay. Starting on page 446, this appears to be a
3 title report for the property, would that be correct?

4 A. Yes.

5 Q. Why would Alessi get a title report for the
6 property?

7 A. To help us ascertain who to mail the Notice of
8 Default to.

9 Q. And that's the ten-day notice list --

10 A. Yes.

11 Q. -- is that what it's called?

12 A. Yes.

13 Q. Okay. And you got this title report prior to the
14 Notice of Default; correct?

15 A. Yes.

16 Q. And that's the first document that Alessi has to
17 provide to deed of trust holders?

18 A. Well, I don't know if that's -- that's the first
19 document that Alessi provided to deed of trust holders.
20 Whether or not that's the first document that had to be
21 provided, I would again defer to a court.

22 Q. Okay. And looking on page 447, it mentions the
23 deed of trust and the assignment of deed of trust. Is it
24 correct to say that Alessi knew about the deed of trust
25 and the assignment of the deed of trust prior to the

1 foreclosure sale?

2 A. Well, I'm looking at the assignment, and I note
3 that there's a mailing. Well, the answer to your question
4 is yes.

5 Q. Okay. Turning to 451, this is a mailing list?

6 A. Yeah.

7 Q. These would have been all the addresses that
8 Alessi mailed the Notice of Default to?

9 A. Yes.

10 Q. All right.

11 A. And you see the copies of the certified mail
12 receipts following.

13 Q. What does Alessi do to ensure that they're
14 actually -- that Notices of Default are actually received?

15 A. Well, if the Notice of Default is claimed, the
16 Notice of Default is, you know, sent regular mail as well,
17 and so I don't know that we would have any way of knowing
18 that. I guess if that envelope was not returned, one
19 could assume it was received. We did not scan returned
20 mail into the program nor did we scan the green cards that
21 would be signed when a certified mail letter was received
22 into the program. We wanted to make sure that we mailed
23 the documents properly. Whether they were received or not
24 wasn't something Alessi had a specific note to on the
25 program.

1 Q. All right. Turning to 454, this is a Notice of
2 Default and Election to Sell Under Homeowners Association
3 Lien?

4 A. Yes.

5 Q. This is the Notice of Default for this property;
6 correct?

7 A. Yes. 4/20/2012 was the recordation date.

8 Q. And Alessi was acting as the HOA's agent at the
9 time?

10 A. Yes.

11 Q. Did the Board authorize Alessi to record this
12 document?

13 A. Yes.

14 Q. Was that through a written agreement or something
15 verbally?

16 A. We have retainers. We do not save a retainer into
17 every file. We have multiple collection files on a given
18 association. So I can check with our paralegal when I get
19 back to the office or next week to see if there's a
20 retainer. There was likely a retainer between Alessi
21 Koenig and Country Garden.

22 Q. And for the record, I haven't seen that. It
23 wasn't in the HOA's file --

24 A. Okay.

25 Q. -- so I don't have it.

1 A. I'll check on that.

2 Q. Yeah. So if you have it, I'd appreciate it if you
3 can send that over.

4 All right. And then 455, those are mailings for
5 the Notices of Default likely?

6 A. Yes.

7 Q. Okay. Turning to 471, this is the notice of
8 trustee mailing. So this is the same approximate list --
9 this is the same sort of list that the -- let me repeat
10 that. This is the list of addresses that the HOA sent the
11 Notice of Trustee's Sale to?

12 A. Yeah. It would be basically the same as the NOD
13 plus the ombudsman's office.

14 Q. Where did Alessi obtain this list from, the title
15 company?

16 A. Yes. And we have our own research team -- or
17 Alessi had our in-house research as well, so a combination
18 of the two. And receipt of mailings to follow on 475,
19 474.

20 Q. All right. Let's turn to 479.

21 A. 479, yes.

22 Q. This on the top says Authorization to Conclude
23 Non-Judicial Foreclosure and Conduct Trustee Sale. Any
24 reason why this isn't signed?

25 A. No. It was not required to be signed. We -- as

1 I've testified many times, we would proceed to foreclosure
2 absent specific authorization from the association not to.
3 And if I had to do it over again, I probably would have
4 titled this document something different, because it
5 wasn't a required -- we wanted to let the association know
6 that our fees would approximate 2500 to 2,950 that the
7 association would be invoiced for if the property did not
8 get purchased, but certainly an association could have
9 responded to this by specifically authorizing us not to go
10 to sale. So it was just a heads-up that we were moving
11 forward to sale. We did get signatures sometimes and
12 sometimes we didn't.

13 Q. So do you know if this actually went to the HOA?

14 A. I'm sure that -- well, I don't know. It would
15 have been given to the manager to include in the Board
16 packet.

17 Q. Got it. All I know is that it's not included in
18 the HOA's packet. That doesn't mean the HOA didn't
19 receive it, it's just the first time I've seen this
20 document.

21 A. It would have been noted on the status report that
22 the HOA gets as well.

23 Q. Okay. And that's the status report at the back of
24 this document?

25 A. Yes, the one that the HOA has and the management

1 company has access to via a username and password.

2 Q. So the HOA gets a username and a password. What
3 information can they get through that username and
4 password?

5 A. They can see the whole status report, and we were
6 also the first in the industry to provide a checks payable
7 report which showed the HOA and its management company all
8 of the money that Alessi received and all of the checks
9 that Alessi has cut on a given file.

10 Q. But they don't get to see this whole packet?

11 A. They certainly could if they wanted to, but we did
12 not upload these documents into the website.

13 Q. Okay.

14 A. As you know, some of these documents are public
15 record.

16 Q. Where it states here the amount owed to the HOA is
17 \$969, how is that amount calculated? Is that assessments
18 plus other fees?

19 A. That's primarily assessments.

20 Q. Okay. And the amount of -- that's owed to the
21 bank, \$147,456.00, how is that amount calculated?

22 A. I think that is just the amount on -- that field
23 was oftentimes not properly populated. That is either the
24 amount of the first mortgage as it says in parenthesis or
25 as the star indicates, it's the amount of the appraised

1 value pursuant to appraisal.com. It's one or the other,
2 can't be both. So this document was never actually
3 perfected.

4 Q. And for the record, the deed of trust amount was
5 \$147,456.

6 A. So then that's what that would have been.

7 Q. Okay. Do you know what the fair market value of
8 the property was at the time of the sale?

9 A. No.

10 Q. Did Alessi ever check Zillow or Redfin prior to
11 the sale?

12 A. Well, we -- what's part of this document was to
13 engage in that analysis for the Board. You know, the
14 thought was the associations didn't want to own properties
15 in general, and a property that was worth more than was
16 owed on it or had no mortgage was much more likely to go
17 to sale. Now, 99 percent of the properties that went to
18 sale were upsidedown, but with few exceptions some did
19 have equity. You know, the original impetus of this
20 document was that associations if they knew there was
21 equity in the property there would be a greater chance of
22 it being purchased at sale, i.e., less of a chance of them
23 owning it. And we felt like that was something relevant
24 that the association would want to know. But as I said,
25 we never really got that protocol off the ground.

1 Q. Okay. Page 480, Notice of Trustee's Sale, date of
2 recording?

3 A. Yes. October 31st, 2012. Halloween.

4 Q. And this document would have been sent to the HOA
5 and all lienholders?

6 A. All interested -- yes, as well as the ombudsman's
7 office.

8 Q. Okay. And what was the date that was going to be
9 set for the sale?

10 A. November 28th, 2012.

11 Q. And the amount here is what, \$4,039; correct?

12 A. Yes.

13 Q. That includes all sorts of fees?

14 A. Yes. It includes everything the association is
15 owed plus that 2500 to 2950 that was on the authorization,
16 that would be fees and costs. That's about the
17 approximate amount owed on a standard non-judicial
18 foreclosure as well as the management fees that we
19 discussed earlier.

20 Q. Page 482, does Alessi drive by the property or
21 does it get these pictures from online?

22 A. No, the -- Alessi or -- and it looks like maybe we
23 were doing it at the time.

24 Q. Yeah.

25 A. Daniel Vidovic, I'm not sure who that is, but it

1 may have been a third-party vendor or would go to the door
2 and serve the notice, as you could see from the pictures,
3 by posting the notice on the door, taking a picture, and I
4 believe there's probably an affidavit of publication -- of
5 posting.

6 Q. All right. Page 486, Trustee's Deed Upon Sale,
7 date of this document it was ordered?

8 A. 1/24/2013.

9 Q. And the amount paid by the trust?

10 A. 8,200.

11 Q. Is this Alessi's standard Trustee's Deed Upon Sale
12 after these foreclosure sales?

13 A. Yes.

14 Q. And what was the date of the sale?

15 A. It was January 16th, 2013.

16 Q. Is there any reason why the sale was delayed from,
17 I believe, November 28th to January 16th, 2013?

18 A. Not that I know of.

19 Q. I guess, why would Alessi delay the sale?

20 A. My understanding is the statute doesn't require a
21 reason. The trustee can postpone a sale for a multitude
22 of reasons and no reason at all, trustee discretion. I
23 didn't conduct the sales, so I don't know why some sales
24 were postponed. So I don't know why.

25 Q. When a sale date gets postponed, what does Alessi

1 do to inform interested parties of the sale date?

2 A. Well, we would note the postponement on the
3 status report for the management company and the Board,
4 which I believe was done here. I think I saw that in the
5 status report. We would note the postponement on our
6 online trustee sale calendar, which we -- which we had on
7 our home page via a link that the general public could
8 access without a username or a password. So all
9 postponements were updated on the online trustee sale
10 calendar. We would also announce the postponement orally
11 at the time and place of the sale.

12 Q. Turning to 487, it states that the total value/
13 sales price of the property was \$8,200. Would I be safe
14 to say that the fair market value of the property as of
15 January 2013 was not 2,000 -- or \$8,200?

16 A. I would disagree with that. I believe that a
17 public auction is -- there's no pure way to obtain the
18 fair market value of an asset at a public auction. This
19 would be the fair market value of the property without
20 title insurance. Basically the investor is buying a
21 lawsuit, does not have clear title, cannot pass clear
22 title. So that is a whole different analysis of fair
23 market value than a property that is purchased via the
24 normal route of an escrow and obtaining title insurance.

25 Q. On 488, this looks like some sort of e-mail, some

1 kind of document from Branko Jeftic?

2 A. Yes.

3 Q. Who's Branko?

4 A. Branko is -- he used to be -- he used to handle
5 the trustee sales. He would take the file over at the end
6 of the process at the trustee sale stage.

7 Q. What company does he work for?

8 A. Alessi Koenig. He used to work for us.

9 Q. And for the record, Branko Jeftic, B-R-A-N-K-O
10 J-E-F-T-I-C. And it looks like Eddie Haddad was the high
11 bidder on this sale; correct?

12 A. Yes. So my understanding is that Branko or later
13 George Bates would attend the sales with a lawyer or a
14 paralegal and the sale would get cried, and Branko or
15 later George would qualify the bidders and also write down
16 on this checklist that's used to confirm that the mailings
17 were all done properly and everything and the file has
18 been properly reviewed, would write down the successful
19 bidder's name.

20 Q. All right. So here the total amount let's say
21 it's \$5,021?

22 A. Yes.

23 Q. And the winning bid was \$8,200. How is that
24 \$5,021 -- or how was the \$8,200 disbursed?

25 A. The HOA is paid in full, the past due assessments,

1 late fees and interest, Alessi Koenig gets paid its
2 assessment collection fees and costs, and the management
3 company is paid its audit fee and transfer fee.

4 Q. What would happen to the excess -- what happened
5 to the excess about \$3,000?

6 A. So generally at the beginning of the process
7 Alessi interpled several million dollars to the courts.
8 As you probably know, that about -- on or about I guess
9 2014 -- 2013, 2014 the process got gummed up by the
10 litigation between the banks and the investors. So our
11 interpleaders we could not finalize them, and so the funds
12 were distributed either to the bankruptcy trustee or
13 pursuant to NRS 116 point -- I think the correct statute
14 is 31164.

15 Q. Okay. But you're not clear what happened to the
16 extra 3,000 in this case?

17 A. I do not know.

18 Q. All right. Does Alessi generally announce at the
19 sale that there's a first deed of trust on the property?

20 A. No.

21 Q. Does Alessi announce at sales whether there was a
22 tender attempt?

23 A. No.

24 Q. Any reason why not?

25 A. Well, as we've talked about before, the Miles,

1 Bauer were the only checks that we received during this
2 period of time. Those checks were accompanied by very
3 restrictive language. We did not cash those checks for
4 that reason, and so we would not have announced it. Had
5 we received a check without restrictive language that we
6 cashed, well, I don't want to speculate what we would have
7 done, because I don't believe that ever happened, but I'm
8 guessing we would have announced that.

9 Q. Okay. But if you received the entire amount that
10 you requested, the sale wouldn't have gone forward;
11 correct?

12 A. Correct.

13 Q. Okay. Did Alessi --

14 A. Well, but if we had received any amount, though,
15 from a homeowner or a bank without restrictive language,
16 partial payment or full payment, our policy was that we
17 would have cashed that payment. In fact, I had a
18 discussion with Miles, Bauer back I don't know when, but
19 saying why don't you just send us a check with what you
20 think is owed, we'll cash it and let the courts determine
21 what it means, and that's what we would have done.

22 Q. And this was just a verbal conversation with them?

23 A. Yeah. I think that Brad Bass, and I'm not sure,
24 but I've testified to this before, I believe I might have
25 seen some e-mails between an attorney that worked for our

1 firm, Brad Bass, and Rock Jung, an attorney that worked
2 for Miles, Bauer who later worked for our firm to that
3 effect. I'm not a hundred percent sure, but I think there
4 was some just -- well, I'm almost sure there were
5 discussions to that effect and that I was involved in them
6 early on.

7 Q. Okay. Did Alessi have a policy for setting
8 opening bid prices?

9 A. Well, the opening bid price would be the amount of
10 the -- the total amount of past due assessments, late fees
11 and interest due the association plus the total amount due
12 to Alessi Koenig plus the total due the management
13 company.

14 Q. 486, again, looking at the deed upon -- Trustee's
15 Deed Upon Sale, any reason why the language in the second
16 paragraph states "without warranty expressed or implied"?

17 A. That's just boilerplate language in the Trustee's
18 Deed Upon Sale. Its import I would defer to a court to
19 interpret. I believe the document speaks for itself.

20 Q. Okay. And the third paragraph where it states,
21 "All requirements of law regarding the mailing and copies
22 of notices and the posting and publication of the copies
23 of the Notice of Sale have been complied with" --

24 A. Uh-huh.

25 Q. -- how did Mr. Kerbow know that Alessi complied

1 with all these things?

2 A. We would -- before we would set a property for
3 sale, which is obviously the biggest step in the process,
4 the file would be reviewed several times by the legal
5 assistant who handled it from its inception to Branko or
6 George whose sole job it was to process files at the
7 trustee sale stage, and then finally by a Nevada attorney
8 so that when we got to the sale stage we were sure that
9 all the mailings were done and done properly.

10 Q. I may have asked this earlier, but in determining
11 an open bid price, does Alessi take into account whether
12 there was a deed of trust recorded against the property?

13 A. You did not ask it, and the answer is no.

14 Q. So in determining the opening bid, Alessi would
15 look at what's owed to the collection company and to
16 Alessi?

17 A. Just Alessi. We would be the, quote, unquote,
18 collection company.

19 Q. Okay. Is there any reason why the opening bid
20 price was so low and wasn't something higher?

21 A. Well, I mean, it was our job to get our client
22 paid in full. I don't know that it would have been -- I
23 mean, that was just the way we and all of your competitors
24 set the opening bid price, the total amount due our
25 client. I don't know that it would have been proper to

1 ask for amounts above and beyond what was owed the client
2 as an opening bid amount what was owed the client, the
3 management company and our office.

4 Q. Let's turn to 530. This is the statement that you
5 were telling me earlier that the HOA could get online?

6 A. Yes.

7 Q. Who can type in entries on this page?

8 A. The legal assistant. An employee of Alessi &
9 Koenig, that's it.

10 Q. Where it says TRI Report, is that the title
11 report?

12 A. Yes.

13 Q. On 2/20/13 it states it received a payoff request
14 from Liquidation Services Foreclosure. Who is that?

15 A. I don't know. I would note that I believe that's
16 after the sale date, so I have no idea.

17 Q. So the sale date was January 26, 2013. Down at
18 the bottom here on February 8th, 2013, Cut check to MP
19 Management for \$300, that's the amount that the management
20 company would get?

21 A. Yes. That's the transfer fee.

22 Q. And the homeowners associations received \$1,266?

23 A. Yes.

24 Q. Okay. Does it say anywhere here where the extra
25 \$3,000 went?

1 A. Oh, well, it says in -- not on the status report,
2 but on the authorization if you recalled it, it let's the
3 association know that those are the fees and costs for a
4 foreclosure, 2500 to 2000.

5 Q. Do you know who Noble Title Company is, 531?

6 A. I've heard of them, but I don't know -- it's a
7 title company.

8 Q. Okay. And on this document it states that you
9 received a payoff request by Miles, Bauer November 27th,
10 2012?

11 A. Yes, I noticed that.

12 Q. And it also on the same date there was a
13 postponement of the sale. Would the HOA have postponed
14 the sale as a result of the letter from Miles, Bauer?

15 A. Not the same date, it's one month later. On
16 November 27th is the notation from Miles, Bauer. The
17 postponement is marked December 27th.

18 Q. Well, if you go down, it looks like the same note
19 for November 27th. Who knows.

20 A. Right. That's -- one of them is wrong.

21 Q. Okay.

22 A. Yeah. But, no, we did not postpone sales as a
23 policy when receiving a Miles letter notice.

24 Q. Do you include on this form the date that you
25 responded to the Miles, Bauer letter?

1 A. I think we responded the same day it looks like.

2 Q. Okay. There's nothing on this form regarding
3 Miles, Bauer sending a check or any rejection of a check
4 to Alessi. Any reason?

5 A. No. I have seen that in the status reports
6 before, so it was either because we never did receive a
7 check or perhaps the note didn't make it to the file.

8 Q. All right. Turning to Exhibit C, this is the
9 Miles, Bauer packet, US Bank 218 to 233. If we could turn
10 to 222. Have you ever seen this letter before?

11 A. Yes.

12 Q. All right. And this is -- and it states the
13 property address for this property; correct?

14 A. Yes.

15 Q. Do you recall -- obviously you haven't read it
16 today, probably, but do you recall what the purpose of
17 this letter was?

18 A. It's requesting a payoff.

19 Q. And do you know who Paterno Jurani is?

20 A. I'm assuming it's a lawyer that worked for Miles,
21 Bauer.

22 Q. Okay. Are you familiar with the term "super
23 priority"?

24 A. Yes.

25 Q. What does it mean to you today?

1 A. Well, I mean, I'm a California attorney. I don't
2 want to interpret NRS 116, but the statute sort of speaks
3 for itself, and I would defer to a court for its
4 interpretation.

5 Q. And the same response if I asked you the same
6 question with respect to what was your understanding in
7 2012?

8 A. Yes. I did not have and Alessi Koenig as a firm
9 did not have an independent position. We deferred to the
10 courts. We were aware of the ongoing litigation.

11 Q. Did Alessi have an understanding as to whether an
12 HOA's foreclosure sale could wipe out recorded liens
13 against the property such as a deed of trust in 2013?

14 A. No. Well, we did have an understanding that it
15 could. We didn't have an understanding of what the
16 Supreme Court would -- if the Supreme Court would
17 inevitably say it did, but we certainly knew that was one
18 of the issues in play.

19 Q. In 2013 did Alessi have any understanding as to
20 whether a lienholder could take any actions to protect its
21 interest in the property before a foreclosure sale?

22 A. Well, in 2013 we would have understood that the
23 bank could have paid the total amount due or tendered a
24 payment without restrictions and we would have processed
25 that payment. It's a fact we would not have had a

1 position on.

2 Q. Okay. Did Alessi have the same policy with
3 respect to super priority payoffs for all HOAs?

4 A. Yeah, our policies were the same, yes.

5 Q. Did Alessi provide copies of the Miles, Bauer
6 payoff request to the HOAs?

7 A. I don't know. I didn't -- as you could see, we
8 noted the correspondence on our status report. I don't
9 know that the actual letter would have been provided.

10 Q. Okay. And this Miles, Bauer letter on 222 and
11 223, this wasn't included in your packet. Any reason why
12 not?

13 A. Generally we -- either we didn't receive it or we
14 didn't scan it into the program. It would be one of those
15 two reasons, we didn't receive it or we didn't scan it
16 into the program.

17 Q. Okay. In this case it appears that you received
18 it. Turn to page 225. If the letter on 222 is dated
19 November 21st, 2012, it appears that your response --

20 A. Yep.

21 Q. -- was -- what's the date of this?

22 A. November 27th, and this would have been our
23 standard response to that letter. It is a breakdown of
24 all the fees owed our firm as well as all of the fees owed
25 the management company as well as all of the assessments

1 owed the HOA. It also lists our costs. And then attached
2 to that is an account ledger indicating the amount of each
3 month's assessments.

4 Q. Okay. So there would be no -- in responding to
5 these Miles, Bauer letters, there would be no -- you would
6 pretty much just give numbers?

7 A. Yes.

8 Q. The handwriting on 227, that's not yours; correct?

9 A. Correct.

10 Q. It appears as though that's the handwriting of
11 someone from Miles, Bauer, and it looks like they were
12 adding up assessments, nine months of assessments plus
13 some late fees plus some collection costs. If you add up
14 these numbers right here and you look at the check on page
15 231, that's the same number, I'll just represent that to
16 you.

17 A. Huh. Okay.

18 Q. So it looks like -- it looks like that's how
19 someone at Miles, Bauer came up with \$1,494.50.

20 A. That's interesting.

21 Q. Okay.

22 A. I've never seen that before.

23 Q. If you turn to 229, it appears as though this is a
24 response to your letter. And have you ever seen this
25 letter before?

1 A. I've seen it.

2 Q. Okay. And you know Rock Jung?

3 A. Yes.

4 Q. He formerly worked for you?

5 A. Yes, he did. He's a friend of mine.

6 Q. And this letter states that "Our client has
7 authorized us to make payment to you in the amount of
8 \$1,494.50." Do you see that?

9 A. Yes.

10 Q. Why did Alessi not accept this payment?

11 A. Because of the restrictive language in the letter.
12 I've always been fascinated with this phrase "paid in
13 full" in quotes, not really sure what the quotation marks
14 indicate. Also if you look on the memo, which was of
15 particular concern, "to cure HOA deficiency." Is that to
16 cure the HOA deficiency going like forward, backwards,
17 vis-a-vis the bank, the homeowner, everyone, all of the
18 deficiency? What if there's fines? So there was some
19 language in these documents that we felt cashing the check
20 would jeopardize the association's rights. You have to
21 remember at this time there was an advisory opinion that
22 was out from the commission that indicated the super
23 priority lien amount included fees and costs. So as I
24 testified earlier, we just -- we had discussions with
25 Miles, Bauer, why don't you just pay us what you think you

1 owe, we'll cash the check and let a court decide rather
2 than playing judge and jury.

3 Q. Was the Miles -- besides -- strike that.

4 Did Alessi notify the HOA that the bank attempted
5 to tender money to the HOA, specifically \$1,400 and change
6 to the HOA prior to the HOA foreclosure?

7 A. It could be on the status report. I don't know.
8 I don't know if there were discussions between the legal
9 assistant who handled the file and the manager. You know,
10 we represented a lot of associations. We had -- Nevada
11 attorneys did attend board meetings to discuss sales at
12 times. I don't know if that occurred with this
13 association. That wouldn't be something that would
14 necessarily make it to the status report if an attorney
15 went to the meeting to discuss this and the foreclosure.
16 So I'd have no way of knowing if that happened.

17 Q. Okay. Would Alessi need to consult the HOA
18 regarding accepting or rejecting the check you just looked
19 at on page 231?

20 A. I mean, I would defer to a court to answer that
21 question. We were hired to -- yeah, I would just defer to
22 a court to answer that.

23 Q. Okay. Given that the bank tendered more than nine
24 months of assessments to pay off the super priority lien
25 amount, was the foreclosure sale for this property a

1 sub-priority sale?

2 A. I would, again, defer to the courts to answer that
3 question.

4 Q. How much money do you think that the bank should
5 have paid to preserve its interest in the property?

6 A. I would defer to the courts again. I think my
7 proposition is that the bank, you know, should have just
8 paid what they thought was owed under the statute. We
9 would have cashed the partial payment or full payment
10 without the restrictive language. You know, when you ask
11 what the HOA -- if we would have -- well, I'll stop there.

12 Q. If Rock would have just sent this check without
13 his letter, what would Alessi have done?

14 A. Well, if it had the -- I don't know. I would be
15 speculating. I mean, there would still be a problem
16 probably with that memo that we discussed. But if you're
17 asking if they would have sent a check without any notes
18 in the memo, without any restrictive language whatsoever,
19 I would be speculating to answer what we would have done.
20 I can tell you, though, that our policy was to accept
21 partial payments absent the restrictive language from a
22 homeowner or a bank.

23 Q. Is there any reason why Alessi didn't inform
24 Miles, Bauer that it was rejecting the check?

25 A. Miles, Bauer knew that -- we engaged in this dance

1 with Miles, Bauer for, you know, several years as well as
2 other assessment collection companies.

3 Q. Why didn't Alessi inform Miles, Bauer of the new
4 sale date?

5 A. Well, I mean, I don't know that we didn't. The
6 new sale date would have been announced at the time and
7 place of the sale. It is also on the trustee sale
8 calendar. Miles, Bauer could have accessed that like
9 anybody else in the general public.

10 Q. All right. Let's turn to Exhibit D. These are
11 miscellaneous documents that were produced by the bank in
12 this litigation, US Bank 686 through 689. And I'll
13 represent to you that these documents are not related to
14 this property in particular.

15 A. Okay. Yeah, I have seen these documents before
16 from Ryan Kerbow. Ryan Kerbow, who is a friend of mine as
17 well, I think he started right around 2010 with Alessi &
18 Koenig. I certainly never saw this letter if it went out,
19 when it went out, but these do not reflect the position of
20 Alessi Koenig as a firm, and I would defer to Ryan as to
21 what he meant by the letter.

22 Q. Okay.

23 A. I know that he does reference the Korbelt Family
24 Trust case, and I think that's an accurate reference to
25 that case.

1 Q. So this letter --

2 A. I'm looking at 686.

3 Q. Okay. So this letter on 686, would this -- this
4 would have been in response to the reply letter we looked
5 at in the former packet?

6 A. Well, as you said, this letter does not pertain to
7 this file, so I don't know what it was in response to, if
8 it was in response to anything. I've seen this letter
9 before with this date on it several times at several
10 depositions.

11 Q. Okay.

12 A. So it got circulated around somehow, somewhere,
13 but I have no idea what it relates to.

14 Q. All right. 688.

15 A. Yes.

16 Q. Have you seen this letter before?

17 A. Yes.

18 Q. And this refers to that advisory opinion that you
19 were talking about earlier?

20 A. Yes, exactly.

21 Q. And is this the position of Alessi as of 2012?

22 A. Alessi didn't have a position. We were aware of
23 the varying opinions out in the industry. We are not a
24 judicial body, as you know, so we didn't take a position
25 as to how it would all shake out.

1 Q. Would Alessi as agent for the HOA need to abide by
2 the HOA's CC&Rs?

3 A. I would defer to a court to answer that question.
4 I know that there are some portions of the CC&Rs that
5 conflict with the statutes, such as a mortgagee protection
6 clause. If that's what you're referring to, I would defer
7 to the courts to answer that question.

8 Q. Well, let's go to it real quickly. I believe this
9 is the next exhibit marked, Declaration of Covenants,
10 Conditions and Restrictions for Country Garden. It looks
11 like the next exhibit marked is actually an authorization
12 -- the authorization. We've already discussed that, so we
13 don't need to talk about that again.

14 A. Okay. So Exhibit F is the CC&Rs for the
15 association.

16 Q. Does Alessi get a copy of these CC&Rs from the
17 HOA?

18 A. Yes. I don't know that I could testify that we do
19 in every circumstance, but I have certainly seen CC&Rs on
20 many occasions for HOAs. Again, like the retainer, we
21 don't store a copy of the CC&Rs in every single file
22 within every single association, so it wouldn't
23 necessarily be in our document production.

24 Q. And just to save some time, I don't want to go
25 through each provision, but I'm assuming that Alessi

1 reviewed the CC&Rs and follows the CC&Rs?

2 A. To the -- I mean, the only relevant provision I
3 know with regard to that is, as I said, the mortgagee
4 protection clause. I know that our Nevada attorneys felt
5 that that clause conflicted with NRS 116 and was,
6 therefore, not a valid provision enforceable. But, again,
7 we would defer to the courts as to whether or not it is
8 enforceable. It's not Alessi's job to determine the legal
9 import of the provisions. They speak for themselves.

10 Q. For kicks go to 188.

11 A. Okay.

12 Q. Have you ever seen an HOA's CC&Rs include an
13 actual super priority provision?

14 A. I don't know. I've seen so many of them I don't
15 know that I -- I don't know. I think I may have. I'm not
16 a hundred percent sure.

17 Q. Obviously some of these provisions are hard to
18 interpret. I'm not going to ask you to interpret them
19 right now. But assuming that Section 4.12 stated that the
20 super priority amount was six months immediately preceding
21 institution of an action to enforce the lien, was the
22 super priority amount in 2012 prior to the sale six months
23 or nine months?

24 A. Nine months. I mean, the statute said nine
25 months. I don't know what the super priority amount would

1 be. Well, we didn't know at that time if it was nine
2 months plus fees and costs or not fees and costs. We just
3 -- there was no way we could have known that. We knew the
4 different opinions. There was an NRED opinion, the
5 commission's opinion, there was the Korbelt case.

6 Q. Are you familiar with the Icahn Holdings case?

7 A. Yes.

8 Q. If the Icahn Holdings case came out before the
9 Miles, Bauer letters, would that have change Alessi's
10 approach to whether it was accepting or rejecting the
11 super priority lien?

12 A. I'm not going to speculate. I mean, that's a big
13 if, and I don't feel comfortable speculating. I mean, I
14 would have to speculate to answer that.

15 Q. Prior to Alessi's collection for this property,
16 did Alessi have a relationship with the trust?

17 A. No.

18 Q. Prior to Alessi's collection for this property,
19 did Alessi have a relationship with Eddie Haddad?

20 A. No.

21 Q. How many properties has Eddie Haddad purchased at
22 Alessi trustee sales?

23 A. I don't know. Eddie Haddad and SFR were the two
24 big dogs in the room. They had to -- if we did 750 sales,
25 they had to have -- I don't want to guess, but I would

1 imagine it was over a hundred. I would imagine Haddad
2 purchased over a hundred, but I don't know.

3 Q. Is it Eddie Haddad that actually bid on this
4 property or does he send one of his associates?

5 A. No, Eddie bid on the properties. I didn't attend
6 the auctions, but I would see him on auction day always.
7 Yeah, so Eddie bid on the properties.

8 Q. And the Alessi auctions happened in your office?

9 A. Yes, in the conference room upstairs at 204, Unit
10 204 at 9500 West Flamingo.

11 Q. That's the property where Naqvi is?

12 A. Yeah. I just had an interesting meeting with
13 Naqvi yesterday.

14 Q. Did Alessi have any type of agreements with Eddie
15 Haddad?

16 A. No.

17 Q. Did Alessi send Mr. Haddad a list of properties
18 that were going to be sold?

19 A. Well, the list -- not that I know of. Certainly
20 Alessi would not have had a problem providing a list,
21 which would have been the list the public could have
22 gotten off of the website. If an old-timer or somebody
23 that wasn't familiar with downloading the link from a
24 website wanted us to print the list out and hand it to
25 them, we certainly would have. We treated all investors

1 the same, though.

2 Q. Does HOA Lawyers Group have any relationship with
3 Eddie Haddad?

4 A. No, and I have no ownership interest in HOA
5 Lawyers Group.

6 Q. Okay. This may be a legal question. Would you
7 consider Eddie Haddad a bona fide purchaser?

8 A. I would defer to the court to answer that
9 question.

10 Q. And I may have asked this earlier. Does HOA
11 Lawyers still collect for this HOA?

12 A. I don't know.

13 MR. LACHMAN: Mr. Alessi, I appreciate your
14 time.

15 THE WITNESS: Awesome.

16 MS. ORLANDI: Now, should I put myself on the
17 record, please? Thank you.

18 THE WITNESS: Do you need to ask me anything or
19 are we good?

20 MS. ORLANDI: I have no questions for you at
21 this time.

22 MR. LACHMAN: And for the record, will you
23 state your appearance?

24 MS. ORLANDI: I did for the first deposition,
25 but I was making phone calls when you began. Gianna

1 Orlandi, Pengilly Law Firm. I represent the HOA in this
2 matter.

3 MR. LACHMAN: Thank you.

4 THE WITNESS: You're welcome.

5 (Thereupon, the taking of the deposition was
6 concluded at 3:33 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 STATE OF NEVADA)
4) ss:
5 COUNTY OF CLARK)

6

7 I, Terri M. Hughes, CCR No. 619, do hereby
8 certify: That I reported the deposition of DAVID ALESSI,
9 30(b)(6) Representative of Alessi & Koenig, LLC,
10 commencing on Friday, January 19, 2018, at 2:27 p.m.

11 That prior to being deposed, the witness was
12 duly sworn by me to testify to the truth, the whole truth
13 and nothing but the truth. That I thereafter transcribed
14 my said shorthand notes into typewritten form, and that
15 the typewritten transcript of said deposition is a
16 complete, true and accurate transcription of my said
17 shorthand notes. That prior to the conclusion of the
18 proceedings, pursuant to NRCP 30(e) the reading and
19 signing of the transcript was not requested by the witness
20 or a party.

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

25 IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this 6th
day of February, 2018.

21
22 
23 Terri M. Hughes, CCR No. 619
24
25

David Alessi ~ January 19, 2018
30(b)(6) Representative of Alessi & Koenig, LLC

Page 1

<p style="text-align: center;">A</p> <p>A-14-704412-C 1:6 A-L-E-S-S-I 4:18 A&K 6:9 abide 44:1 absent 22:2 41:21 accept 39:10 41:20 accepting 40:18 46:10 access 23:1 27:8 accessed 42:8 accompanied 30:2 account 10:7 17:4 17:6 32:11 38:2 accurate 42:24 50:10 act 8:17 9:2 acting 8:23 16:13 20:8 action 4:15 45:21 50:14,14 actions 36:20 actual 6:22 9:23 12:1 15:17 16:6 37:9 45:13 add 12:18 17:7 38:13 Added 17:5 adding 38:12 additional 13:17 address 6:19 11:9 11:9,10,11 35:13 addresses 15:16,16 15:18 19:7 21:10 advisory 39:21 43:18 affidavit 10:21,22 26:4 afternoon 4:14 agenda 10:3 agent 8:15,17,20 8:23 9:3 16:13,15 16:18 20:8 44:1</p>	<p>agreed 4:5 agreement 20:14 agreements 47:14 Akerman 1:20 2:2 2:10 Alessi 1:19,20 2:1 2:2 3:2 4:8,14,18 5:6,22,23 6:9,18 6:25 7:9,14,22,23 8:13,17,23 9:2,8 9:10,15,17 11:1,6 13:22 16:13,17 16:21 17:2,20,23 17:24 18:5,16,19 18:24 19:8,13,24 20:8,11,20 21:14 21:17 23:8,9 24:10 25:20,22 26:19,25 28:8 29:1,7,18,21 30:13 31:7,12,25 32:11,14,16,17 33:8 35:4 36:8,11 36:19 37:2,5 39:10 40:4,17 41:13,23 42:3,17 42:20 43:21,22 44:1,16,25 46:16 46:19,22 47:8,14 47:17,20 48:13 50:6,7 Alessi's 10:13 26:11 45:8 46:9 46:15,18 America 1:8 2:7 American 14:4,7 14:20 amount 17:2,4 23:16,17,20,21 23:22,24,25 24:4 25:11,17 26:9 28:20 30:9,14 31:9,10,11 32:24</p>	<p>33:2,19 36:23 38:2 39:7,23 40:25 45:20,22 45:25 amounts 9:18 33:1 analysis 24:13 27:22 announce 27:10 29:18,21 announced 30:4,8 42:6 answer 7:13 16:24 19:3 32:13 40:20 40:22 41:2,19 44:3,7 46:14 48:8 anybody 42:9 APN 11:14 appear 7:25 appearance 48:23 APPEARANCES 2:6 appears 10:18 12:15,19 14:25 16:6 18:2 37:17 37:19 38:10,23 appraised 23:25 appreciate 21:2 48:13 approach 46:10 approximate 21:8 22:6 25:17 approximately 4:25 9:8 12:20 ascertain 15:4,6 18:7 asked 32:10 36:5 48:10 asking 41:17 assessment 7:15 8:1 12:11 16:7 17:12,13 29:2 42:2 assessments 12:16</p>	<p>12:19,20 16:19 23:17,19 28:25 31:10 37:25 38:3 38:12,12 40:24 assessor's 11:5 asset 27:18 assignment 15:7 18:23,25 19:2 assignments 15:5 assistant 32:5 33:8 40:9 associates 47:4 association 1:7 2:13 5:22 12:24 13:6 20:2,18 22:2 22:5,7,8 24:24 25:14 31:11 34:3 40:13 44:15,22 association's 39:20 associations 7:16 24:14,20 33:22 40:10 assume 19:19 assuming 35:20 44:25 45:19 attached 5:4,10 38:1 attachment 14:12 attempt 29:22 attempted 40:4 attend 28:13 40:11 47:5 attention 13:14,20 attorney 17:20,24 17:25,25 18:1 30:25 31:1 32:7 36:1 40:14 attorneys 40:11 45:4 auction 9:15 27:17 27:18 47:6 auctions 47:6,8 audit 17:8 29:3</p>	<p>authorization 3:11 21:22 22:2 25:15 34:2 44:11,12 authorize 16:21,23 20:11 authorized 39:7 authorizing 22:9 automatic 11:21 12:4 automatically 12:2 avoid 13:19 aware 36:10 43:22 Awesome 48:15 Azra 15:22</p> <hr/> <p style="text-align: center;">B</p> <p>B 3:7,9 4:1 10:13 B-R-A-N-K-O 28:9 back 12:6 20:19 22:23 30:18 backwards 39:16 balance 12:19 bank 1:7,8,9 2:7,7 2:8 3:9,9,10,10 4:15 23:21 30:15 35:9 36:23 39:17 40:4,23 41:4,7,22 42:11,12 bankruptcy 11:19 11:21,23 29:12 banks 29:10 based 13:25 basically 21:12 27:20 Bass 30:23 31:1 Bates 28:13 Bauer 30:1,18 31:2 34:9,14,16,25 35:3,9,21 37:5,10 38:5,11,19 39:25 41:24,25 42:1,3,8 46:9</p>
--	--	---	--	--

David Alessi ~ January 19, 2018
30(b)(6) Representative of Alessi & Koenig, LLC

Page 2

<p>began 48:25 beginning 12:18 29:6 behalf 6:18 17:7 believe 8:8 14:14 26:4,17 27:4,16 30:7,24 31:19 33:15 44:8 Bergstrom 3:10 beyond 33:1 bid 28:23 31:8,9 32:11,14,19,24 33:2 47:3,5,7 bidder 28:11 bidder's 28:19 bidders 28:15 big 46:12,24 biggest 32:3 billed 13:6 bit 9:24 Blossom 1:4 5:24 6:1 board 9:21 10:2,6 13:2,3 16:21 20:11 22:15 24:13 27:3 40:11 body 43:24 boilerplate 31:17 bona 48:7 book 11:12 bottom 33:18 Brad 30:23 31:1 Branko 28:1,3,4,9 28:12,14 32:5 breakdown 37:23 bunch 15:20 business 6:19 buying 27:20</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 3:10 4:1 35:8 calculated 23:17 23:21</p>	<p>calendar 27:6,10 42:8 California 7:17 36:1 call 10:12 called 12:7 18:11 calls 10:11 48:25 cards 19:20 case 1:6 8:25 15:25 29:16 37:17 42:24,25 46:5,6,8 cash 30:3,20 40:1 cashed 30:6,17 41:9 cashing 39:19 CC&Rs 3:12 44:2 44:4,14,16,19,21 45:1,1,12 CCR 1:25 50:6,22 Center 1:22 2:3,11 2:15 certainly 16:18 22:8 23:11 36:17 42:18 44:19 47:19,25 CERTIFICATE 50:1 Certificates 1:11 2:9 certified 2:5 19:11 19:21 certify 50:6,13 chance 24:21,22 change 40:5 46:9 Chapter 11:20 charge 12:21,23 13:4,5,5 charged 13:17 charges 13:17 check 20:18 21:1 24:10 30:5,19 33:18 35:3,3,7 38:14 39:19 40:1</p>	<p>40:18 41:12,17 41:24 checklist 28:16 checks 9:19 23:6,8 30:1,2,3 Circle 1:22 2:3,11 2:15 circulated 43:12 circumstance 44:19 Civil 4:6 claimed 19:15 Clark 1:2 13:21,23 50:4,15 clause 44:6 45:4,5 clear 1:11 27:21,21 29:15 client 7:23 10:17 32:21,25 33:1,2 39:6 Clover 1:4 5:24 6:1 collect 16:19 48:11 collection 7:1,3,15 8:1,5,9,11,15,17 8:20 9:3,10 10:14 10:17 16:13,15 20:17 29:2 32:15 32:18 38:13 42:2 46:15,18 collections 8:2,24 10:7 17:11 combination 21:17 comfortable 46:13 coming 4:22 commencement 4:4 commencing 50:7 commission 39:22 commission's 46:5 communicates 10:5 community 10:6 companies 13:1,2</p>	<p>42:2 company 10:12 13:5 14:5 15:18 17:7,10 21:15 23:1,7 27:3 28:7 29:3 31:13 32:15 32:18 33:3,20 34:5,7 37:25 competitors 32:23 complete 7:3 50:10 completed 6:4 complied 31:23,25 concern 39:15 Conclude 3:11 21:22 concluded 49:6 conclusion 50:11 Conditions 44:10 conduct 3:11 21:23 26:23 conference 47:9 confirm 28:16 conflict 44:5 conflicted 45:5 consider 48:7 consult 40:17 contacted 4:20 conversation 30:22 copies 19:11 31:21 31:22 37:5 copy 44:16,21 CORPS 1:12 correct 7:1 8:11,12 11:17 12:16 17:3 18:3,14,24 20:6 25:11 28:11 29:13 30:11,12 35:13 38:8,9 correspondence 3:10 10:8 37:8 costs 17:12,14 25:16 29:2 34:3 38:1,13 39:23</p>	<p>46:2,2 counsel 4:4,19,21 7:16,24 50:13 Country 2:13 5:22 20:21 44:10 County 1:2 13:21 13:23 50:4,15 course 11:1 court 1:1 2:5 4:5 5:24 6:1 16:24 18:21 31:18 36:3 36:16,16 40:1,20 40:22 44:3 48:8 courtesy 13:12 courts 29:7 30:20 36:10 41:2,6 44:7 45:7 Covenants 44:9 cover 12:9,10 creates 11:21 cried 28:14 CT 1:4 cure 39:15,16 current 14:8,15 15:14 16:1 currently 6:17 17:8,21 cut 23:9 33:18</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 3:1,10 4:1 5:25 42:10 dance 41:25 Daniel 25:25 data 11:15 date 11:7 14:7,11 14:16 16:10 20:7 25:1,8 26:7,14,25 27:1 33:16,17 34:12,15,24 37:21 42:4,6 43:9 dated 11:6 13:10 14:13 15:8 37:18</p>
--	---	--	---	---

David Alessi ~ January 19, 2018
30(b)(6) Representative of Alessi & Koenig, LLC

Page 3

dates 13:25	5:7,16 48:24 49:5	dogs 46:24	ensure 19:13	25:13,16,18 29:1
David 1:19 2:1 3:2	50:6,10	doing 6:8 25:23	enter 11:14	29:2 31:10 34:3
4:8,18 5:6 50:6	depositions 4:23	dollars 29:7	entire 30:9	37:24,24 38:13
day 35:1 47:6	6:8 15:23 43:10	door 26:1,3	entities 15:20	39:23 46:2,2
50:16	Dept 1:6	downloading	entity 16:16	felt 24:23 39:19
December 34:17	description 11:12	47:23	entries 33:7	45:4
decide 40:1	11:13	draft 11:24,25	envelope 19:18	fide 48:7
Declaration 44:9	determine 30:20	drive 25:20	eppraisal.com 24:1	field 23:22
deed 5:19 12:12	45:8	duces 5:5 10:18	equity 24:19,21	fields 11:15
14:25 15:7,14	determining 32:10	due 16:19 28:25	escrow 27:24	file 5:18 7:1,3,4,6
16:1,2,4 18:17,19	32:14	31:10,11,11,12	ESQ 2:10,14	7:25 8:8,11 10:14
18:23,23,24,25	different 11:9	32:24 36:23	exactly 43:20	10:17 11:24 13:3
24:4 26:6,11	15:20 22:4 27:22	duly 4:9 50:8	Examination 3:3,3	15:2 17:10 20:17
29:19 31:14,15	46:4		4:12	20:23 23:9 28:5
31:18 32:12	directly 10:6	E	examined 4:10	28:17 32:4 35:7
36:13	disagree 27:16	E 3:1,7,11 4:1	exceptions 24:18	40:9 43:7 44:21
deeds 15:4,5	disbursed 28:24	e-mail 27:25	Excerpt 3:12	files 20:17 32:6
default 5:20 13:11	discretion 26:22	e-mails 30:25	excess 29:4,5	finalize 29:11
13:12,25 18:8,14	discuss 40:11,15	earlier 17:5 25:19	executive 10:4	finally 32:7
19:8,14,15,16	discussed 10:3	32:10 33:5 39:24	exhibit 5:4,24	Financial 16:16
20:2,5 21:5	25:19 41:16	43:19 48:10	10:13 35:8 42:10	financially 50:14
Defendants 1:13	44:12	early 31:6	44:9,11,14	find 15:13,22
2:7	discussion 4:3 9:5	Eddie 28:10 46:19	Exhibits 4:1	fine 7:14
defer 16:24 18:21	30:18	46:21,23 47:3,5,7	expressed 31:16	finer 39:18
31:18 36:3 40:20	discussions 31:5	47:14 48:3,7	extra 29:16 33:24	firm 2:15 10:8
40:21 41:2,6	39:24 40:8	education 6:4		16:17 17:21 31:1
42:20 44:3,6 45:7	distributed 29:12	effect 31:3,5	F	31:2 36:8 37:24
48:8	DISTRICT 1:1	effort 13:14	F 3:12 4:1 44:14	42:20 49:1
deferred 36:9	ditch 13:14	EIGHTH 1:1	fact 30:17 36:25	first 4:9 12:12 14:4
deficiency 39:15	Division 16:17	either 9:16 23:23	fair 24:7 27:14,18	14:7,20 18:16,18
39:16,18	document 10:24	29:12 35:6 37:13	27:19,22	18:20 22:19 23:6
definitions 5:21	11:8 12:5 14:2	Election 20:2	familiar 35:22 46:6	23:24 29:19
degree 6:5	16:22,23 17:15	electronic 5:18	47:23	48:24
delay 26:19	18:16,19,20	11:15	Family 42:23	Flamingo 6:20
delayed 26:16	20:12 22:4,20,24	Elm 11:11	fascinated 39:12	47:10
delinquent 9:12	24:2,12,20 25:4	employee 33:8	February 11:6	follow 21:18
10:8,11 11:22	26:7 28:1 31:19	50:13,14	16:11,12 33:18	following 19:12
12:11 16:7 17:12	34:8 44:23	enclosed 12:10	50:16	follows 4:11 45:1
17:13	documents 7:8	enforce 45:21	fed 11:16	foreclosure 3:11
department 15:21	10:25 15:17	enforceable 45:6,8	fee 17:8,9,11 29:3	4:24 7:18 8:24
deposed 50:8	19:23 23:12,14	engage 24:13	29:3 33:21	9:14 11:21 16:20
deposition 1:19 2:1	39:19 42:11,13	engaged 16:18	feel 46:13	19:1 21:23 22:1
3:9 4:4,20,22 5:5	42:15	41:25	fees 22:6 23:18	25:18 26:12

David Alessi ~ January 19, 2018
30(b)(6) Representative of Alessi & Koenig, LLC

Page 4

33:14 34:4 36:12 36:21 40:6,15,25 form 34:24 35:2 50:9 former 15:25 43:5 formerly 39:4 forward 22:11 30:10 39:16 founding 7:11 four 9:8 Friday 1:21 2:3 50:7 friend 39:5 42:16 full 28:25 30:16 32:22 39:13 41:9 function 12:5 funds 29:11 further 3:3 50:13 <hr/> <p style="text-align: center;">G</p> <hr/> Garden 2:13 5:22 20:21 44:10 general 7:15,24 24:15 27:7 42:9 generally 29:6,18 37:13 George 28:13,15 32:6 Gianna 2:14 48:25 give 38:6 given 20:17 22:15 23:9 40:23 gives 15:18 go 9:4,23 14:23 15:7 22:9 24:16 26:1 34:18 44:8 44:24 45:10 goes 12:24 17:9 going 7:13 9:6 13:16 15:21 25:8 39:16 45:18 46:12 47:18 good 4:14 48:19	gotten 47:22 greater 24:21 green 19:20 ground 24:25 Group 6:15,15,18 8:20 48:2,5 Grove 11:11 guess 19:18 26:19 29:8 46:25 guessing 30:8 gummed 29:9 <hr/> <p style="text-align: center;">H</p> <hr/> H 3:7 Haddad 28:10 46:19,21,23 47:1 47:3,15,17 48:3,7 Halloween 25:3 hand 47:24 50:15 handle 28:4 handled 32:5 40:9 handwriting 38:8 38:10 happen 29:4 happened 29:4,15 30:7 40:16 47:8 hard 45:17 heads-up 22:10 heard 34:6 held 4:3 help 15:6 18:7 high 28:10 higher 32:20 highest 6:4 hired 40:21 HOA 4:19,24 5:22 6:7,11,12,13,15 6:17 7:21,23,25 8:2,10,13,14,18 8:20,21,23 9:13 9:14,16,17,25 16:13,19 17:7 21:10 22:13,18	22:22,25 23:2,7 23:16 25:4 28:25 33:5 34:13 38:1 39:15,16 40:4,5,6 40:6,17 41:11 44:1,17 48:2,4,10 48:11 49:1 HOA's 8:4 20:8,23 22:18 36:12 44:2 45:12 HOAs 8:4 9:2,8,21 9:22 37:3,6 44:20 holder 12:13 15:14 16:1 holders 1:9 2:8 18:17,19 Holdings 46:6,8 home 27:7 homeowner 9:12 10:9,11 11:22 30:15 39:17 41:22 homeowner's 11:8 13:14,19 homeowners 7:16 10:5 20:2 33:22 Hughes 1:25 2:4 50:6,22 Huh 38:17 hundred 31:3 45:16 47:1,2 <hr/> <p style="text-align: center;">I</p> <hr/> i.e 24:22 Icahn 46:6,8 idea 33:16 43:13 identification 4:2 imagine 47:1,1 immediately 45:20 impetus 24:19 implements 12:24 implied 31:16 import 31:18 45:9	in-house 13:1 21:17 inception 32:5 include 7:18 13:16 22:15 34:24 45:12 included 9:21 15:9 22:17 37:11 39:23 includes 25:13,14 independent 36:9 indicate 39:14 indicated 4:21 39:22 indicates 13:4,16 23:25 indicating 38:2 industry 23:6 43:23 inevitably 36:17 inform 27:1 41:23 42:3 information 11:14 16:9 23:3 institution 45:21 Institutions 16:16 insurance 27:20,24 interest 7:9 15:4 29:1 31:11 36:21 41:5 48:4 interested 25:6 27:1 50:14 interesting 38:20 47:12 interpleaders 29:11 interpreted 29:7 interpret 31:19 36:2 45:18,18 interpretation 36:4 investor 27:20 investors 29:10	47:25 invoice 9:22 invoiced 22:7 involved 31:5 50:14 issues 36:18 item 10:3 <hr/> <p style="text-align: center;">J</p> <hr/> J-E-F-T-I-C 28:10 January 1:21 2:4 26:15,17 27:15 33:17 50:7 Jeftic 28:1,9 jeopardize 39:20 job 6:22 32:6,21 45:8 JOHNSON 3:9,9 3:10,10 judge 40:2 judicial 1:1 43:24 June 14:25 15:8 Jung 31:1 39:2 Jurani 35:19 jury 40:2 <hr/> <p style="text-align: center;">K</p> <hr/> keep 9:6 kept 10:25 Kerbow 17:19,20 31:25 42:16,16 kicks 45:10 kind 13:13 14:2 28:1 knew 18:24 24:20 36:17 41:25 46:3 know 7:24 8:2,19 8:22 11:20,22 14:1,3 15:3,11 17:21 18:18 19:16,17 22:5,13 22:14,17 23:14 24:7,13,19,24
---	--	---	---	---

David Alessi ~ January 19, 2018
30(b)(6) Representative of Alessi & Koenig, LLC

Page 5

26:18,23,24 29:8 29:17 30:18 31:25 32:22,25 33:15 34:3,5,6 35:19 37:7,9 39:2 40:7,8,9,12 41:7 41:10,14 42:1,5 42:23 43:7,24 44:4,18 45:3,4,14 45:15,15,25 46:1 46:23 47:2,19 48:12 knowing 19:17 40:16 knowledge 16:4 knowledgeable 5:13 known 46:3 knows 34:19 Koenig 1:20 2:2 5:6,23 6:9,18 7:10 9:8 11:1 16:17 17:21,23 20:21 28:8 29:1 31:12 33:9 36:8 42:18,20 50:7 Koenig's 7:23 Korbel 42:23 46:5	38:13 law 2:15 6:5 16:17 31:21 49:1 lawsuit 27:21 lawyer 28:13 35:20 Lawyers 6:15,15 6:17 8:20 48:2,5 48:11 ledger 17:4,6 38:2 legal 11:12,13 32:4 33:8 40:8 45:8 48:6 let's 9:6 10:13 14:23 15:7 17:18 21:20 28:20 33:4 34:2 42:10 44:8 letter 12:8,9,10,12 13:10,11 19:21 34:14,23,25 35:10,17 37:9,10 37:18,23 38:24 38:25 39:6,11 41:13 42:18,21 43:1,3,4,6,8,16 letters 12:3 38:5 46:9 level 6:4 levied 13:5 LG 6:7,13,14 licensed 16:16 lien 5:20 12:8 17:11 20:3 39:23 40:24 45:21 46:11 lienholder 36:20 lienholders 25:5 liens 13:3 36:12 link 27:7 47:23 Liquidation 33:14 list 18:9 19:5 21:8 21:9,10,14 47:17 47:19,20,21,24 listed 15:16	lists 38:1 litigation 4:24 6:25 29:10 36:10 42:12 lives 17:22 living 6:6 LLC 1:20 2:2 5:23 6:9,10,11,12,13 50:7 LLP 1:20 2:2,10 3:10 Loan 1:10,10 2:8,8 located 10:19 long 8:17 longer 17:23 look 10:13 13:23 32:15 38:14 39:14 looked 40:18 43:4 looking 12:15 13:21 14:12 15:4 18:22 19:2 31:14 43:2 looks 11:5 12:7 13:24 14:4 15:24 25:22 27:25 28:10 34:18 35:1 38:11,18,18 44:10 lot 6:8 11:12 40:10 low 32:20	mailings 5:20 21:4 21:18 28:16 32:9 making 48:25 management 10:11 13:1,2,5 17:7,9 22:25 23:7 25:18 27:3 29:2 31:12 33:3,19,19 37:25 manager 10:2,6 22:15 40:9 March 13:10 14:9 14:13,15 marked 4:1 34:17 44:9,11 market 24:7 27:14 27:18,19,23 marks 39:13 matter 49:2 mean 8:3 22:18 32:21,23 35:25 36:1 40:20 41:15 42:5 45:2,24 46:12,13 means 5:22,23,24 5:25 30:21 meant 42:21 meeting 9:25 40:15 47:12 meetings 40:11 members 7:11 10:6 memo 39:14 41:16 41:18 mention 17:16 mentions 18:22 merger 1:8 2:7 Miles 3:10 29:25 30:18 31:2 34:9 34:14,16,23,25 35:3,9,20 37:5,10 38:5,11,19 39:25 40:3 41:24,25 42:1,3,8 46:9	million 29:7 mine 39:5 42:16 minimum 13:17 minus 12:21 miscellaneous 42:11 money 23:8 40:5 41:4 month 34:15 month's 38:3 monthly 12:15 months 12:19,20 13:24 38:12 40:24 45:20,22 45:23,24,25 46:2 mortgage 1:10,10 2:8,8 23:24 24:16 mortgagee 44:5 45:3 moving 13:15,20 22:10 MP 33:18 multiple 20:17 multitude 26:21
<hr/>				
N				
<hr/>				
N 3:1 N.A 1:8,9 2:7,7,8 name 4:14,17 28:19 named 15:22 Naqvi 47:11,13 NATIONAL 1:7 necessarily 8:10 40:14 44:23 need 40:17 44:1,13 48:18 Nevada 1:2,23 2:3 2:5,12,16 4:6 6:20 7:17 17:25 32:7 40:10 45:4 50:3,15 never 24:2,25 35:6				

David Alessi ~ January 19, 2018
30(b)(6) Representative of Alessi & Koenig, LLC

Page 6

38:22 42:18 new 42:3,6 nine 12:20 38:12 40:23 45:23,24 45:24 46:1 Noble 34:5 NOD 15:6 21:12 non-judicial 3:11 7:18 16:20 21:23 25:17 normal 27:24 North 6:1 notation 13:4 34:16 note 10:18 19:2,24 27:2,5 33:15 34:18 35:7 noted 22:21 37:8 notes 41:17 50:9 50:11 notice 5:7,10,20 12:1,2,10 13:13 13:16,24 16:6 17:12,13 18:7,9 18:14 19:8,15,16 20:1,5 21:7,11 25:1 26:2,3 31:23 34:23 noticed 34:11 notices 11:16,24 12:3 15:12,15 19:14 21:5 31:22 notify 9:17 40:4 November 25:10 26:17 34:9,16,19 37:19,22 NRCP 50:11 NRED 46:4 NRS 29:13 36:2 45:5 number 6:20 11:12 17:5,8 38:15 numbers 12:18	38:6,14 <hr/> O obtain 11:8,11,14 21:14 27:17 obtaining 27:24 obviously 7:23 17:23 32:3 35:15 45:17 occasions 44:20 occurred 40:12 October 25:3 off-the-record 4:3 office 10:12 20:19 21:13 25:7 33:3 47:8 50:15 oftentimes 23:23 Oh 6:12,16 34:1 okay 5:1 6:16,19 7:3,6,9,14,21 8:7 8:9 9:2,6,7,10,17 10:5,10,20 11:3 13:7 14:17,19,22 16:2,6 18:2,13,22 19:5 20:24 21:7 22:23 23:13,20 24:7 25:1,8 29:15 30:9,13 31:7,20 32:19 33:24 34:8 34:21 35:2,22 37:2,10,17 38:4 38:17,21 39:2 40:17,23 42:15 42:22 43:3,11 44:14 45:11 48:6 old-timer 47:22 ombudsman's 21:13 25:6 ongoing 36:10 online 9:19 25:21 27:6,9 33:5 open 32:11 opened 5:18	opening 31:8,9 32:14,19,24 33:2 opinion 39:21 43:18 46:4,5 opinions 43:23 46:4 orally 27:10 order 14:18 ordered 26:7 ordinary 10:25 original 24:19 Orlandi 2:14 13:8 48:16,20,24 49:1 owe 40:1 owed 9:18 16:25 23:16,20 24:16 25:15,17 30:20 32:15 33:1,2 37:24,24 38:1 41:8 owner 7:10 Owners 2:13 5:22 ownership 7:9 48:4 owning 24:23 <hr/> P p.m 1:21 2:4 49:6 50:7 PACER 11:19 packet 9:24 10:3 22:16,18 23:10 35:9 37:11 43:5 packets 9:21 page 3:8 10:19,23 11:5,6,7,12,18,19 13:10 14:2 18:2 18:22 25:1,20 26:6 27:7 33:7 37:18 38:14 40:19 paid 9:10,12,13,15 26:9 28:25 29:1,3 32:22 36:23	39:12 41:5,8 paragraph 31:16 31:20 paralegal 20:18 28:14 parenthesis 23:24 part 6:25 14:6,14 14:18 15:3,13 24:12 partial 30:16 41:9 41:21 particular 39:15 42:14 parties 15:4,23 27:1 50:13,14 party 50:12 pass 27:21 Pass-Through 1:11 2:8 password 23:1,2,4 27:8 Paterno 35:19 pay 39:25 40:24 payable 9:20 23:6 payment 30:16,16 30:17 36:24,25 39:7,10 41:9,9 payments 41:21 payoff 33:13 34:9 35:18 37:6 payoffs 37:3 Pengilly 2:15 49:1 percent 24:17 31:3 45:16 percentages 7:13 perfected 24:3 performed 7:24 8:1 period 30:2 person 5:13 50:14 pertain 43:6 phone 48:25 phrase 39:12	picture 26:3 pictures 25:21 26:2 place 10:3 27:11 42:7 Plaintiff 1:5 play 36:18 playing 40:2 please 48:17 plus 21:13 23:18 25:15 31:11,12 38:12,13 46:2 PMK 6:7,22 point 29:13 policies 8:9 37:4 policy 8:2,5 30:16 31:7 34:23 37:2 41:20 populated 23:23 portions 44:4 position 17:24 36:9 37:1 42:19 43:21 43:22,24 posting 26:3,5 31:22 postpone 26:21 34:22 postponed 26:24 26:25 34:13 postponement 27:2,5,10 34:13 34:17 postponements 27:9 pre- 13:2 pre-lien 12:21,23 13:1 pre-notice 13:11 13:12,18 preceding 45:20 preliminary 5:1 preparation 7:6 17:10 prepare 5:16
--	--	---	---	--

<p>preserve 41:5 pretty 38:6 price 27:13 31:9 32:11,20,24 prices 31:8 primarily 15:22 23:19 print 11:6,18 12:2 47:24 printout 11:5 prior 4:3,20 5:7 18:13,25 24:10 40:6 45:22 46:15 46:18 50:8,11 priority 17:16 35:23 37:3 39:23 40:24 45:13,20 45:22,25 46:11 probably 11:20 15:5 22:3 26:4 29:8 35:16 41:16 problem 41:15 47:20 Procedure 4:6 proceed 22:1 proceedings 4:4 50:11 process 16:20 28:6 29:6,9 32:3,6 processed 36:24 produced 6:25 42:11 production 44:23 program 5:17 11:15 12:3,6 19:20,22,25 37:14,16 proper 32:25 properly 19:23 23:23 28:17,18 32:9 properties 24:14 24:17 46:21 47:5</p>	<p>47:7,17 property 5:25 7:1 7:4 8:24 9:14 11:9 13:22,23 18:3,6 20:5 22:7 24:8,15,21 25:20 27:13,14,19,23 29:19 32:2,12 35:13,13 36:13 36:21 40:25 41:5 42:14 46:15,18 47:4,11 proposition 41:7 protect 36:20 protection 44:5 45:4 protocol 24:25 provide 18:17 23:6 37:5 provided 7:15 10:17 18:19,21 37:9 providing 47:20 provision 44:25 45:2,6,13 provisions 45:9,17 public 23:14 27:7 27:17,18 42:9 47:21 publication 26:4 31:22 purchased 22:8 24:22 27:23 46:21 47:2 purchaser 48:7 pure 27:17 purpose 10:21 35:16 pursuant 24:1 29:13 50:11 put 9:24 10:2 48:16</p>	<p>Q qualify 28:15 question 16:24 19:3 36:6 40:21 41:3 44:3,7 48:6 48:9 questions 5:2 6:2 48:20 quickly 44:8 quitclaim 16:2,4 quotation 39:13 quote 32:17 quotes 39:13</p> <p>R R 2:10 read 35:15 reading 50:11 real 8:24 13:22,23 44:8 really 13:3 24:25 39:13 reason 11:18 13:22 15:2,8 17:15 21:24 26:16,21 26:22 29:24 30:4 31:15 32:19 35:4 37:11 41:23 reasons 26:22 37:15 recall 35:15,16 recalled 34:2 receipt 21:18 receipts 19:12 receive 22:19 35:6 37:13,15 received 17:6 19:14,19,21,23 23:8 30:1,5,9,14 33:13,22 34:9 37:17 receiving 34:23 recollection 5:9 8:5</p>	<p>RECON 1:12 record 4:17,19 9:5 13:22 16:22,23 20:11,22 23:15 24:4 28:9 48:17 48:22 recordation 20:7 recorded 11:13 12:1,5 15:11,15 15:17 16:9,12 32:12 36:12 recording 17:12 25:2 Records 13:23 Redfin 24:10 reference 42:23,24 referenced 17:5 referred 10:12 referring 44:6 refers 43:18 reflect 42:19 regard 45:3 regarding 4:24 5:14 9:17 16:4 31:21 35:2 40:18 regular 19:16 rejecting 40:18 41:24 46:10 rejection 35:3 related 42:13 relates 43:13 relationship 7:21 8:14 46:16,19 48:2 relative 50:13,13 release 17:13 relevant 24:23 45:2 remember 39:21 repeat 21:9 reply 43:4 report 5:18 9:23 9:24 10:2 14:6,10</p>	<p>14:12,13,16,21 18:3,5,13 22:21 22:23 23:5,7 27:3 27:5 33:10,11 34:1 37:8 40:7,14 reported 1:25 50:6 reporter 2:5 4:5 50:1 reports 9:19,20,21 35:5 represent 4:15 10:16 38:15 42:13 49:1 Representative 1:20 2:1 50:7 represented 9:7 40:10 request 33:13 34:9 37:6 requested 30:10 50:12 requesting 35:18 require 26:20 required 13:13 15:24 21:25 22:5 requirements 4:5 31:21 research 15:3,13 21:16,17 respect 36:6 37:3 responded 22:9 34:25 35:1 responding 38:4 response 10:17 36:5 37:19,23 38:24 43:4,7,8 restrictions 36:24 44:10 restrictive 30:3,5 30:15 39:11 41:10,18,21 result 34:14 retainer 20:16,20</p>
--	--	---	--	---

David Alessi ~ January 19, 2018
30(b)(6) Representative of Alessi & Koenig, LLC

Page 8

20:20 44:20 retainers 20:16 returned 19:18,19 review 9:22 reviewed 5:6,11,17 5:19,19 7:8 28:18 32:4 45:1 right 4:14 5:4,13 5:21 6:7 10:13 12:7 13:21 16:21 19:10 20:1 21:4 21:20 26:6 28:20 29:18 34:20 35:8 35:12 38:14 42:10,17 43:14 45:19 rights 39:20 Robert 7:10 Rock 31:1 39:2 41:12 room 46:24 47:9 route 27:24 Rule 4:6 5:5 Rules 4:6 Ryan 17:19,20 42:16,16,20	42:7,7 45:22 sales 7:19 26:12,23 26:23 27:13 28:5 28:13 29:21 34:22 40:11 46:22,24 save 20:16 44:24 saves 12:3 saw 27:4 42:18 saying 30:19 says 16:2 21:22 23:24 33:10 34:1 scan 12:6 19:19,20 37:14,15 Scott 2:10 4:15 second 4:20 9:4 14:10,21 16:24 17:19 31:15 secondary 9:16 Section 45:19 see 11:10 13:4,15 15:19 19:11 20:19 23:5,10 26:2 37:7 39:8 47:6 seeing 8:6 seen 8:4 15:24 20:22 22:19 30:25 35:5,10 38:22,24 39:1 42:15 43:8,16 44:19 45:12,14 sell 9:14 20:2 semantics 16:18 send 17:10 21:3 30:19 47:4,17 sending 35:3 sent 12:12 19:16 21:10 25:4 41:12 41:17 Series 1:11 2:9 serve 26:2 services 7:16,24	8:1 9:11 33:14 session 10:4 set 17:9 25:9 32:2 32:24 50:15 setting 31:7 SFR 46:23 shake 43:25 shorthand 50:9,11 showed 23:7 signature 11:3 signatures 22:11 signed 16:11 19:21 21:24,25 signing 50:12 single 44:21,22 six 45:20,22 skipping 5:1 sold 47:18 sole 32:6 somebody 47:22 sort 13:12 21:9 27:25 36:2 sorts 25:13 speak 45:9 speaks 10:24 31:19 36:2 specific 5:8 19:24 22:2 specifically 22:9 40:5 speculate 30:6 46:12,14 speculating 41:15 41:19 46:13 spell 4:17 ss 50:3 stage 28:6 32:7,8 standard 25:17 26:11 37:23 star 23:25 start 5:21 6:2 started 42:17 Starting 18:2	state 2:5 7:17 48:23 50:3,15 stated 45:19 statement 33:4 states 14:8 23:16 27:12 31:16,20 33:13 34:8 35:12 39:6 status 5:18 9:19,23 9:24 10:2 22:21 22:23 23:5 27:3,5 34:1 35:5 37:8 40:7,14 statute 13:13 17:8 26:20 29:13 36:2 41:8 45:24 statutes 44:5 stay 11:21 17:18 step 13:15,16,19,20 32:3 stepped 4:19 steps 7:7 stop 41:11 store 44:21 strike 40:3 sub-priority 41:1 subpoena 3:9 5:4,5 10:18 successful 28:18 successor 1:7,8 2:7 2:7 Suite 1:22 2:3,11 2:16 summary 10:19 super 17:16 35:22 37:3 39:22 40:24 45:13,20,22,25 46:11 Supreme 36:16,16 sure 5:8,9 8:3 19:22 22:14 25:25 30:23 31:3 31:4 32:8 39:13	45:16 suspect 14:16 sworn 4:9,16 50:8 <hr/> T <hr/> T 3:7 tab 12:3 take 7:7 15:20 28:5 32:11 36:20 43:24 taken 1:20,22 2:2 17:4 talk 44:13 talked 29:25 talking 43:19 taxes 14:8,15 team 21:16 tecum 5:5 10:18 tell 4:9 41:20 telling 33:5 ten-day 18:9 tender 29:22 40:5 tendered 36:23 40:23 term 35:22 Terri 1:25 2:4 50:6 50:22 testified 4:10 22:1 30:24 39:24 testify 44:18 50:8 Thank 13:8 48:17 49:3 things 32:1 think 10:24 13:17 16:15,16 23:22 27:4 29:13 30:20 30:23 31:3 35:1 39:25 41:4,6 42:17,24 45:15 third 31:20 third-party 26:1 thorough 15:22 thought 24:14 41:8
--	--	---	--	--

David Alessi ~ January 19, 2018
30(b)(6) Representative of Alessi & Koenig, LLC

Page 9

three 12:19 throw 11:25,25 time 9:13,13 15:20 16:14,25 20:9 22:19 24:8 25:23 27:11 30:2 39:21 42:6 44:24 46:1 48:14,21 times 22:1 32:4 40:12 43:9 title 6:23 14:4,6,9 14:13,16,21 15:3 15:18 18:3,5,13 21:14 27:20,21 27:22,24 33:10 34:5,7 titled 22:4 today 4:23 8:13,21 35:16,25 today's 5:16 top 16:9 21:22 topics 5:10,11,14 total 27:12 28:20 31:10,11,12 32:24 36:23 touch 17:22 transcribed 50:9 transcript 50:10 50:12 transcription 50:10 transfer 29:3 33:21 transferred 10:7 treated 47:25 TRI 33:10 true 50:10 trust 1:4,10 2:8 4:21 5:23,24 12:13 14:25 15:5 15:5,8,14 16:1 18:17,19,23,23 18:24,25 24:4 26:9 29:19 32:12	36:13 42:24 46:16 trustee 1:8,9 2:7,8 3:11 12:25 21:8 21:23 26:21,22 27:6,9 28:5,6 29:12 32:7 42:7 46:22 Trustee's 5:19 21:11 25:1 26:6 26:11 31:14,17 truth 4:9,9,10 50:8 50:8,9 try 13:14,19,19 15:3 turn 17:18 21:20 33:4 35:9 37:18 38:23 42:10 Turning 16:2 19:5 20:1 21:7 27:12 35:8 two 13:24 21:18 37:15 46:23 type 33:7 47:14 typewritten 50:9 50:10 typical 11:25	username 23:1,2,3 27:8 usually 12:6 15:24 utilizing 16:19	week 20:19 welcome 49:4 went 5:17 22:13 24:17 33:25 40:15 42:18,19 West 6:20 47:10 whatsoever 41:18 WHEREOF 50:15 winning 28:23 Winters 3:10 wipe 36:12 witness 3:2 4:16,24 5:6 9:7 48:15,18 49:4 50:8,12,15 wondering 14:11 word 16:15 17:16 work 28:7,8 worked 17:20 30:25 31:1,2 35:20 39:4 works 17:21,23 worth 24:15 wouldn't 30:10 40:13 44:22 write 28:15,18 written 20:14 wrong 34:20	Z Zillow 24:10 Zuni 1:10 2:8
		V		0
		valid 45:6 value 24:1,7 27:14 27:18,19,23 value/ 27:12 varying 43:23 Vegas 1:23 2:3,12 2:16 6:1,20 17:22 vendor 26:1 verbal 30:22 verbally 20:15 verify 17:2 Vidovic 25:25 Village 1:22 2:2,11 2:15 vis-a-vis 39:17 vs 1:6		0340-US 3:9 0531 3:9 0686-US 3:10 0689 3:10
		W		1
		waive 4:5 want 11:22 24:14 24:24 30:6 36:2 44:24 46:25 wanted 19:22 22:5 23:11 47:24 warranty 31:16 wasn't 19:24 20:23 22:5 32:20 37:11 47:23 way 19:17 27:17 32:23 40:16 46:3 we'll 9:23 14:10,21 30:20 40:1 we're 8:13 we've 15:19 29:25 44:12 website 23:12 47:22,24		1,150.50 17:1 1,266 33:22 1,400 40:5 1,494.50 38:19 39:8 1/24/2013 26:8 116 29:13 36:2 45:5 12th 13:10 13 11:20 147,456 24:5 147,456.00 23:21 1635 1:22 2:2,11 16th 26:15,17 188 45:10 19 1:21 2:4 50:7 190 2:16 1995 2:15
	U		X	2
	U.S 1:7 2:7 4:15 Uh-huh 15:1 31:24 understanding 8:3 9:20 10:1 26:20 28:12 36:6,11,14 36:15,19 understood 36:22 Unit 47:9 unquote 32:17 updated 27:9 upload 23:12 upside down 24:18 upstairs 47:9 use 15:16,16,17			2,000 27:15 2,950 22:6 2/20/13 33:13 2:27 1:21 2:4 50:7 200 1:22 2:3,11 4:25 15:23 17:9 2000 34:4 2004 14:25 2006-OA1 1:10,11 2:8,9 2010 42:17 2011 15:8

David Alessi ~ January 19, 2018
30(b)(6) Representative of Alessi & Koenig, LLC

Page 10

2012 9:3 11:6 13:10 14:9,13,15 16:11,12 25:3,10 34:10 36:7 37:19 43:21 45:22	300 33:19 31164 29:14 31st 25:3 325 17:11 340 10:23	500 9:8 530 10:19 33:4 531 10:19 34:5 5316 1:4 5:24,25 55 12:16		
2013 26:15,17 27:15 29:9 33:17 33:18 36:13,19 36:22	341 11:3 342 11:5 345 11:18 348 12:7	<hr/> 6 <hr/>		
2014 29:9,9	350 12:15	619 1:25 50:6,22		
2018 1:21 2:4 50:7 50:16	354 13:10 357 13:21	634-5000 2:12 686 42:12 43:2,3 688 43:14 689 42:12		
204 6:20 47:9,10	362 14:2	6th 11:6 16:11 50:15		
218 35:9	373 14:23	<hr/> 7 <hr/>		
21st 37:19	<hr/> 4 <hr/>	702 2:12,17		
222 35:10 37:10,18	4 3:3,9,9,10,10,11 3:12	750 13:17 46:24		
223 37:11	4,039 25:11	<hr/> 8 <hr/>		
225 37:18	4.12 45:19	8,200 26:10 27:13 27:15 28:23,24		
227 38:8	4/20/2012 20:7	889-6665 2:17		
229 38:23	405 15:7	89031 6:1		
22nd 16:12	436 16:2	89134 2:12,16		
231 38:15 40:19	442 16:6 17:18	89147 6:21		
233 35:9	444 17:18	8th 33:18		
25 5:10	446 14:13 18:2	<hr/> 9 <hr/>		
2500 22:6 25:15 34:4	447 18:22	95 13:18		
26 33:17	451 15:19 19:5	9500 6:20 47:10		
27th 34:9,16,17,19 37:22	454 20:1	969 23:17		
28 14:15	455 21:4	99 24:17		
28th 14:13 25:10 26:17	471 21:7			
2950 25:15	474 21:19			
<hr/> 3 <hr/>	475 21:18			
3,000 29:5,16 33:25	479 21:20,21			
3/28/12 14:9	480 25:1			
3:33 49:6	482 25:20			
30(b)(4) 4:6	486 26:6 31:14			
30(b)(6) 1:20 2:1 5:5 6:17 50:7	487 27:12			
30(e) 50:11	488 27:25			
	<hr/> 5 <hr/>			
	5,021 28:21,24			
	50/50 7:12			

EXHIBIT D

EXHIBIT D

1 EIGHTH JUDICIAL DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 * * * * *
4 5316 CLOVER BLOSSOM CT TRUST,)
5 Plaintiff,)
6 vs.) Case No.: A-14-704412-C
7 U.S. BANK, NATIONAL) Dept. No.: XXIV
8 ASSOCIATION, SUCCESSOR)
9 TRUSTEE TO BANK OF AMERICA,)
10 N.A., SUCCESSOR BY MERGER TO)
11 LASALLE BANK, N.A., AS)
12 TRUSTEE TO THE HOLDERS OF THE)
13 ZUNI MORTGAGE LOAN TRUST)
14 2006-OA1, MORTGAGE LOAN)
15 PASS-THROUGH CERTIFICATES)
16 SERIES 2006-OA1; and CLEAR)
17 RECON CORPS,)
18 Defendants.)
19 _____)

**CERTIFIED
COPY**

20 DEPOSITION OF GERALD MARKS
21 30(b)(6) REPRESENTATIVE OF COUNTRY GARDEN OWNERS ASSOCIATION
22 Taken on Friday, January 19, 2018
23 At 1:14 p.m.
24 Taken at 1635 Village Center Circle
25 Suite 200
Las Vegas, Nevada
Reported By: Terri M. Hughes, CCR No. 619

Gerald Marks ~ January 19, 2018
30(b)(6) Representative of Country Garden Owners Association

Page 2

1 DEPOSITION OF GERALD MARKS, 30(b)(6) REPRESENTATIVE OF
2 COUNTRY GARDEN OWNERS ASSOCIATION, taken at Akerman, LLP,
3 1635 Village Center Circle, Suite 200, Las Vegas, Nevada,
4 on Friday, January 19, 2018, at 1:14 p.m., before Terri M.
5 Hughes, Certified Court Reporter, in and for the State of
6 Nevada.

7 APPEARANCES:

8 For the Defendants, U.S. Bank, N.A., Successor Trustee to
9 Bank of America, N.A., successor by merger to LaSalle
10 Bank, N.A., as Trustee to the Holders of the Zuni Mortgage
Loan Trust 2006-OA1, Mortgage Loan Pass-Through
Certificates, Series 2006-OA1:

11 SCOTT R. LACHMAN, ESQ.
12 Akerman LLP
13 1635 Village Center Circle
14 Suite 200
Las Vegas, Nevada 89134
(702) 634-5000

15 For Country Garden Owners Association:

16 GIANNA M. ORLANDI, ESQ.
17 Pengilly Law Firm
18 1995 Village Center Circle
Suite 190
Las Vegas, Nevada 89134
(702) 889-6665

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Gerald Marks ~ January 19, 2018
30(b)(6) Representative of Country Garden Owners Association

Page 3

1
2
3
4
5
6
7
8
9
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11
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13
14
15
16
17
18
19
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21
22
23
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I N D E X

Witness: GERALD MARKS

	Examination	Further Examination
By Mr. Lachman	4	--

E X H I B I T S

Page

A - Subpoena for Deposition.....	6
B - CGOA000001-CGOA000130.....	13
C - Title Report.....	31
D - Miles, Bergstrom & Winters, LLP Correspondence.	35
E - Recorded Documents.....	43

1 (In an off-the-record discussion held prior to the
2 commencement of the deposition proceedings, counsel
3 agreed to waive the court reporter requirements under
4 Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)
5 Whereupon --

6 GERALD MARKS,
7 being first duly sworn to tell the truth, the whole truth,
8 and nothing but the truth, was examined and testified as
9 follows:

10 EXAMINATION

11 BY MR. LACHMAN:

12 Q. Good afternoon. My name is Scott Lachman. I
13 represent U.S. Bank in this action. This is 5316 Clover
14 Blossom Court Trust v. U.S. Bank, Case No. A-14-704412-C.
15 The witness has been sworn in.

16 For the record can you spell your name?

17 A. Gerald, G-E-R-A-L-D, Marks, M-A-R-K-S.

18 MR. LACHMAN: And can others in the room please
19 state their appearances?

20 MS. ORLANDI: Gianna Orlandi, Bar Number 5087.
21 Pengilly Law Firm. I am representing the HOA in this
22 matter.

23 MR. LACHMAN: And just for the record, prior to
24 this deposition I called the Law Offices of Michael Bohn,
25 and they said that they will not be attending this

1 deposition.

2 BY MR. LACHMAN:

3 Q. Is it all right if I call you Jerry?

4 A. Yes, that's what I would prefer. Thank you.

5 Q. All right. Jerry, how many times have you been a
6 witness in HOA foreclosure litigation?

7 A. Ten times already at least.

8 Q. Seeing that you've been a witness to approximately
9 ten depositions in HOA foreclosure litigations, would you
10 mind if I waive the opening questions?

11 A. Yes.

12 Q. Okay.

13 A. Sorry. I forgot I have to speak up.

14 Q. Yes.

15 A. And don't cut you off, that sort of thing. I'll
16 try. I'm not very good at that, but I'll try.

17 Q. If your attorney has any objections, let her make
18 those objections first, and then you can answer as well.

19 A. Okay.

20 Q. Is there anything prohibiting you from giving
21 truthful testimony today?

22 A. No.

23 Q. Okay.

24 MR. LACHMAN: We'll mark as Exhibit A the
25 Subpoena for Deposition of Rule 30(b)(6) Witness for

1 Country Garden Owners Association.

2 (Exhibit A was marked for identification.)

3 BY MR. LACHMAN:

4 Q. Jerry, have you seen this document prior to today?

5 A. Yes.

6 Q. And have you reviewed the 27 topics listed in
7 Exhibit -- or, yeah, Exhibit A?

8 A. I've read them.

9 Q. Okay. Are you the person most knowledgeable
10 regarding these topics?

11 A. Yes.

12 Q. How did you prepare for today's deposition?

13 A. Experience.

14 Q. Okay. Did you review any documents?

15 A. No, I haven't. Because of my illness I have been
16 in and out of the office.

17 Q. Okay. And did you speak to anyone regarding this
18 deposition?

19 A. Just Pengilly to make sure where it was and
20 whatever.

21 Q. Okay. And I don't want to know about your
22 communications with Pengilly.

23 A. Yeah.

24 Q. Does the Board know that you're here?

25 A. Yes.

1 Q. Okay. And did you speak to the Board about
2 anything regarding this deposition?

3 A. No.

4 Q. Okay. A few definitions before we start. When I
5 say "HOA," that means the Country Garden Owners
6 Association. When I say "Alessi," that's means Alessi &
7 Koenig, LLC. When I say "the trust," that means 5316
8 Clover Blossom Court Trust. When I say "the property,"
9 that means 5316 Clover Blossom Court, North Las Vegas,
10 89031.

11 Any questions for me before we start?

12 A. No.

13 Q. Okay. Jerry, what do you do for a living?

14 A. I own an HOA management company and I'm a super
15 CAM.

16 Q. What is super CAM?

17 A. Supervising CAM, that means I supervise other
18 community association managers when they go through their
19 provisional period.

20 Q. Okay. What's your company called?

21 A. M, as in Mary, P, as in Paul, MP Association
22 Management.

23 Q. Okay. And what's your title?

24 A. I'm the owner and also the manager.

25 Q. And what's your address?

1 A. 6053 South Fort Apache, Suite 110, Las Vegas,
2 89148.

3 Q. And what is your role as it pertains to this HOA?

4 A. The manager of the community.

5 Q. Okay. And how long have you been the manager for
6 this HOA?

7 A. Let's see. It's been what, five years now, I
8 think. I had them before and then they left when my
9 business partner left, then came back to me. So it's --
10 right now I think it's about the past five years, if I'm
11 not mistaken. I may be wrong, but it's around that time.

12 Q. And adding your prior relationship with the HOA to
13 this five years, approximately how many years have you
14 been --

15 A. That was probably another couple years.

16 Q. Okay.

17 A. Excuse me.

18 Q. And as manager for the HOA what are your duties?

19 A. To ensure that NRS 116 is followed, the
20 association's compliance, and that we produce everything,
21 you know, the financials and do everything we're supposed
22 to.

23 Q. Was your company the manager for the HOA in 2012?

24 A. Right off the top of my head I honestly don't
25 remember if it was us, me, because there was one of these

1 cases that it wasn't me, it was the management company
2 before me. And I think this may have been -- that could
3 have been in David's company, Nevada Association, Debbie
4 Pike. It could have been that company. I'm not sure.

5 Q. What was the -- so you were the manager, some
6 other company came in and was the manager and then you
7 came back?

8 A. Then we got it back.

9 Q. Who was the company in between?

10 A. I believe they were with -- I think it was Nevada
11 Association Services -- no, wait a minute. Wait a minute.
12 This is the one Dory brought. That would have been, I
13 believe, if my recollection is right, Diane Wild. What
14 was her company? I don't remember the name of her
15 company.

16 Q. Wild is W-I-L-D-E?

17 A. No, just I think it's W-I-L-D, Wild. Diane Wild
18 is the one that had all the issues with the Real Estate
19 Division.

20 Q. Okay.

21 A. I forgot -- yeah. I just don't remember. I could
22 find out real quick by making a phone call if it would
23 help if you need that decisive answer.

24 Q. No, that's okay. Why don't you just call later.

25 A. You sure?

1 Q. Tell your attorney, your attorney can --

2 A. Okay. I'll get you. Yeah, I've had so much going
3 on, to be honest with you.

4 Q. Don't even worry about it.

5 A. Yeah.

6 Q. That's not that big of a deal right now. Do you
7 maintain audio recordings for board meetings?

8 A. The Boards do. My contract doesn't say that I
9 have to do it. The Boards have to do it.

10 Q. Okay. So the Board keeps audio recordings?

11 A. But I always make sure, because I usually open
12 them on my phone or a recorder.

13 Q. Okay. And board meetings are -- there's minutes
14 of everything?

15 A. Everything. Oh, yes, and every 90 days.

16 Q. Okay. How often does the HOA bill assessments for
17 this --

18 A. Monthly. We do monthly.

19 Q. Is this monthly?

20 And how much are the --

21 A. Wait a minute. Let me back up. Country Garden is
22 the only one, I'm sorry, they're on coupons. They're the
23 only association out of everybody I do, they're on
24 coupons.

25 Q. Okay. And are these coupons monthly, quarterly,

1 yearly?

2 A. They're supposed to be paid monthly.

3 Q. Okay.

4 A. They're given to them once a year and, you know,
5 they have to tear out. And we're now at the point where
6 we send out if somebody's delinquent, because we don't
7 send them regular monthly statements, we send those folks
8 a statement to show they're delinquent.

9 Q. Okay. And you've kind of answered my next
10 question, but what happens when an account becomes
11 delinquent? You send some sort of notice. Is there
12 anything else that you do?

13 A. Well, under normal circumstances it would be
14 according to the collection policy. If they're two months
15 out, we would send them the first letter that's required
16 by NRS 116. That tells them you've got -- you're
17 delinquent. That would be a chance for them to give them
18 two months to repay it, and the third one would be a
19 hearing in front of the Board too if it was a hardship.
20 But that's only been in recent years that those three
21 letters were required before it was required.

22 Q. Okay. And what role does -- and I'll have some
23 more questions about --

24 A. Okay. That's fine.

25 Q. -- the delinquency in a little bit, but what role

1 does an HOA have in setting the price of the property at
2 an HOA foreclosure sale?

3 A. Nothing.

4 Q. Whose role is it to set the price of a property at
5 an HOA foreclosure sale?

6 A. I imagine it would be the collection company or
7 trustee company, whatever term you use.

8 Q. It's my understanding that Alessi was the
9 collection company for this HOA at the time of the
10 foreclosure sale on January 26, 2013. Who's the current
11 HOA collection company?

12 A. It would be HOA Lawyers Group now.

13 Q. Also run by Alessi?

14 A. Yeah, also run by Alessi.

15 Q. How big is this community?

16 A. A hundred homes.

17 Q. Single-family homes?

18 A. Single-family homes.

19 Q. What are the houses going for for sale nowadays?

20 A. To be honest with you, I don't get into that, but
21 just in my mind I would say it was in the probably 200,000
22 range, but I never get involved in that.

23 Q. Okay. What I'm going to do is go through the
24 HOA's file that your attorney produced in this case.

25 MR. LACHMAN: We'll mark that as Exhibit B.

1 (Exhibit B was marked for identification.)

2 BY MR. LACHMAN:

3 Q. All right. So I'll represent to you that these
4 are documents produced by your attorney with respect to
5 this case. You'll see the Bates stamp number at the
6 bottom, CGOA with some numbers attached to it.

7 A. Okay.

8 Q. When I go through this document, if I refer to a
9 page number, that's the number I'm referring to.

10 A. Okay.

11 Q. We're just going to go through these. I'm not
12 going to go one by one, but we're just going to skim
13 through them and I'll have questions as we go through.

14 The first eight pages here are a bunch of, looks
15 like, envelopes. Do you have any idea what documents
16 these envelopes go to?

17 A. Well, they could have been -- they could have been
18 the statements or they could have been violation letters.

19 Q. Okay.

20 A. I don't know without, you know, seeing what was
21 inside.

22 Q. Okay. Turning to page 9, this is the Account
23 History Report. It appears as though the monthly
24 assessments was \$55 in 2011-2012; is that correct?

25 A. Yes.

1 Q. And what is -- and the late fee at this time was
2 \$5.50?

3 A. Right.

4 Q. How does the late fee accrue?

5 A. Every month, if I'm understanding you, it's
6 according to their documents is how much we're allowed to
7 charge for late fees, and this would be a percentage and
8 that's how it comes up. So the 5.50 -- every time there's
9 a balance, if there's a balance owed, there's a late fee
10 going to be put on the account. That's accounting
11 principles.

12 Q. Okay. And is this report prepared by you?

13 A. This report would come from us.

14 Q. Okay. When you say "us" --

15 A. My company.

16 Q. Okay. And what is the pre-lien charge of \$45?

17 A. Okay. The pre-lien is -- again, now it's current.
18 When you do the first letters, you give them 14 days to
19 respond. If they don't respond, then what we do is a
20 courtesy. It's called a pre-lien, a letter of intent,
21 basically if you want to use terminology. And what that
22 does, it just gives them extra time, tells them how much
23 they owe, gives them an opportunity in that letter that
24 they have to contact the Board if they choose to do a
25 payment plan. If not, it will go to lien if they don't

1 pay it.

2 Q. Okay.

3 A. So that charge is paid by the homeowner. It's
4 charged to the homeowner, but the association pays it to
5 me upfront, then they get reimbursed when the homeowner
6 pays.

7 Q. Okay. So looking at this report, on July 31st,
8 2011 there's a beginning balance for \$170?

9 A. Right.

10 Q. That would amount to three months of assessments;
11 is that correct?

12 A. Well, that I don't know. Like I say, that would
13 mean it came from another company. So I'd have to go to
14 their records and figure out what was on their accounts.

15 Q. Okay. That makes sense.

16 A. Yes.

17 Q. So based on this report, your company, the
18 management company, took over HOAs --

19 A. August 1st.

20 Q. -- sometime in 2011?

21 A. Yeah, exactly. Because it looks like our first
22 billing was August 2011, \$55.

23 Q. Does the HOA charge an amount for nuisance
24 abatement charges?

25 A. No.

1 Q. Okay. And when are assessments due?

2 A. Most of them -- I'd have to look at their docs.

3 Due on the 1st. They have until the 15th until they're
4 considered late. But some docs, and, again, we'd have to
5 look at their CC&Rs, give them a full 30 days until
6 they're late.

7 Q. How many employees does your management company
8 have?

9 A. I have four.

10 Q. Okay.

11 A. I had more back then.

12 Q. So who actually prepares this document?

13 A. Any one of us can do it. Like if Alessi requests
14 a document, I can print it. Anybody can print it in my
15 office.

16 Q. Okay. And what steps are taken to verify that the
17 document is accurate?

18 A. Comes right off our computer.

19 Q. Okay. Let's look at page 11. Is this -- you were
20 referring to a letter earlier that was sent to homeowners
21 when they're --

22 A. This is a pre-lien letter.

23 Q. This is what's called a pre-lien letter?

24 A. Pre-lien letter, yes, this one on page 11.

25 Q. So this is a letter that's sent to homeowners when

1 they are more than nine months --

2 A. No, when they're more than two months out. Again,
3 with the new law it's changed. The new law we have to
4 send out the three letters.

5 Q. All right. Let's go back to 2011.

6 A. Okay. So we didn't have the three letters. So if
7 they were two months out, we would send them a -- this
8 thing, a pre-lien. And this states at this point they
9 owed 435.50. And then it says here, you know, if you
10 don't pay it by November 15th, and this says all balances
11 must be paid in full unless you, you know, make
12 arrangements, and then it says it will be -- a lien will
13 be put on if after this date, November 15, if they don't
14 do anything about it.

15 Q. Okay. So this is just a standard letter?

16 A. Yeah, pretty much. Pretty much.

17 Q. Okay. I don't believe I saw a collection policy
18 in this packet.

19 A. I don't know if there was one.

20 MS. ORLANDI: There was not.

21 BY MR. LACHMAN:

22 Q. Is that something that you can provide to your
23 attorney?

24 A. Yes.

25 MS. ORLANDI: Two things now.

1 MR. LACHMAN: Yeah. I had asked him if he
2 could produce his collection policy.

3 THE WITNESS: No problem.

4 MS. ORLANDI: Sure.

5 BY MR. LACHMAN:

6 Q. All right. The next letter, we're looking at page
7 14, is something from Noble Title. Do you know what this
8 is?

9 A. Hold on. Oh, that's -- that would be where they
10 sent for a demand. They send us a demand. I don't know
11 if you have a copy. Yeah, the demand is on page 16.

12 Q. All right. So something is happening with the
13 title and then you got to fill something out?

14 A. We have to fill out this when they're going to
15 sell the property or do anything with the property. This
16 comes from the title company to us.

17 Q. Okay. And is this your signature at the bottom of
18 page 16?

19 A. Actually, to be honest with you, that probably was
20 my business partner, because that's not my signature.

21 Q. Okay.

22 A. Sorry.

23 Q. Hey, that's fine. But this was something --

24 A. But we do this all the time.

25 Q. This is something that a title company sends

1 something to the HOA and you just fill this out?

2 A. Right. That's all we do is we take it off the
3 account history, and then if there's a transfer fee, a
4 demand fee, they want to know who the insurance is, and we
5 need to enter who the insurance is. Yeah, so that's what
6 this is.

7 Q. Okay. Looking on page 18, who's L a W
8 Collections?

9 A. I have no idea.

10 Q. So do you have any idea what this document is?

11 A. No, because that was the name of her company,
12 Castle Management, Diane Wild.

13 Q. Okay.

14 A. So that's the company before me.

15 Q. I just saved you a phone call.

16 A. Castle Management.

17 Q. Still in business?

18 A. No. She got -- let's just say there were issues.

19 MS. ORLANDI: I think the State of Nevada
20 needed to step in.

21 BY MR. LACHMAN:

22 Q. Do you have any licensures or certifications?

23 A. Oh, yeah. I have to have a license.

24 Q. Through the State of Nevada?

25 A. Oh, yes. My license number is 0086. I'm one of

1 the originals.

2 Q. Pretty impressive. All right.

3 A. Hopefully it's going to end this year. I'm
4 retiring.

5 Q. Congratulations.

6 MS. ORLANDI: Congratulations.

7 THE WITNESS: Well, after a quadruple bypass, I
8 think it's time.

9 BY MR. LACHMAN:

10 Q. Well, you look great, Jerry.

11 A. Thank you.

12 Q. All right. Going to page 19, pardon me if I'm
13 wrong, this would have been --

14 A. That's their statement.

15 Q. Okay. So this was a statement prior to your
16 involvement in the property?

17 A. Yes.

18 Q. Okay. Page 20, this appears to be Clark County
19 Real Property records?

20 A. Right.

21 Q. Printed on January 6th, 2011; correct?

22 A. Right.

23 Q. Okay. Would this have been something that your
24 management company printed out or the prior management
25 company?

1 A. No, that would have been them too.

2 Q. Okay. Is there a reason why management companies
3 print out the real property records?

4 A. Well, we want to -- in case there's a mess and we
5 want to check the dates of when they actually bought it.
6 Say, for instance, they buy it and then there's a time
7 period, so we know when to start the assessments. You
8 know, like say you bought in the middle of the month, we
9 got to make sure what date it is. So we go online and
10 we'll look at it too and make sure everything is correct.

11 Q. Do you ever look at the taxable value of the
12 property?

13 A. No.

14 Q. What about do you ever look at the assessor's
15 website?

16 A. Well, that's where we go for this, the assessor's
17 website, but we have to pull up -- we could do it by name
18 or address.

19 Q. Oh, okay. Do you ever -- when you're on the
20 assessor or recorder's website, do you ever pull up
21 records for deeds of trust or assignments?

22 A. No. No, I can't get into that.

23 Q. Okay.

24 A. I don't have passcodes for that.

25 Q. Just to make this go smooth, we're not going to go

1 into HOA violations regarding landscaping. We're going to
2 keep this pretty quick, okay, the quickest I can.

3 A. No, you're fine. You're fine. Believe me.

4 Q. All right. Let's turn to page 47. This appears
5 to be some sort of fax to --

6 A. That is not from my fax sheets I could tell you.

7 Q. Okay. So this was most likely --

8 A. Yes, this is not from my transmittal sheet.

9 Q. And this is dated 2004?

10 A. Yeah.

11 Q. This was not --

12 A. This could -- no, no.

13 Q. Okay. So Alessi may have been involved. Who
14 knows when this handwriting was on there too, so... Okay.
15 Let's move on then. Page -- well, let me back up to
16 Alessi. What's your relationship with David Alessi?

17 A. I've known him like for a lot of years.

18 Q. And you guys -- did you guys used to work
19 together?

20 A. Yeah. Well, I met him when I worked for a company
21 in Los Angeles in Malibu, California. That's when I first
22 met him.

23 Q. What year was this?

24 A. Oh, God. Don't make me go back that far. Oh, it
25 would have to be -- holy crap. I opened my company in

1 2005. I worked for him before. This would be in the
2 '90s, late '90s.

3 Q. Okay. Did you in your role as manager for this
4 HOA, did you ever inform Alessi -- well, let's strike
5 that.

6 Looking at page 48, this is a title report from
7 2004. Do you know who New Vision Management is?

8 A. Yes. New Vision was the company that I worked for
9 after I went to Bench -- when I left Benchmark, I moved to
10 California six months, sorry for the story, to be with my
11 family. And I lasted there about six months. I said, I
12 can't take it. No, I can't take the driving, the traffic
13 and all this stuff. I moved back. I went to work for New
14 Vision Management.

15 Q. Okay.

16 A. As a community association manager. So that's
17 where New Vision came in.

18 Q. Okay. Let's turn to page 75. This is the first
19 page of the Declaration of Covenants, Conditions and
20 Restrictions for Country Garden. It doesn't say HOA, but
21 for Country Garden. Does your management company abide
22 by the HOAs?

23 A. Oh, definitely.

24 Q. Okay.

25 A. We follow everything.

1 Q. Is a copy of the CC&Rs included in everybody's --

2 A. It's required by law when we do a seller's
3 package.

4 Q. All right. Let's turn to Section 4.9. I'll get
5 the page for you there. Page 99.

6 A. Oh, excuse me. I'm sorry.

7 Q. And this talks about the effect of nonpayment of
8 assessments, and it gives a sample Notice of Delinquent
9 Assessments form. Is this the form that the HOA uses for
10 delinquent assessments?

11 A. Well, what do you mean, form? We do is our --
12 like I say, we do our pre-lien, and then that's to let
13 them know, and then once they don't do anything, then
14 everything is given to the trustee company. We're out of
15 the picture.

16 Q. Okay. So the Notice of Delinquent Assessment
17 doesn't get sent by the HOA?

18 A. Yeah.

19 Q. Okay. So the HOA can use whatever form they want?

20 A. Yeah. We don't have to do a pre-lien by law, but
21 we do it as a courtesy to try to get them to pay.

22 Q. It states here on page 100 at the bottom, "Such
23 notice shall be signed by an officer or director of the
24 association, its manager or attorney." Do you know if the
25 Notice of Lien in this case was signed by one of those

1 people?

2 A. I have no idea.

3 Q. Maybe we'll take a look at that later.

4 A. Okay.

5 Q. Let's turn to page 101. Section 4.9(d). At the
6 time of sale what was the HOA's understanding of this
7 section?

8 A. As I say, once we send it over to lien, we were
9 out of the picture.

10 Q. Okay. Section 4.10, Notice to Lien Holders. It
11 states that "A copy of the notice of default and election
12 to sell as well as the notice of sale shall be mailed
13 certified or registered mail, return receipt requested, to
14 persons who have recorded requests for notice per NRS
15 107." Just making sure I understand this right. The
16 association doesn't actually do this?

17 A. No.

18 Q. It's the trustee?

19 A. The trustee company.

20 Q. Okay. Turning to Section 4.11 on page 102 --

21 MS. ORLANDI: I'm sorry, 102?

22 MR. LACHMAN: 102.

23 BY MR. LACHMAN:

24 Q. And your answer may be the same for a lot of these
25 questions. What was the association's understanding of

1 4.11 at the time of the sale?

2 MS. ORLANDI: I'm going to object as to legal
3 conclusion. And, Jerry, the floor is yours now.

4 THE WITNESS: Okay. Again, once it went to
5 Alessi, we were out of it.

6 BY MR. LACHMAN:

7 Q. Okay. In Section 4.12 also on page 102 it talks
8 about super priority. This was actually one of the first
9 CC&Rs that actually specifically states super priority.
10 And it states that -- at least it's my understanding that
11 it states that the super priority is six months
12 immediately preceding institution of an action to enforce
13 the lien. What is -- what was the HOA's understanding of
14 super priority in 2011 and 2012?

15 A. Oh, I don't think I can speak for them on what
16 their thoughts were on this.

17 Q. Let's turn to page 130. It appears as though
18 these CC&Rs were from the year 2000. Any reason that you
19 know why these weren't -- that this copy is not signed?

20 A. No, I don't know. You know, from the first time
21 when we got them, we could have had an original copy. I
22 don't have signed copies. I tried to get the recorded
23 copies, you know.

24 Q. Has the association updated its CC&Rs since 2000?

25 A. I'm not sure to be honest with you.

1 Q. Are the CC&Rs something that's provided to Alessi
2 as part of Alessi's collection services?

3 A. Oh, when they ask for it, we request it, yes.

4 Q. Okay. And do they often -- did Alessi often
5 request it?

6 A. If they did, they could have gone through the
7 bookkeeping department. They could have gone to anybody
8 in my office and asked for them.

9 Q. But you have no way of knowing --

10 A. I have no way of knowing.

11 Q. -- six, seven years later?

12 A. I'm sharp but not that sharp.

13 Q. Okay. And the HOA would expect Alessi would abide
14 by the HOA CC&Rs?

15 A. Correct.

16 Q. Did the HOA instruct Alessi to conduct a
17 non-foreclosure sale?

18 A. Not that I know of.

19 Q. Okay. We don't have the policy in front of us,
20 but do you know if the policy requires that Alessi go to
21 the HOA for permission to conduct a foreclosure sale?

22 A. That I don't know.

23 Q. Okay. How do you describe the relationship
24 between the HOA and Alessi?

25 A. There was no issues that I knew of.

1 Q. What was the relationship?

2 A. Most of it would be me, our company, dealing with
3 Alessi.

4 Q. Okay.

5 A. As far as paperwork, as far as action, and then,
6 you know, advising the Board what we're doing.

7 Q. And what services did Alessi provide the HOA?

8 A. Well, they would take -- once it got to the lien,
9 they would take it from that point on.

10 Q. Okay. Can a homeowner contact the HOA while the
11 file is in collections to make a payment directly?

12 A. No, once it's in collections.

13 Q. Could a secured party such as a beneficiary of a
14 senior deed of trust contact the HOA and ask how much is
15 due on an account?

16 A. No.

17 Q. Any reason?

18 A. They would have to go to Alessi.

19 Q. Okay.

20 A. All communication would be through Alessi.

21 Q. Is Alessi directed to respond to beneficiaries of
22 senior deeds of trust with respect to how much the monthly
23 assessment is?

24 A. I have no idea what they're allowed, not allowed
25 to do.

1 Q. When does the HOA decide to recommend foreclosure,
2 if any?

3 A. Well, if it's going on for a long period of time,
4 we look at the delinquency and try to find out why, did
5 they do a payment plan, did they not do a payment plan,
6 it's time.

7 Q. Okay. Does the Board need to authorize the sale?

8 A. The Board -- that's been a tough question going on
9 in this whole thing. We -- oh, God, I don't know. I
10 don't know how to answer that. Because it's, like I say,
11 it's been going on forever, and the Board, I usually say,
12 Well, here's what's happening. They tell me, Go ahead and
13 put it to lien. Once it goes to lien, they leave it
14 alone, pretty much leave it alone.

15 Q. Okay. Your communications with the Board, are
16 they verbal at a meeting, are they in minutes?

17 A. No, they're verbal, they're in minutes, they're in
18 executive sessions sometimes.

19 Q. Okay. What factors are considered in recommending
20 foreclosure?

21 A. Well, again, if in fact -- okay. Possibly a good
22 example is they set up a payment plan and then they
23 default on the payment plan, that would be a good example.

24 Q. At the time of this foreclosure sale in January
25 2013, what was the HOA's understanding of what would

1 happen to the bank's deed of trust?

2 A. Oh, I have no idea. I don't know that they would
3 know.

4 Q. Okay. Let me just phrase it one other way. If,
5 in fact, the Board recommended foreclosure --

6 A. Okay.

7 Q. -- did the Board understand that the bank's deed
8 of trust would be extinguished?

9 A. Again, I can't speak for their knowledge on this
10 subject.

11 Q. Is there someone on the Board presently or
12 formerly that may have knowledge?

13 A. This Board has changed. Right now I'm down to two
14 board members there and I can't find a third. I'm
15 operating with two and I can't find a third. Boards are
16 unique.

17 Q. How much oversight does the HOA have over Alessi
18 in its activities?

19 A. Well, they have the opportunity to look at the
20 status report when anything is in collection. That gives
21 them updates of where they are with every account. And we
22 do go over those when we do executive session. We'll go
23 over the status report.

24 Q. And that's a status report prepared by Alessi?

25 A. From Alessi, correct.

1 Q. And that's the one that lists the dates?

2 A. And what they've done, you know, the reports
3 they've done or the inquiries they've done, progress
4 payments have been made, et cetera.

5 Q. Okay. Did the HOA instruct Alessi as to the
6 minimum bid they could offer the property for?

7 A. No.

8 Q. Did the HOA instruct Alessi to accept or reject
9 super priority payments from lienholders?

10 A. No.

11 Q. Did Alessi inform the HOA regarding how many
12 people showed up to bid on the property at auctions?

13 A. No.

14 Q. Did Alessi inform the HOA that there would be --
15 that there was a deed of trust on the property?

16 A. No.

17 Q. Did Alessi inform the HOA regarding the market
18 value of the property?

19 A. No.

20 Q. Did Alessi provide a title report to the HOA?

21 A. No.

22 MR. LACHMAN: Let's mark as Exhibit C the title
23 report.

24 (Exhibit C was marked for identification.)

25 ///

1 BY MR. LACHMAN:

2 Q. I'll represent to you that this is a title report
3 produced by Alessi as part of his documents that he
4 provided to my client. It's Bates stamped US Bank
5 (Johnson) 446 through 450. Can you tell the date of this
6 document from page 446?

7 A. March 28th.

8 Q. Or approximately?

9 A. 2012 it says right here.

10 Q. Okay. Let's turn to page 446. It identifies a
11 deed of trust and an assignment of deed of trust; correct?

12 A. 446 is the front page; right?

13 Q. 447. Yeah, turn to the next page.

14 A. Okay.

15 Q. And I'll repeat that. It identifies a deed of
16 trust and an assignment of deed of trust; correct?

17 A. I guess I've never seen the document. I've never
18 seen this.

19 MS. ORLANDI: I'm just going to object that the
20 document speaks for itself. And, Jerry, you can answer as
21 you see fit or not.

22 BY MR. LACHMAN:

23 Q. All right. So you've never seen this document
24 before?

25 A. No.

1 Q. Does the HOA or does your management company ever
2 ask Alessi for these title reports?

3 A. No.

4 Q. Okay. And was the HOA aware of the deed of trust
5 and the assignment of deed of trust prior to the
6 foreclosure sale?

7 A. I don't -- I don't know.

8 Q. Okay. Is there anything that prevented the HOA
9 from reviewing the title report prior to the sale?

10 A. No. There's nothing -- I mean, again, once it
11 went to Alessi, they handled it. That's what they --

12 Q. How does the HOA pay Alessi for its services?

13 A. There's no charge.

14 Q. All right. So how does Alessi --

15 A. All the charges are applied to the homeowner,
16 whomever.

17 Q. Okay. What happens in a situation where the
18 property is not foreclosed?

19 A. I believe it reverts to the association, but it
20 stays in limbo.

21 Q. Okay. Does the HOA tell Alessi who to send
22 collection notices to?

23 A. I do by watching my delinquency list every month.
24 So we're back to the beginning again.

25 Q. Does the HOA tell Alessi to send the collection

1 notices to first deed of trust holders?

2 A. No. We don't get into that.

3 Q. Okay. So Alessi decides who to send --

4 A. Alessi does all that, correct. I only do, again,
5 the very beginning parts of it.

6 Q. Okay. In 2012-2013 did the HOA have an
7 understanding as to whether a lienholder could take any
8 actions to protect its interest in the property before an
9 HOA foreclosure sale?

10 A. I don't know.

11 Q. What actions could a lienholder take to protect
12 its interest in the property?

13 A. Pay the assessments or make contact.

14 Q. Okay. We'll go into that in a little bit. In
15 2012-2013 did the HOA have a policy concerning acceptance
16 of super priority lien payoffs prior to HOA foreclosure
17 sales?

18 A. No, I don't think so.

19 Q. Did the HOA instruct Alessi on how to deal with
20 requests to pay off liens by lienholders?

21 A. No.

22 Q. In the HOA files were there any requests to pay
23 super priority liens?

24 A. No.

25 Q. Okay. Did the HOA instruct Alessi not to provide

1 payoff information to lienholders?

2 A. No.

3 Q. Did any party offer to pay the super priority lien
4 on this property?

5 A. I have no idea.

6 Q. Was the HOA notified that the bank attempted to
7 tender money to the HOA prior to the HOA foreclosure?

8 A. No.

9 Q. Any reason why Alessi wouldn't tell the HOA?

10 A. I have no idea.

11 Q. I guess we'll have to ask Alessi.

12 A. I guess you're going to have to ask Alessi.

13 Q. Have you ever heard of a law firm by the name of
14 Miles, Bauer, Bergstrom & Winters?

15 A. No.

16 MR. LACHMAN: We'll learn a little about them.
17 Attached as Exhibit D is documents that were produced by
18 the bank, 218 through 233, and at the top it states Miles,
19 Bergstrom & Winters, LLP Affidavit.

20 (Exhibit D was marked for identification.)

21 MS. ORLANDI: Can we go off the record for a
22 minute.

23 (Discussion off the record.)

24 (A recess was then taken.)

25 MR. LACHMAN: Let's go back on the record.

1 BY MR. LACHMAN:

2 Q. Jerry, you understand you're still under oath?

3 A. Yes, sir.

4 Q. Let's take a look at this exhibit, the Miles,
5 Bauer exhibit. Have you ever seen any of these documents
6 before?

7 A. No, sir.

8 Q. Let's go through them. On page 222, this is a
9 letter from Miles, Bauer, Bergstrom & Winters to the
10 Country Garden Owners Association care of The Alessi &
11 Koenig, LLC. The property listed on this letter is the
12 property that we're here for today; correct?

13 A. Yes.

14 Q. Okay. Have you ever seen a letter of this sort
15 from Miles, Bauer?

16 A. Not that I recall.

17 Q. Okay. And some of these questions I'm going to
18 know the answer to, but just for a record, let's just go
19 through them. Did Alessi notify the HOA that the bank
20 attempted to tender money to the HOA prior to the HOA
21 sale?

22 A. No.

23 Q. Is this the type of letter that Alessi needs to
24 consult the HOA about?

25 A. Questionable.

1 Q. Okay. And when you say "questionable," can you
2 just --

3 A. Well, my thing is, maybe I'm wrong, they entrusted
4 Alessi to handle all this. That's what they're there for.
5 That's what they need to do.

6 Q. And this letter was before the HOA foreclosure
7 sale; correct?

8 A. I believe so.

9 Q. Okay. It looks like this is a letter from Miles,
10 Bauer requesting the super priority amount. Would you
11 agree with that?

12 A. No, I don't know anything about this.

13 Q. And if Alessi received this letter, this is
14 something that you would expect Alessi to respond to;
15 correct?

16 A. Yes, that they would handle it.

17 Q. Okay. Let's turn to 225. I'll represent to you
18 that this was a response from Alessi to the letter we just
19 looked at. What's the date of this?

20 A. I don't know. Where is it? Oh, my God, I could
21 barely see it. Tuesday, November 27th, 2012.

22 Q. Okay. So that would likely be in response to the
23 letter we just looked at?

24 MR. LACHMAN: Go off for a second.

25 (Discussion off the record.)

1 MR. LACHMAN: All right. Let's go back on.

2 BY MR. LACHMAN:

3 Q. This was likely a letter in response to the letter
4 we just looked at?

5 A. Well, I can't make that assumption.

6 Q. Okay. And this -- you've never seen 225 through
7 -- 225 and 226, this was prepared by Alessi; correct?

8 A. No.

9 Q. Where would Alessi get the numbers from?

10 A. They would get the statement. Page 227 they would
11 get. That's an account history that would come from us.
12 Not that page, 227.

13 Q. Okay.

14 A. They ask us for an account ledger, and we provided
15 an account ledger.

16 Q. Based on these documents, did Alessi provide the
17 super priority amount to Miles, Bauer?

18 A. I have no idea.

19 MS. ORLANDI: Speculation.

20 BY MR. LACHMAN:

21 Q. Based on 226, approximately how many assessments
22 were the homeowners delinquent on?

23 A. I don't know. Where does it say? Oh, it says
24 assessments through December 15, 1189.

25 Q. So that's approximately 21 or 22 months of

1 assessments?

2 A. Well, there's 55, but it was lower before that.

3 So, yeah, 55. I'd have to have a calculator.

4 Q. Oh, here's your buddy.

5 MS. ORLANDI: And there he goes.

6 MR. LACHMAN: Just for the record, David
7 Alessi, who just walked by, we're going to have his
8 deposition next.

9 BY MR. LACHMAN:

10 Q. And page 227, this is an account history report
11 prepared by your company; correct?

12 A. Well, I think then it could have been New Vision
13 or was it me? I'm not sure. But it's a Voyager program,
14 so it would come from one of us. We had the same program.

15 Q. Okay. And based on this, monthly assessments and
16 late fees accounted for \$469; correct?

17 A. That's what they're saying here.

18 Q. Do you know whose handwriting is on this document?

19 A. I have no idea. Somebody from Alessi's office.

20 Q. I'll represent to you that's probably someone from
21 Miles, Bauer --

22 A. Okay. I don't know.

23 Q. -- who was probably trying to figure out how much
24 to pay Alessi and the HOA.

25 A. Okay.

1 Q. Let's turn to the next page here, page 229. This
2 is a letter dated December 6th, 2012 to Alessi regarding
3 the property. Have you ever seen this letter before?

4 A. Nope, not that I recall.

5 Q. Okay. And if you look at 230, it states that "our
6 client has authorized us to make a payment to you in the
7 amount of \$1,494.50." Was the HOA ever aware that the
8 bank was providing payment in the amount of \$1,494.50 to
9 the HOA?

10 A. I couldn't answer that.

11 Q. If there's nothing in the HOA file, would you then
12 deduce that Alessi never provided this to you?

13 A. I would say that I've never seen it. I don't
14 know.

15 Q. Okay. Let's turn to 231. This is a check from
16 Miles, Bauer to Alessi & Koenig dated December 4th, 2012
17 in the amount of \$1,494.50. Would it be safe to assume
18 you've never seen this check before?

19 A. Correct, never seen it.

20 Q. Page 233 is pretty illegible, so we're not going
21 to go through that one.

22 A. Even with my trifocals I couldn't see it.

23 Q. I can't either. Do you know if Alessi accepted or
24 rejected the bank's super priority lien payoff?

25 A. I have no idea.

1 Q. Based on -- let's go back to 227 for a second.
2 Looking at the handwriting stuff right here. Assessments
3 for nine months of \$55, \$495, that's nine months of
4 assessments. Then you have collection fees, 950, and then
5 \$49.50. Is that the -- calculating those numbers, that
6 appears to be the amount of the check; correct?

7 A. What check?

8 Q. The check on --

9 A. Oh, you're talking about --

10 MS. ORLANDI: The bank check.

11 BY MR. LACHMAN:

12 Q. -- 231.

13 A. Okay. Let me look at it.

14 Q. I should have asked you to bring a calculator to
15 this deposition.

16 A. I do have it on the phone, pal. The 1494.50. So
17 if you add up -- hold on. Calculator. So if we clear out
18 this and we're going to add 495 plus 49.50 plus 950 plus,
19 1494.50.

20 Q. And that's the amount of the check; correct?

21 A. Yes.

22 Q. Okay. So based on that, the HOA was willing to
23 pay -- or the bank was willing to pay the HOA nine months
24 of assessments, almost \$50 in late fees and 950 in
25 collection fees?

1 A. It appears that.

2 Q. If the HOA knew that they were going to receive
3 over \$500 in assessments, do you know what the HOA would
4 have done with that?

5 A. I can't speak for them at the time, because I'm
6 not sure who was on the Board.

7 Q. Okay. Given that the bank tendered more than nine
8 months of assessments to pay off the super priority lien
9 payoff, was the foreclosure sale of this property a
10 sub-priority sale?

11 A. I have no idea.

12 Q. Okay. How much money do you think the bank should
13 have to pay to preserve its interest in the property?

14 A. That's not for me to say.

15 Q. Who would that be to say?

16 A. I don't know, but it's not me.

17 Q. Okay. What amount would the HOA have accepted
18 from the bank to release its super priority lien?

19 A. I have no idea.

20 Q. Nine months of assessments?

21 A. At the time wasn't it six months? Was it six
22 months at the time or nine months?

23 Q. It was nine months at the time.

24 A. Nine months at the time. Then I imagine it would
25 get the nine months.

1 Q. Okay. So let me just rephrase my question. If
2 the bank offered the association nine months of
3 assessments, the association then would have --

4 A. Again, I can't speak for the process in how it
5 went down.

6 Q. Okay. Did the HOA instruct Alessi to conduct a
7 foreclosure sale on the HOA's super priority lien?

8 A. I don't know at the time.

9 Q. Okay. Did Alessi specifically tell the HOA that
10 it was conducting a foreclosure on the HOA's super
11 priority lien?

12 A. I don't know at that time.

13 Q. Did the HOA know that Alessi postponed the sale?

14 A. The only way we would know is on the status
15 report.

16 Q. Okay.

17 A. So if you have one of his status reports, you
18 might be able to figure it out.

19 Q. It's in this pile somewhere. We're not going to
20 get there. We're going to get you out of here shortly.

21 A. We're good.

22 MR. LACHMAN: All right. Let's mark as Exhibit
23 E some recorded notices.

24 (Exhibit E was marked for identification.)

25 ///

1 BY MR. LACHMAN:

2 Q. Have you ever seen the Notice of Delinquent
3 Assessment Lien on page 141?

4 A. Oh, I've seen these before but not this particular
5 one.

6 Q. Okay. Are these normally something that Alessi
7 provided to the HOA?

8 A. No.

9 Q. Okay. Do you know who Ryan Kerbow is?

10 A. Ryan Kerbow used to be an attorney that worked for
11 David.

12 Q. Okay. Was your understanding of Alessi & Koenig
13 as a law firm or as a collection company?

14 A. Both.

15 Q. Just depending on what they were doing?

16 A. It depended on the circumstance.

17 Q. In this circumstance did the HOA believe that
18 Alessi was an attorney or --

19 A. Oh, this would be a trustee collection company.

20 Q. Okay. And what's the date of this one?

21 A. Which one? February 6th, 2012, is that the one
22 you're looking at?

23 Q. Yeah. I usually go by the recorded date.

24 A. Oh, okay. I'm sorry, yes.

25 Q. But I see what date you're referring to.

1 A. Yeah, I'm referring to it on the bottom.

2 Q. Okay. And how much was owed at this time?

3 A. According to this is 1,150.50 plus this 1,075
4 represents, oh, I don't know, late fee.

5 Q. Okay. Let's turn to 143. This is the Notice of
6 Default and Election to Sell. Have you ever seen this
7 particular document before?

8 A. Wait, I'm not there yet. Hold on. No.

9 Q. Again, this is something that Alessi just --

10 A. Yeah. These are all sent out by Alessi.

11 Q. Let's turn to 144, Notice of Trustee's Sale. Did
12 the HOA actually attend the sale?

13 A. No. We -- never.

14 Q. Okay. And have you ever seen this document on
15 page 144?

16 A. Oh, I've seen this document from other, but not
17 this particular document.

18 Q. Okay. Do you know if the sale occurred on
19 November 28th, 2012?

20 A. I don't know when it was.

21 Q. I'll represent to you that the sale occurred on
22 January 26th, 2013. Do you know why the sale was
23 postponed by a few months?

24 A. I have no idea.

25 Q. Would the HOA -- could the HOA Board have

1 postponed the sale?

2 A. No. It would all be done through Alessi.

3 Q. Does the HOA have any understanding of who
4 purchased this property at the foreclosure sale?

5 A. No.

6 Q. What's the current status of the property?

7 A. I believe somebody's in there now. Here, in fact,
8 wasn't there one of the histories was current through --
9 no, there was '17. Yeah, I think it's showing who's in
10 there.

11 Q. So the property is current?

12 A. Yeah, I believe it's -- well, I believe it is.
13 What's one of the documents we went through had a copy of
14 the statement? Wait a minute. I'll find it.

15 MR. LACHMAN: Go off for a second.

16 (Discussion off the record.)

17 MR. LACHMAN: All right. Let's go back on.

18 BY MR. LACHMAN:

19 Q. We were referring to the current assessment
20 history of the property?

21 A. Oh, yeah, it would be in this -- hopefully in this
22 one.

23 Q. Does the HOA know whether the bank's deed of trust
24 was extinguished as a result of the HOA foreclosure sale?

25 A. No.

1 Q. Does it care?

2 A. I'm not going to answer for them. Sorry.

3 Q. Who are the current board members?

4 A. Right now there's just Cheryl Shelly and Deepak
5 Chugh, C-H-U-G-H.

6 Q. Do you know who the board members were in 2012?

7 A. Oh, I'd have to go back and look again.

8 Q. And that's information we could find on the board
9 minutes if we needed to?

10 A. Oh, yeah, yeah. I could find out who that is,
11 definitely. I don't know where it is, who the current
12 owner is in there now, but I know there was, because I
13 remember a statement that we went through that showed
14 2017, so I believe that's the people that's in the
15 property now.

16 Q. And you're aware that this matter is presently in
17 litigation?

18 A. Yes.

19 Q. Do you have any understanding of the current
20 status of the litigation?

21 A. I --

22 Q. But any communication with your attorney don't
23 tell me.

24 A. I know it's in litigation.

25 Q. Does the HOA have any stake in who keeps the

1 property?

2 A. No.

3 Q. As long as somebody's paying the HOA --

4 A. As long as we get the assessments and they're
5 current and they don't have violations.

6 MR. LACHMAN: Jerry, thank you so much for your
7 time.

8 THE WITNESS: You're welcome.

9 MS. ORLANDI: Thank you.

10 (Thereupon, the taking of the deposition was
11 concluded at 2:14 p.m.)

12 * * * * *

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CERTIFICATE OF REPORTER

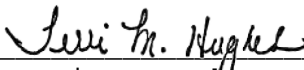
STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Terri M. Hughes, CCR No. 619, do hereby
certify: That I reported the deposition of GERALD MARKS,
30(b)(6) Representative of Country Garden Owners
Association, commencing on Friday, January 19, 2018, at
1:14 p.m.

That prior to being deposed, the witness was
duly sworn by me to testify to the truth, the whole truth
and nothing but the truth. That I thereafter transcribed
my said shorthand notes into typewritten form, and that
the typewritten transcript of said deposition is a
complete, true and accurate transcription of my said
shorthand notes. That prior to the conclusion of the
proceedings, pursuant to NRCP 30(e) the reading and
signing of the transcript was not requested by the witness
or a party.

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

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this 5th
day of February, 2018.



Terri M. Hughes, CCR No. 619

Gerald Marks ~ January 19, 2018
30(b)(6) Representative of Country Garden Owners Association

Page 1

A			B	
A-14-704412-C 1:6 4:14 abatement 15:24 abide 23:21 27:13 able 43:18 accept 31:8 acceptance 34:15 accepted 40:23 42:17 account 11:10 13:22 14:10 19:3 28:15 30:21 38:11,14,15 39:10 accounted 39:16 accounting 14:10 accounts 15:14 accrue 14:4 accurate 16:17 49:11 action 4:13 26:12 28:5 49:14,15 actions 34:8,11 activities 30:18 add 41:17,18 adding 8:12 address 7:25 21:18 advising 28:6 Affidavit 35:19 afternoon 4:12 agree 37:11 agreed 4:3 ahead 29:12 Akerman 2:2,11 Alessi 7:6,6 12:8 12:13,14 16:13 22:13,16,16 23:4 26:5 27:1,4,13,16 27:20,24 28:3,7 28:18,20,21 30:17,24,25 31:5	31:8,11,14,17,20 32:3 33:2,11,12 33:14,21,25 34:3 34:4,19,25 35:9 35:11,12 36:10 36:19,23 37:4,13 37:14,18 38:7,9 38:16 39:7,24 40:2,12,16,23 43:6,9,13 44:6,12 44:18 45:9,10 46:2 Alessi's 27:2 39:19 allowed 14:6 28:24 28:24 America 1:8 2:8 amount 15:10,23 37:10 38:17 40:7 40:8,17 41:6,20 42:17 Angeles 22:21 answer 5:18 9:23 25:24 29:10 32:20 36:18 40:10 47:2 answered 11:9 anybody 16:14 27:7 Apache 8:1 appearances 2:7 4:19 appears 13:23 20:18 22:4 26:17 41:6 42:1 applied 33:15 approximately 5:8 8:13 32:8 38:21 38:25 arrangements 17:12 asked 18:1 27:8 41:14	assessment 24:16 28:23 44:3 46:19 assessments 10:16 13:24 15:10 16:1 21:7 24:8,9,10 34:13 38:21,24 39:1,15 41:2,4,24 42:3,8,20 43:3 48:4 assessor 21:20 assessor's 21:14,16 assignment 32:11 32:16 33:5 assignments 21:21 association 1:7,18 2:2,14 6:1 7:6,18 7:21 9:3,11 10:23 15:4 23:16 24:24 25:16 26:24 33:19 36:10 43:2 43:3 49:7 association's 8:20 25:25 assume 40:17 assumption 38:5 attached 13:6 35:17 attempted 35:6 36:20 attend 45:12 attending 4:25 attorney 5:17 10:1 10:1 12:24 13:4 17:23 24:24 44:10,18 47:22 auctions 31:12 audio 10:7,10 August 15:19,22 authorize 29:7 authorized 40:6 aware 33:4 40:7 47:16	B 3:7,9 12:25 13:1 back 8:9 9:7,8 10:21 16:11 17:5 22:15,24 23:13 33:24 35:25 38:1 41:1 46:17 47:7 balance 14:9,9 15:8 balances 17:10 bank 1:7,8,9 2:8,8 2:9 4:13,14 32:4 35:6,18 36:19 40:8 41:10,23 42:7,12,18 43:2 bank's 30:1,7 40:24 46:23 Bar 4:20 barely 37:21 based 15:17 38:16 38:21 39:15 41:1 41:22 basically 14:21 Bates 13:5 32:4 Bauer 35:14 36:5,9 36:15 37:10 38:17 39:21 40:16 beginning 15:8 33:24 34:5 believe 9:10,13 17:17 22:3 33:19 37:8 44:17 46:7 46:12,12 47:14 Bench 23:9 Benchmark 23:9 beneficiaries 28:21 beneficiary 28:13 Bergstrom 3:10 35:14,19 36:9 bid 31:6,12 big 10:6 12:15	bill 10:16 billing 15:22 bit 11:25 34:14 Blossom 1:4 4:14 7:8,9 board 6:24 7:1 10:7,10,13 11:19 14:24 28:6 29:7,8 29:11,15 30:5,7 30:11,13,14 42:6 45:25 47:3,6,8 Boards 10:8,9 30:15 Bohn 4:24 bookkeeping 27:7 bottom 13:6 18:17 24:22 45:1 bought 21:5,8 bring 41:14 brought 9:12 buddy 39:4 bunch 13:14 business 8:9 18:20 19:17 buy 21:6 bypass 20:7
				C
				C 3:10 31:22,24 C-H-U-G-H 47:5 calculating 41:5 calculator 39:3 41:14,17 California 22:21 23:10 call 5:3 9:22,24 19:15 called 4:24 7:20 14:20 16:23 CAM 7:15,16,17 care 36:10 47:1 case 1:6 4:14 12:24 13:5 21:4 24:25

Gerald Marks ~ January 19, 2018
30(b)(6) Representative of Country Garden Owners Association

Page 2

cases 9:1	49:4,16	conclusion 26:3	24:21	definitely 23:23
Castle 19:12,16	clear 1:11 41:17	49:11	Covenants 23:19	47:11
CC&Rs 16:5 24:1	client 32:4 40:6	Conditions 23:19	crap 22:25	definitions 7:4
26:9,18,24 27:1	Clover 1:4 4:13 7:8	conduct 27:16,21	CT 1:4	delinquency 11:25
27:14	7:9	43:6	current 12:10	29:4 33:23
CCR 1:25 49:6,23	collection 11:14	conducting 43:10	14:17 46:6,8,11	delinquent 11:6,8
Center 1:21 2:3,12	12:6,9,11 17:17	Congratulations	46:19 47:3,11,19	11:11,17 24:8,10
2:16	18:2 27:2 30:20	20:5,6	48:5	24:16 38:22 44:2
CERTIFICATE	33:22,25 41:4,25	considered 16:4	cut 5:15	demand 18:10,10
49:1	44:13,19	29:19		18:11 19:4
Certificates 1:11	collections 19:8	consult 36:24	D	department 27:7
2:10	28:11,12	contact 14:24	D 3:1,10 35:17,20	depended 44:16
certifications	come 14:13 38:11	28:10,14 34:13	date 17:13 21:9	depending 44:15
19:22	39:14	contract 10:8	32:5 37:19 44:20	deposed 49:8
certified 2:5 25:13	comes 14:8 16:18	copies 26:22,23	44:23,25	deposition 1:17 2:1
certify 49:6,13	18:16	copy 18:11 24:1	dated 22:9 40:2,16	3:9 4:2,24 5:1,25
cetera 31:4	commencement	25:11 26:19,21	dates 21:5 31:1	6:12,18 7:2 39:8
CGOA 13:6	4:2	46:13	David 22:16 39:6	41:15 48:10 49:6
CGOA000001-C...	commencing 49:7	CORPS 1:12	44:11	49:10
3:9	communication	correct 13:24	David's 9:3	depositions 5:9
chance 11:17	28:20 47:22	15:11 20:21	day 49:16	Dept 1:6
changed 17:3	communications	21:10 27:15	days 10:15 14:18	describe 27:23
30:13	6:22 29:15	30:25 32:11,16	16:5	Diane 9:13,17
charge 14:7,16	community 7:18	34:4 36:12 37:7	deal 10:6 34:19	19:12
15:3,23 33:13	8:4 12:15 23:16	37:15 38:7 39:11	dealing 28:2	directed 28:21
charged 15:4	companies 21:2	39:16 40:19 41:6	Debbie 9:3	directly 28:11
charges 15:24	company 7:14,20	41:20	December 38:24	director 24:23
33:15	8:23 9:1,3,4,6,9	Correspondence	40:2,16	discussion 4:1
check 21:5 40:15	9:14,15 12:6,7,9	3:10	decide 29:1	35:23 37:25
40:18 41:6,7,8,10	12:11 14:15	counsel 4:2 49:14	decides 34:3	46:16
41:20	15:13,17,18 16:7	Country 1:18 2:2	decisive 9:23	DISTRICT 1:1
Cheryl 47:4	18:16,25 19:11	2:14 6:1 7:5	Declaration 23:19	Division 9:19
choose 14:24	19:14 20:24,25	10:21 23:20,21	deduce 40:12	docs 16:2,4
Chugh 47:5	22:20,25 23:8,21	36:10 49:7	deed 28:14 30:1,7	document 6:4 13:8
Circle 1:21 2:3,12	24:14 25:19 28:2	County 1:2 20:18	31:15 32:11,11	16:12,14,17
2:16	33:1 39:11 44:13	49:4,16	32:15,16 33:4,5	19:10 32:6,17,20
circumstance	44:19	couple 8:15	34:1 46:23	32:23 39:18 45:7
44:16,17	complete 49:11	coupons 10:22,24	deeds 21:21 28:22	45:14,16,17
circumstances	compliance 8:20	10:25	Deepak 47:4	documents 3:11
11:13	computer 16:18	court 1:1 2:5 4:3	default 25:11	6:14 13:4,15 14:6
Civil 4:4	concerning 34:15	4:14 7:8,9	29:23 45:6	32:3 35:17 36:5
Clark 1:2 20:18	concluded 48:11	courtesy 14:20	Defendants 1:13	38:16 46:13
			2:8	

Gerald Marks ~ January 19, 2018
30(b)(6) Representative of Country Garden Owners Association

Page 3

<p>doing 28:6 44:15 Dory 9:12 driving 23:12 due 16:1,3 28:15 duly 4:7 49:9 duties 8:18</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 3:1,7,11 43:23,24 earlier 16:20 effect 24:7 eight 13:14 EIGHTH 1:1 either 40:23 election 25:11 45:6 employee 49:14,14 employees 16:7 enforce 26:12 ensure 8:19 enter 19:5 entrusted 37:3 envelopes 13:15,16 ESQ 2:11,15 Estate 9:18 et 31:4 everybody 10:23 everybody's 24:1 exactly 15:21 Examination 3:3,3 4:10 examined 4:8 example 29:22,23 excuse 8:17 24:6 executive 29:18 30:22 exhibit 5:24 6:2,7 6:7 12:25 13:1 31:22,24 35:17 35:20 36:4,5 43:22,24 expect 27:13 37:14 Experience 6:13 extinguished 30:8</p>	<p>46:24 extra 14:22</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact 29:21 30:5 46:7 factors 29:19 family 23:11 far 22:24 28:5,5 fax 22:5,6 February 44:21 49:16 fee 14:1,4,9 19:3,4 45:4 fees 14:7 39:16 41:4,24,25 figure 15:14 39:23 43:18 file 12:24 28:11 40:11 files 34:22 fill 18:13,14 19:1 financially 49:15 financials 8:21 find 9:22 29:4 30:14,15 46:14 47:8,10 fine 11:24 18:23 22:3,3 firm 2:16 4:21 35:13 44:13 first 4:7 5:18 11:15 13:14 14:18 15:21 22:21 23:18 26:8,20 34:1 fit 32:21 five 8:7,10,13 floor 26:3 folks 11:7 follow 23:25 followed 8:19 follows 4:9</p>	<p>foreclosed 33:18 foreclosure 5:6,9 12:2,5,10 27:21 29:1,20,24 30:5 33:6 34:9,16 35:7 37:6 42:9 43:7,10 46:4,24 forever 29:11 forgot 5:13 9:21 form 24:9,9,11,19 49:10 formerly 30:12 Fort 8:1 four 16:9 Friday 1:19 2:4 49:7 front 11:19 27:19 32:12 full 16:5 17:11 further 3:3 49:13</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>G-E-R-A-L-D 4:17 Garden 1:18 2:2 2:14 6:1 7:5 10:21 23:20,21 36:10 49:7 Gerald 1:17 2:1 3:2 4:6,17 49:6 Gianna 2:15 4:20 give 11:17 14:18 16:5 given 11:4 24:14 42:7 gives 14:22,23 24:8 30:20 giving 5:20 go 7:18 12:23 13:8 13:11,12,13,16 14:25 15:13 17:5 21:9,16,25,25 22:24 27:20 28:18 29:12</p>	<p>30:22,22 34:14 35:21,25 36:8,18 37:24 38:1 40:21 41:1 44:23 46:15 46:17 47:7 God 22:24 29:9 37:20 goes 29:13 39:5 going 10:2 12:19 12:23 13:11,12 13:12 14:10 18:14 20:3,12 21:25 22:1 26:2 29:3,8,11 32:19 35:12 36:17 39:7 40:20 41:18 42:2 43:19,20 47:2 good 4:12 5:16 29:21,23 43:21 great 20:10 Group 12:12 guess 32:17 35:11 35:12 guys 22:18,18</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>H 3:7 hand 49:15 handle 37:4,16 handled 33:11 handwriting 22:14 39:18 41:2 happen 30:1 happening 18:12 29:12 happens 11:10 33:17 hardship 11:19 head 8:24 heard 35:13 hearing 11:19 held 4:1 help 9:23</p>	<p>Hey 18:23 histories 46:8 history 13:23 19:3 38:11 39:10 46:20 HOA 4:21 5:6,9 7:5,14 8:3,6,12 8:18,23 10:16 12:1,2,5,9,11,12 15:23 19:1 22:1 23:4,20 24:9,17 24:19 27:13,14 27:16,21,24 28:7 28:10,14 29:1 30:17 31:5,8,11 31:14,17,20 33:1 33:4,8,12,21,25 34:6,9,15,16,19 34:22,25 35:6,7,7 35:9 36:19,20,20 36:24 37:6 39:24 40:7,9,11 41:22 41:23 42:2,3,17 43:6,9,13 44:7,17 45:12,25,25 46:3 46:23,24 47:25 48:3 HOA's 12:24 25:6 26:13 29:25 43:7 43:10 HOAs 15:18 23:22 hold 18:9 41:17 45:8 holders 1:9 2:9 25:10 34:1 holy 22:25 homeowner 15:3,4 15:5 28:10 33:15 homeowners 16:20 16:25 38:22 homes 12:16,17,18 honest 10:3 12:20</p>
--	--	--	--	---

Gerald Marks ~ January 19, 2018
30(b)(6) Representative of Country Garden Owners Association

Page 4

18:19 26:25 honestly 8:24 hopefully 20:3 46:21 houses 12:19 Hughes 1:25 2:5 49:6,23 hundred 12:16	involvement 20:16 issues 9:18 19:18 27:25	Koenig 7:7 36:11 40:16 44:12	14:23 16:20,22 16:23,24,25 17:15 18:6 36:9 36:11,14,23 37:6 37:9,13,18,23 38:3,3 40:2,3	38:4 looking 15:7 18:6 19:7 23:6 41:2 44:22 looks 13:14 15:21 37:9
I	J	L	letters 11:21 13:18 14:18 17:4,6 license 19:23,25 licensures 19:22 lien 14:25 17:12 24:25 25:8,10 26:13 28:8 29:13 29:13 34:16 35:3 40:24 42:8,18 43:7,11 44:3	Los 22:21 lot 22:17 25:24 lower 39:2
idea 13:15 19:9,10 25:2 28:24 30:2 35:5,10 38:18 39:19 40:25 42:11,19 45:24	Jerry 5:3,5 6:4 7:13 20:10 26:3 32:20 36:2 48:6	L 19:7 Lachman 2:11 3:3 4:11,12,18,23 5:2 5:24 6:3 12:25 13:2 17:21 18:1,5 19:21 20:9 25:22 25:23 26:6 31:22 32:1,22 35:16,25 36:1 37:24 38:1,2 38:20 39:6,9 41:11 43:22 44:1 46:15,17,18 48:6	lienholder 34:7,11 lienholders 31:9 34:20 35:1 liens 34:20,23 limbo 33:20 list 33:23 listed 6:6 36:11 lists 31:1 litigation 5:6 47:17 47:20,24 litigations 5:9 little 11:25 34:14 35:16 living 7:13 LLC 7:7 36:11 LLP 2:2,11 3:10 35:19 Loan 1:10,10 2:9,9 long 8:5 29:3 48:3 48:4 look 16:2,5,19 20:10 21:10,11 21:14 25:3 29:4 30:19 36:4 40:5 41:13 47:7 looked 37:19,23	M M 1:25 2:4,15 7:21 49:6,23 M-A-R-K-S 4:17 mail 25:13 mailed 25:12 maintain 10:7 making 9:22 25:15 Malibu 22:21 management 7:14 7:22 9:1 15:18 16:7 19:12,16 20:24,24 21:2 23:7,14,21 33:1 manager 7:24 8:4 8:5,18,23 9:5,6 23:3,16 24:24 managers 7:18 March 32:7 mark 5:24 12:25 31:22 43:22 marked 6:2 13:1 31:24 35:20 43:24 market 31:17 Marks 1:17 2:1 3:2 4:6,17 49:6 Mary 7:21 matter 4:22 47:16 mean 15:13 24:11 33:10 means 7:5,6,7,9,17 meeting 29:16
identification 6:2 13:1 31:24 35:20 43:24 identifies 32:10,15 illegible 40:20 illness 6:15 imagine 12:6 42:24 immediately 26:12 impressive 20:2 included 24:1 inform 23:4 31:11 31:14,17 information 35:1 47:8 inquiries 31:3 inside 13:21 instance 21:6 institution 26:12 instruct 27:16 31:5 31:8 34:19,25 43:6 insurance 19:4,5 intent 14:20 interest 34:8,12 42:13 interested 49:15 involved 12:22 22:13 49:14	Johnson 32:5 JUDICIAL 1:1 July 15:7	landscaping 22:1 Las 1:23 2:3,13,17 7:9 8:1 LaSalle 1:9 2:8 lasted 23:11 late 14:1,4,7,9 16:4 16:6 23:2 39:16 41:24 45:4 law 2:16 4:21,24 17:3,3 24:2,20 35:13 44:13 Lawyers 12:12 learn 35:16 leave 29:13,14 ledger 38:14,15 left 8:8,9 23:9 legal 26:2 let's 8:7 16:19 17:5 19:18 22:4,15 23:4,18 24:4 25:5 26:17 31:22 32:10 35:25 36:4 36:8,18 37:17 38:1 40:1,15 41:1 43:22 45:5,11 46:17 letter 11:15 14:20	14:23 16:20,22 16:23,24,25 17:15 18:6 36:9 36:11,14,23 37:6 37:9,13,18,23 38:3,3 40:2,3	looks 13:14 15:21 37:9
keep 22:2 keeps 10:10 47:25 Kerbow 44:9,10 kind 11:9 knew 27:25 42:2 know 6:21,24 8:21 11:4 13:20,20 15:12 17:9,11,19 18:7,10 19:4 21:7 21:8 23:7 24:13 24:24 26:19,20 26:20,23 27:18 27:20,22 28:6 29:9,10 30:2,3 31:2 33:7 34:10 36:18 37:12,20 38:23 39:18,22 40:14,23 42:3,16 43:8,12,13,14 44:9 45:4,18,20 45:22 46:23 47:6 47:11,12,24 knowing 27:9,10 knowledge 30:9,12 knowledgeable 6:9 known 22:17 knows 22:14	K	landscaping 22:1 Las 1:23 2:3,13,17 7:9 8:1 LaSalle 1:9 2:8 lasted 23:11 late 14:1,4,7,9 16:4 16:6 23:2 39:16 41:24 45:4 law 2:16 4:21,24 17:3,3 24:2,20 35:13 44:13 Lawyers 12:12 learn 35:16 leave 29:13,14 ledger 38:14,15 left 8:8,9 23:9 legal 26:2 let's 8:7 16:19 17:5 19:18 22:4,15 23:4,18 24:4 25:5 26:17 31:22 32:10 35:25 36:4 36:8,18 37:17 38:1 40:1,15 41:1 43:22 45:5,11 46:17 letter 11:15 14:20	14:23 16:20,22 16:23,24,25 17:15 18:6 36:9 36:11,14,23 37:6 37:9,13,18,23 38:3,3 40:2,3	looks 13:14 15:21 37:9
idea 13:15 19:9,10 25:2 28:24 30:2 35:5,10 38:18 39:19 40:25 42:11,19 45:24	Johnson 32:5 JUDICIAL 1:1 July 15:7	landscaping 22:1 Las 1:23 2:3,13,17 7:9 8:1 LaSalle 1:9 2:8 lasted 23:11 late 14:1,4,7,9 16:4 16:6 23:2 39:16 41:24 45:4 law 2:16 4:21,24 17:3,3 24:2,20 35:13 44:13 Lawyers 12:12 learn 35:16 leave 29:13,14 ledger 38:14,15 left 8:8,9 23:9 legal 26:2 let's 8:7 16:19 17:5 19:18 22:4,15 23:4,18 24:4 25:5 26:17 31:22 32:10 35:25 36:4 36:8,18 37:17 38:1 40:1,15 41:1 43:22 45:5,11 46:17 letter 11:15 14:20	lienholder 34:7,11 lienholders 31:9 34:20 35:1 liens 34:20,23 limbo 33:20 list 33:23 listed 6:6 36:11 lists 31:1 litigation 5:6 47:17 47:20,24 litigations 5:9 little 11:25 34:14 35:16 living 7:13 LLC 7:7 36:11 LLP 2:2,11 3:10 35:19 Loan 1:10,10 2:9,9 long 8:5 29:3 48:3 48:4 look 16:2,5,19 20:10 21:10,11 21:14 25:3 29:4 30:19 36:4 40:5 41:13 47:7 looked 37:19,23	looks 13:14 15:21 37:9
identification 6:2 13:1 31:24 35:20 43:24 identifies 32:10,15 illegible 40:20 illness 6:15 imagine 12:6 42:24 immediately 26:12 impressive 20:2 included 24:1 inform 23:4 31:11 31:14,17 information 35:1 47:8 inquiries 31:3 inside 13:21 instance 21:6 institution 26:12 instruct 27:16 31:5 31:8 34:19,25 43:6 insurance 19:4,5 intent 14:20 interest 34:8,12 42:13 interested 49:15 involved 12:22 22:13 49:14	keep 22:2 keeps 10:10 47:25 Kerbow 44:9,10 kind 11:9 knew 27:25 42:2 know 6:21,24 8:21 11:4 13:20,20 15:12 17:9,11,19 18:7,10 19:4 21:7 21:8 23:7 24:13 24:24 26:19,20 26:20,23 27:18 27:20,22 28:6 29:9,10 30:2,3 31:2 33:7 34:10 36:18 37:12,20 38:23 39:18,22 40:14,23 42:3,16 43:8,12,13,14 44:9 45:4,18,20 45:22 46:23 47:6 47:11,12,24 knowing 27:9,10 knowledge 30:9,12 knowledgeable 6:9 known 22:17 knows 22:14	landscaping 22:1 Las 1:23 2:3,13,17 7:9 8:1 LaSalle 1:9 2:8 lasted 23:11 late 14:1,4,7,9 16:4 16:6 23:2 39:16 41:24 45:4 law 2:16 4:21,24 17:3,3 24:2,20 35:13 44:13 Lawyers 12:12 learn 35:16 leave 29:13,14 ledger 38:14,15 left 8:8,9 23:9 legal 26:2 let's 8:7 16:19 17:5 19:18 22:4,15 23:4,18 24:4 25:5 26:17 31:22 32:10 35:25 36:4 36:8,18 37:17 38:1 40:1,15 41:1 43:22 45:5,11 46:17 letter 11:15 14:20	lienholder 34:7,11 lienholders 31:9 34:20 35:1 liens 34:20,23 limbo 33:20 list 33:23 listed 6:6 36:11 lists 31:1 litigation 5:6 47:17 47:20,24 litigations 5:9 little 11:25 34:14 35:16 living 7:13 LLC 7:7 36:11 LLP 2:2,11 3:10 35:19 Loan 1:10,10 2:9,9 long 8:5 29:3 48:3 48:4 look 16:2,5,19 20:10 21:10,11 21:14 25:3 29:4 30:19 36:4 40:5 41:13 47:7 looked 37:19,23	looks 13:14 15:21 37:9
idea 13:15 19:9,10 25:2 28:24 30:2 35:5,10 38:18 39:19 40:25 42:11,19 45:24	Johnson 32:5 JUDICIAL 1:1 July 15:7	landscaping 22:1 Las 1:23 2:3,13,17 7:9 8:1 LaSalle 1:9 2:8 lasted 23:11 late 14:1,4,7,9 16:4 16:6 23:2 39:16 41:24 45:4 law 2:16 4:21,24 17:3,3 24:2,20 35:13 44:13 Lawyers 12:12 learn 35:16 leave 29:13,14 ledger 38:14,15 left 8:8,9 23:9 legal 26:2 let's 8:7 16:19 17:5 19:18 22:4,15 23:4,18 24:4 25:5 26:17 31:22 32:10 35:25 36:4 36:8,18 37:17 38:1 40:1,15 41:1 43:22 45:5,11 46:17 letter 11:15 14:20	lienholder 34:7,11 lienholders 31:9 34:20 35:1 liens 34:20,23 limbo 33:20 list 33:23 listed 6:6 36:11 lists 31:1 litigation 5:6 47:17 47:20,24 litigations 5:9 little 11:25 34:14 35:16 living 7:13 LLC 7:7 36:11 LLP 2:2,11 3:10 35:19 Loan 1:10,10 2:9,9 long 8:5 29:3 48:3 48:4 look 16:2,5,19 20:10 21:10,11 21:14 25:3 29:4 30:19 36:4 40:5 41:13 47:7 looked 37:19,23	looks 13:14 15:21 37:9

Gerald Marks ~ January 19, 2018
30(b)(6) Representative of Country Garden Owners Association

Page 5

meetings 10:7,13 members 30:14 47:3,6 merger 1:8 2:8 mess 21:4 met 22:20,22 Michael 4:24 middle 21:8 Miles 3:10 35:14 35:18 36:4,9,15 37:9 38:17 39:21 40:16 mind 5:10 12:21 minimum 31:6 minute 9:11,11 10:21 35:22 46:14 minutes 10:13 29:16,17 47:9 mistaken 8:11 money 35:7 36:20 42:12 month 14:5 21:8 33:23 monthly 10:18,18 10:19,25 11:2,7 13:23 28:22 39:15 months 11:14,18 15:10 17:1,2,7 23:10,11 26:11 38:25 41:3,3,23 42:8,20,21,22,22 42:23,24,25 43:2 45:23 Mortgage 1:10,10 2:9,9 move 22:15 moved 23:9,13 MP 7:21 <hr/> <p style="text-align: center;">N</p> <hr/> N 3:1	N.A 1:8,9 2:8,8,9 name 4:12,16 9:14 19:11 21:17 35:13 NATIONAL 1:7 need 9:23 19:5 29:7 37:5 needed 19:20 47:9 needs 36:23 Nevada 1:2,23 2:3 2:6,13,17 4:4 9:3 9:10 19:19,24 49:3,16 never 12:22 32:17 32:17,23 38:6 40:12,13,18,19 45:13 new 17:3,3 23:7,8 23:13,17 39:12 nine 17:1 41:3,3,23 42:7,20,22,23,24 42:25 43:2 Noble 18:7 non-foreclosure 27:17 nonpayment 24:7 Nope 40:4 normal 11:13 normally 44:6 North 7:9 notes 49:10,11 notice 11:11 24:8 24:16,23,25 25:10,11,12,14 44:2 45:5,11 notices 33:22 34:1 43:23 notified 35:6 notify 36:19 November 17:10 17:13 37:21 45:19	nowadays 12:19 NRCP 49:12 NRS 8:19 11:16 25:14 nuisance 15:23 number 4:20 13:5 13:9,9 19:25 numbers 13:6 38:9 41:5 <hr/> <p style="text-align: center;">O</p> <hr/> oath 36:2 object 26:2 32:19 objections 5:17,18 occurred 45:18,21 off-the-record 4:1 offer 31:6 35:3 offered 43:2 office 6:16 16:15 27:8 39:19 49:16 officer 24:23 Offices 4:24 oh 10:15 18:9 19:23,25 21:19 22:24,24 23:23 24:6 26:15 27:3 29:9 30:2 37:20 38:23 39:4 41:9 44:4,19,24 45:4 45:16 46:21 47:7 47:10 okay 5:12,19,23 6:9,14,17,21 7:1 7:4,13,20,23 8:5 8:16 9:20,24 10:2 10:10,13,16,25 11:3,9,22,24 12:23 13:7,10,19 13:22 14:12,14 14:16,17 15:2,7 15:15 16:1,10,16 16:19 17:6,15,17 18:17,21 19:7,13	20:15,18,23 21:2 21:19,23 22:2,7 22:13,14 23:3,15 23:18,24 24:16 24:19 25:4,10,20 26:4,7 27:4,13,19 27:23 28:4,10,19 29:7,15,19,21 30:4,6 31:5 32:10 32:14 33:4,8,17 33:21 34:3,6,14 34:25 36:14,17 37:1,9,17,22 38:6 38:13 39:15,22 39:25 40:5,15 41:13,22 42:7,12 42:17 43:1,6,9,16 44:6,9,12,20,24 45:2,5,14,18 once 11:4 24:13 25:8 26:4 28:8,12 29:13 33:10 online 21:9 open 10:11 opened 22:25 opening 5:10 operating 30:15 opportunity 14:23 30:19 original 26:21 originals 20:1 Orlandi 2:15 4:20 4:20 17:20,25 18:4 19:19 20:6 25:21 26:2 32:19 35:21 38:19 39:5 41:10 48:9 oversight 30:17 owe 14:23 owed 14:9 17:9 45:2 owner 7:24 47:12	Owners 1:18 2:2 2:14 6:1 7:5 36:10 49:7 <hr/> <p style="text-align: center;">P</p> <hr/> P 7:21 p.m 1:20 2:4 48:11 49:8 package 24:3 packet 17:18 page 3:8 13:9,22 16:19,24 18:6,11 18:18 19:7 20:12 20:18 22:4,15 23:6,18,19 24:5,5 24:22 25:5,20 26:7,17 32:6,10 32:12,13 36:8 38:10,12 39:10 40:1,1,20 44:3 45:15 pages 13:14 paid 11:2 15:3 17:11 pal 41:16 paperwork 28:5 pardon 20:12 part 27:2 32:3 particular 44:4 45:7,17 parties 49:14,14 partner 8:9 18:20 parts 34:5 party 28:13 35:3 49:13 Pass-Through 1:11 2:9 passcodes 21:24 Paul 7:21 pay 15:1 17:10 24:21 33:12 34:13,20,22 35:3 39:24 41:23,23
--	---	---	--	--

Gerald Marks ~ January 19, 2018
30(b)(6) Representative of Country Garden Owners Association

Page 6

42:8,13 paying 48:3 payment 14:25 28:11 29:5,5,22 29:23 40:6,8 payments 31:4,9 payoff 35:1 40:24 42:9 payoffs 34:16 pays 15:4,6 Pengilly 2:16 4:21 6:19,22 people 25:1 31:12 47:14 percentage 14:7 period 7:19 21:7 29:3 permission 27:21 person 6:9 49:15 persons 25:14 pertains 8:3 phone 9:22 10:12 19:15 41:16 phrase 30:4 picture 24:15 25:9 Pike 9:4 pile 43:19 Plaintiff 1:5 plan 14:25 29:5,5 29:22,23 please 4:18 plus 41:18,18,18 45:3 point 11:5 17:8 28:9 policy 11:14 17:17 18:2 27:19,20 34:15 Possibly 29:21 postponed 43:13 45:23 46:1 pre-lien 14:16,17	14:20 16:22,23 16:24 17:8 24:12 24:20 preceding 26:12 prefer 5:4 prepare 6:12 prepared 14:12 30:24 38:7 39:11 prepares 16:12 presently 30:11 47:16 preserve 42:13 pretty 17:16,16 20:2 22:2 29:14 40:20 prevented 33:8 price 12:1,4 principles 14:11 print 16:14,14 21:3 printed 20:21,24 prior 4:1,23 6:4 8:12 20:15,24 33:5,9 34:16 35:7 36:20 49:8,11 priority 26:8,9,11 26:14 31:9 34:16 34:23 35:3 37:10 38:17 40:24 42:8 42:18 43:7,11 probably 8:15 12:21 18:19 39:20,23 problem 18:3 Procedure 4:4 proceedings 4:2 49:12 process 43:4 produce 8:20 18:2 produced 12:24 13:4 32:3 35:17 program 39:13,14 progress 31:3	prohibiting 5:20 property 7:8 12:1 12:4 18:15,15 20:16,19 21:3,12 31:6,12,15,18 33:18 34:8,12 35:4 36:11,12 40:3 42:9,13 46:4 46:6,11,20 47:15 48:1 protect 34:8,11 provide 17:22 28:7 31:20 34:25 38:16 provided 27:1 32:4 38:14 40:12 44:7 providing 40:8 provisional 7:19 pull 21:17,20 purchased 46:4 pursuant 49:12 put 14:10 17:13 29:13	21:3 reason 21:2 26:18 28:17 35:9 recall 36:16 40:4 receipt 25:13 receive 42:2 received 37:13 recess 35:24 recollection 9:13 recommend 29:1 recommended 30:5 recommending 29:19 RECON 1:12 record 4:16,23 35:21,23,25 36:18 37:25 39:6 46:16 recorded 3:11 25:14 26:22 43:23 44:23 recorder 10:12 recorder's 21:20 recordings 10:7,10 records 15:14 20:19 21:3,21 refer 13:8 referring 13:9 16:20 44:25 45:1 46:19 regarding 6:10,17 7:2 22:1 31:11,17 40:2 registered 25:13 regular 11:7 reimbursed 15:5 reject 31:8 rejected 40:24 relationship 8:12 22:16 27:23 28:1 relative 49:13,14	release 42:18 remember 8:25 9:14,21 47:13 repay 11:18 repeat 32:15 rephrase 43:1 report 3:10 13:23 14:12,13 15:7,17 23:6 30:20,23,24 31:20,23 32:2 33:9 39:10 43:15 reported 1:25 49:6 reporter 2:5 4:3 49:1 reports 31:2 33:2 43:17 represent 4:13 13:3 32:2 37:17 39:20 45:21 Representative 1:18 2:1 49:7 representing 4:21 represents 45:4 request 27:3,5 requested 25:13 49:12 requesting 37:10 requests 16:13 25:14 34:20,22 required 11:15,21 11:21 24:2 requirements 4:3 requires 27:20 respect 13:4 28:22 respond 14:19,19 28:21 37:14 response 37:18,22 38:3 Restrictions 23:20 result 46:24 retiring 20:4 return 25:13
---	--	---	---	---

Gerald Marks ~ January 19, 2018
30(b)(6) Representative of Country Garden Owners Association

Page 7

reverts 33:19 review 6:14 reviewed 6:6 reviewing 33:9 right 5:3,5 8:10,24 9:13 10:6 13:3 14:3 15:9 16:18 17:5 18:6,12 19:2 20:2,12,20,22 22:4 24:4 25:15 30:13 32:9,12,23 33:14 38:1 41:2 43:22 46:17 47:4 role 8:3 11:22,25 12:4 23:3 room 4:18 Rule 4:4 5:25 Rules 4:4 run 12:13,14 Ryan 44:9,10	25:10,20 26:7 secured 28:13 see 8:7 13:5 32:21 37:21 40:22 44:25 seeing 5:8 13:20 seen 6:4 32:17,18 32:23 36:5,14 38:6 40:3,13,18 40:19 44:2,4 45:6 45:14,16 sell 18:15 25:12 45:6 seller's 24:2 send 11:6,7,7,11,15 17:4,7 18:10 25:8 33:21,25 34:3 sends 18:25 senior 28:14,22 sense 15:15 sent 16:20,25 18:10 24:17 45:10 Series 1:11 2:10 services 9:11 27:2 28:7 33:12 session 30:22 sessions 29:18 set 12:4 29:22 49:15 setting 12:1 seven 27:11 sharp 27:12,12 sheet 22:8 sheets 22:6 Shelly 47:4 shorthand 49:10 49:11 shortly 43:20 show 11:8 showed 31:12 47:13	showing 46:9 signature 18:17,20 signed 24:23,25 26:19,22 signing 49:12 Single-family 12:17,18 sir 36:3,7 situation 33:17 six 23:10,11 26:11 27:11 42:21,21 skim 13:12 smooth 21:25 Somebody 39:19 somebody's 11:6 46:7 48:3 sorry 5:13 10:22 18:22 23:10 24:6 25:21 44:24 47:2 sort 5:15 11:11 22:5 36:14 South 8:1 speak 5:13 6:17 7:1 26:15 30:9 42:5 43:4 speaks 32:20 specifically 26:9 43:9 Speculation 38:19 spell 4:16 ss 49:3 stake 47:25 stamp 13:5 stamped 32:4 standard 17:15 start 7:4,11 21:7 state 2:5 4:19 19:19,24 49:3,16 statement 11:8 20:14,15 38:10 46:14 47:13 statements 11:7	13:18 states 17:8 24:22 25:11 26:9,10,11 35:18 40:5 status 30:20,23,24 43:14,17 46:6 47:20 stays 33:20 step 19:20 steps 16:16 story 23:10 strike 23:4 stuff 23:13 41:2 sub-priority 42:10 subject 30:10 Subpoena 3:9 5:25 successor 1:7,8 2:8 2:8 Suite 1:22 2:3,12 2:17 8:1 super 7:14,16 26:8 26:9,11,14 31:9 34:16,23 35:3 37:10 38:17 40:24 42:8,18 43:7,10 supervise 7:17 Supervising 7:17 supposed 8:21 11:2 sure 6:19 9:4,25 10:11 18:4 21:9 21:10 25:15 26:25 39:13 42:6 sworn 4:7,15 49:9	talks 24:7 26:7 taxable 21:11 tear 11:5 tell 4:7 10:1 22:6 29:12 32:5 33:21 33:25 35:9 43:9 47:23 tells 11:16 14:22 ten 5:7,9 tender 35:7 36:20 tendered 42:7 term 12:7 terminology 14:21 Terri 1:25 2:4 49:6 49:23 testified 4:8 testify 49:9 testimony 5:21 thank 5:4 20:11 48:6,9 thing 5:15 17:8 29:9 37:3 things 17:25 think 8:8,10 9:2,10 9:17 19:19 20:8 26:15 34:18 39:12 42:12 46:9 third 11:18 30:14 30:15 thoughts 26:16 three 11:20 15:10 17:4,6 time 8:11 12:9 14:1 14:8,22 18:24 20:8 21:6 25:6 26:1,20 29:3,6,24 42:5,21,22,23,24 43:8,12 45:2 48:7 times 5:5,7 title 3:10 7:23 18:7 18:13,16,25 23:6 31:20,22 32:2
S				
S 3:7 safe 40:17 sale 12:2,5,10,19 25:6,12 26:1 27:17,21 29:7,24 33:6,9 34:9 36:21 37:7 42:9,10 43:7 43:13 45:11,12 45:18,21,22 46:1 46:4,24 sales 34:17 sample 24:8 saved 19:15 saw 17:17 saying 39:17 says 17:9,10,12 32:9 38:23 Scott 2:11 4:12 second 37:24 41:1 46:15 section 24:4 25:5,7				
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Gerald Marks ~ January 19, 2018
30(b)(6) Representative of Country Garden Owners Association

Page 8

33:2,9 today 5:21 6:4 36:12 today's 6:12 top 8:24 35:18 topics 6:6,10 tough 29:8 traffic 23:12 transcribed 49:9 transcript 49:10 49:12 transcription 49:11 transfer 19:3 transmittal 22:8 tried 26:22 trifocals 40:22 true 49:11 trust 1:4,10 2:9 4:14 7:7,8 21:21 28:14,22 30:1,8 31:15 32:11,11 32:16,16 33:4,5 34:1 46:23 trustee 1:8,9 2:8,9 12:7 24:14 25:18 25:19 44:19 Trustee's 45:11 truth 4:7,7,8 49:9 49:9,9 truthful 5:21 try 5:16,16 24:21 29:4 trying 39:23 Tuesday 37:21 turn 22:4 23:18 24:4 25:5 26:17 32:10,13 37:17 40:1,15 45:5,11 Turning 13:22 25:20 two 11:14,18 17:2	17:7,25 30:13,15 type 36:23 typewritten 49:10 49:10 <hr/> U <hr/> U.S 1:7 2:8 4:13,14 understand 25:15 30:7 36:2 understanding 12:8 14:5 25:6,25 26:10,13 29:25 34:7 44:12 46:3 47:19 unique 30:16 updated 26:24 updates 30:21 upfront 15:5 use 12:7 14:21 24:19 uses 24:9 usually 10:11 29:11 44:23 <hr/> V <hr/> v 4:14 value 21:11 31:18 Vegas 1:23 2:3,13 2:17 7:9 8:1 verbal 29:16,17 verify 16:16 Village 1:21 2:3,12 2:16 violation 13:18 violations 22:1 48:5 Vision 23:7,8,14 23:17 39:12 Voyager 39:13 vs 1:6 <hr/> W <hr/> W 19:7	W-I-L-D 9:17 W-I-L-D-E 9:16 wait 9:11,11 10:21 45:8 46:14 waive 4:3 5:10 walked 39:7 want 6:21 14:21 19:4 21:4,5 24:19 wasn't 9:1 42:21 46:8 watching 33:23 way 27:9,10 30:4 43:14 we'll 5:24 12:25 21:10 25:3 30:22 34:14 35:11,16 we're 8:21 11:5 13:11,12 14:6 18:6 21:25 22:1 24:14 28:6 33:24 36:12 39:7 40:20 41:18 43:19,20 43:21 website 21:15,17 21:20 welcome 48:8 went 23:9,13 26:4 33:11 43:5 46:13 47:13 weren't 26:19 WHEREOF 49:15 Wild 9:13,16,17,17 19:12 willing 41:22,23 Winters 3:10 35:14 35:19 36:9 witness 3:2 4:15 5:6,8,25 18:3 20:7 26:4 48:8 49:8,12,15 work 22:18 23:13 worked 22:20 23:1	23:8 44:10 worry 10:4 wouldn't 35:9 wrong 8:11 20:13 37:3 <hr/> X <hr/> X 3:1,7 XXIV 1:6 <hr/> Y <hr/> yeah 6:7,23 9:21 10:2,5 12:14 15:21 17:16 18:1 18:11 19:5,23 22:10,20 24:18 24:20 32:13 39:3 44:23 45:1,10 46:9,12,21 47:10 47:10 year 11:4 20:3 22:23 26:18 yearly 11:1 years 8:7,10,13,13 8:15 11:20 22:17 27:11 <hr/> Z <hr/> Zuni 1:10 2:9 <hr/> 0 <hr/> 0086 19:25 <hr/> 1 <hr/> 1,075 45:3 1,150.50 45:3 1,494.50 40:7,8,17 1:14 1:20 2:4 49:8 100 24:22 101 25:5 102 25:20,21,22 26:7 107 25:15	11 16:19,24 110 8:1 116 8:19 11:16 1189 38:24 13 3:9 130 26:17 14 14:18 18:7 141 44:3 143 45:5 144 45:11,15 1494.50 41:16,19 15 17:13 38:24 15th 16:3 17:10 16 18:11,18 1635 1:21 2:3,12 17 46:9 170 15:8 18 19:7 19 1:19 2:4 20:12 49:7 190 2:17 1995 2:16 1st 15:19 16:3 <hr/> 2 <hr/> 2:14 48:11 20 20:18 200 1:22 2:3,12 200,000 12:21 2000 26:18,24 2004 22:9 23:7 2005 23:1 2006-OA1 1:10,11 2:9,10 2011 15:8,20,22 17:5 20:21 26:14 2011-2012 13:24 2012 8:23 26:14 32:9 37:21 40:2 40:16 44:21 45:19 47:6 2012-2013 34:6,15 2013 12:10 29:25
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Gerald Marks ~ January 19, 2018
30(b)(6) Representative of Country Garden Owners Association

Page 9

45:22	45 14:16			
2017 47:14	450 32:5			
2018 1:19 2:4 49:7	469 39:16			
49:16	47 22:4			
21 38:25	48 23:6			
218 35:18	49.50 41:5,18			
22 38:25	495 41:3,18			
222 36:8	4th 40:16			
225 37:17 38:6,7				
226 38:7,21	5			
227 38:10,12 39:10	5.50 14:2,8			
41:1	50 41:24			
229 40:1	500 42:3			
230 40:5	5087 4:20			
231 40:15 41:12	5316 1:4 4:13 7:7,9			
233 35:18 40:20	55 13:24 15:22			
26 12:10	39:2,3 41:3			
26th 45:22	5th 49:16			
27 6:6				
27th 37:21	6			
28th 32:7 45:19	6 3:9			
	6053 8:1			
	619 1:25 49:6,23			
3	634-5000 2:13			
30 16:5	6th 20:21 40:2			
30(b)(4) 4:4	44:21			
30(b)(6) 1:18 2:1				
5:25 49:7	7			
30(e) 49:12	702 2:13,18			
31 3:10	75 23:18			
31st 15:7				
35 3:10	8			
	889-6665 2:18			
4	89031 7:10			
4 3:3	89134 2:13,17			
4.10 25:10	89148 8:2			
4.11 25:20 26:1				
4.12 26:7	9			
4.9 24:4	9 13:22			
4.9(d) 25:5	90 10:15			
43 3:11	90s 23:2,2			
435.50 17:9	950 41:4,18,24			
446 32:5,6,10,12	99 24:5			
447 32:13				

EXHIBIT E

EXHIBIT E

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: _____

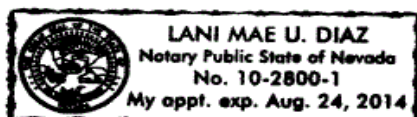
Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Country Gardens Owners' Association**

State of Nevada

County of Clark

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

(Seal)



(Signature)

NOTARY PUBLIC

EXHIBIT F

EXHIBIT F

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

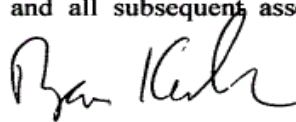
A.P.N. 124-31-220-092

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 G

EXHIBIT G

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.

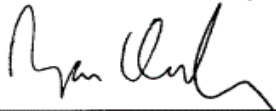
NOTICE IS HEREBY GIVEN THAT:

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 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: 63482260

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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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  (Seal)
(Signature of Notary Public)

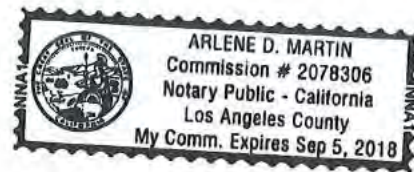


EXHIBIT 1

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. McCLENNAN
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. SHIELLY RAISZADEH
SHANNON C. WILLIAMS
LAWRENCE R. BOVIN
RICK J. NEHORAOFF
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.

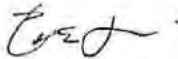
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. For purposes of calculating the nine-month period, the trigger date is 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 Bars



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: 818-733-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-864-8300

\$1,494.50

FACSIMILE COVER LETTER

To:	A Bhome	Re:	5316 CLOVER BLOSSOM CT/HO #30488
From:		Date:	Tuesday, November 27, 2012
Fax No.:		Pages:	2, including cover
		HO #:	30488

Dear A Bhome:

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



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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	a 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. DONEYER
Also Admitted in the District of
Columbia & Virginia
TAMI S. CROSBY
L. BRYANT JAQUEZ
VY T. PHAM
HADI R. SEYED-ALI
BRIAN H. TRAN
ANNA A. GHAJAR
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 #: 63482260
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.

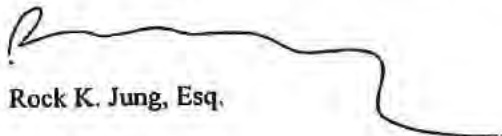
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that 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.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct
 Payee: Alessi & Koenig, LLC
 12-H2280
 Initials: NEG
 Date: 12/4/2012 Amount: 1,494.50
 Check #: 17657

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
12/4/2012	30488	To Cure HOA Deficiency	1,494.50			

Miles, Bauer, Bergstrom & Winters, LLP
 Trust Account
 1231 E. Dyer Road, #100
 Santa Ana, CA 92705
 Phone: (714) 481-9100

Bank of America
 1100 N. Green Valley Parkway
 Henderson, NV 89074
 16-661220
 1020
 12-H2280
 Loan # 63482260

17657
 Date: 12/4/2012
 Amount \$**** 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

⑆ 17657⑆ ⑆ 122400724⑆ 501006876973⑆

Security Features Included. Details on back.

EXHIBIT 4

US BANK (JOHNSON) 0233
AA001187

EXHIBIT I

EXHIBIT I



HOA Lawyers Group
9500 W. Flamingo Suite #204
Las Vegas, NV 89147
(702) 222-4033

Country Gardens Owners' Association

DENNIS L & GERALDINE J JOHNSON

5316 CLOVER BLOSSOM CT
North Las Vegas NV 89031
Account #:

May 29, 2012	Notice of Default and Election to Sell (90) day waiting period expires 7-30-12
April 30, 2012	10 Day Notice of Default Mailings sent via certified mail, (90) day waiting period initiated
December 27, 2012	1st postponement of HOA sale. New sale date 01.16.2013.
November 27, 2012	Payoff made to Miles, Bauer, Bergstrom & Winters
November 27, 2012	Received Payoff request from Miles, Bauer, Bergstrom & Winters
November 27, 2012	1st postponement of HOA sale. New sale date 01.16.2013.
March 27, 2012	Notice of Default Drafted and sent for TRI Report
March 26, 2012	Received an updated accounting ledger from the Management Company
October 25, 2012	Notice of Trustee Sale mailings sent via certified mail
September 24, 2012	Status check for Senior Default and Bankruptcy, no current records
August 24, 2012	Review file for Notice of Trustee Sale
November 20, 2012	Authorization to conduct HOA sale sent to management/board via email
February 20, 2013	Received Payoff request from Liquidation Services Foreclosure
October 17, 2012	Publication Date Down processed for posting and publishing of Trustee Sale
January 17, 2013	Sold to 3rd Party at Sale
October 15, 2012	HOA sale set for 11.28.2012.
November 14, 2012	HOA sale set for 11.28.2012.
March 12, 2012	Pre-Notice of Default sent to homeowner via regular mail
April 11, 2012	TRI Report complete, Waiting for Recorded Notice of Default
April 10, 2012	TRI Data Received
February 8, 2013	Paid In Full through 1/15/2013
February 8, 2013	Paid In Full through 1/15/2013
February 8, 2013	Cut check to MP Mgmt. for \$300.00
February 8, 2013	Cut check to Country Gardens Owners Association for \$1,266.00
February 8, 2013	Payment in full received in the amount of \$8,200.00. 10 day waiting period for funds to clear initiated.
February 6, 2012	Lien recordation sent via regular and certified mail
July 5, 2012	Notice of Default and Election to Sell (30) day waiting period expires 7-30-12



HOA Lawyers Group
9500 W. Flamingo Suite #204
Las Vegas, NV 89147
(702) 222-4033

Country Gardens Owners' Association

April 5, 2012	Demand Made to Escrow
April 4, 2012	Received Payoff request from Noble Title Company
August 3, 2012	Pre-Notice of Trustee Sale sent to homeowner
April 3, 2012	TRI Data Ordered

EXHIBIT J

EXHIBIT J