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Bank of New York Mellon
9

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 THE BANK OF NEW YORK MELLON,
13 FKA THE BANK OF NEW YORK AS
14 SUCCESSOR IN INTEREST TO JP
15 MORGAN CHASE BANK NA AS TRUSTEE
FOR STRUCTURED ASSET MORTGAGE
16 INVESTMENTS II INC. BEAR STEARNS
ALT-A TRUST 2005-9, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2005-
9,

17 Plaintiff,

18 vs.

19 LAS VEGAS DEVELOPMENT GROUP
20 LLC, a Nevada limited-liability company;
21 ROYAL HIGHLANDS STREET AND
22 LANDSCAPE MAINTENANCE
CORPORATION, a Nevada non-profit
corporation; and ALESSI & KOENIG, LLC,
a Nevada limited-liability company;

23 Defendants.
24

Case No.: 2:16-cv-00478-JCM-GWF

**STIPULATION AND ORDER TO FILE
FIRST AMENDED COMPLAINT**

25
26 Plaintiff the Bank of New York Mellon, fka The Bank of New York as Successor in
27 Interest to JP Morgan Chase Bank NA as Trustee for Structured Asset Mortgage Investments II
28 Inc. Bear Stearns ALT-A Trust 2005-9, Mortgage Pass-Through Certificates, Series 2005-9

1 (“BNYM” or “Plaintiff”), and Defendants Las Vegas Development Group LLC (“LVDG”) and
2 Alessi & Koenig, LLC (“Alessi & Koenig” and collectively with BNYM and LVDG, the
3 “Parties”), by and through their respective counsel, hereby stipulate to allow Plaintiff to file a
4 First Amended Complaint (“FAC”) as follows:

5 WHEREAS, on March 4, 2016, Plaintiff filed its *Complaint* (ECF No. 1) (“Complaint”);

6 WHEREAS, no party has answered the Complaint, however both LVDG and Alessi &
7 Koenig have appeared in the action (ECF No. 12 and ECF No. 14);

8 WHEREAS, the Parties agree to allow Plaintiff to file the FAC, a copy of which is
9 attached hereto as **Exhibit 1**;

10 WHEREAS this request is not made for purposes of delay and is supported by good cause;

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1 NOW, THEREFORE, in consideration of the foregoing, and for good cause, IT IS
2 HEREBY STIPULATED AND AGREED, by and between the Parties as follows:

- 3 1. Plaintiff shall file its FAC within five (5) days of this Order;
- 4 2. Alessi & Koenig and LVDG shall file a response to the FAC within thirty (30)
- 5 days thereafter.

6 **IT IS SO STIPULATED.**

7 Dated: December 20, 2017.
8 SNELL & WILMER L.L.P.

Dated: December 20, 2017.
ROGER P. CROTEAU & ASSOCIATES,
LTD.

9 By: Blakeley E. Griffith
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11 Blakeley E. Griffith (NV Bar No. 12386)
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17 *Attorneys for Plaintiff Bank of New York Mellon*

By: /s/ Timothy E. Rhoda
18 Roger P. Croteau (NV Bar No. 4958)
19 Timothy E. Rhoda (NV Bar No. 7878)
20 9120 West Post Road, Suite 100
21 Las Vegas, NV 89148
22 Telephone: (702) 254-7775
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24 *Attorneys for Defendant Las Vegas
25 Development Group LLC*

26 Dated: December 20, 2017.
27 HOA LAWYERS GROUP, LLC

28 By: /s/ Steven T. Loizzi
Steven T. Loizzi, Jr. (NV Bar No. 10920)
9500 West Flamingo Road, Suite 204
Las Vegas, NV 89147-5721
Telephone: (702) 222-4033
Facsimile: (702) 222-4043
Attorneys for Defendant Alessi & Koenig

ORDER

IT IS SO ORDERED.

December 22, 2017

DATED: _____
James C. Mahan
UNITED STATES DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2017, I electronically filed the foregoing **STIPULATION AND ORDER TO FILE FIRST AMENDED COMPLAINT** with the Clerk of Court for the U.S. District Court, District of Nevada by using the Court's CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

DATED this 20th day of December 2017.


An Employee of Snell & Wilmer L.L.P.

EXHIBIT 1

EXHIBIT 1

1 Andrew M. Jacobs, Esq.
Nevada Bar No. 12787
2 Blakeley E. Griffith, Esq.
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3 Holly E. Cheong, Esq.
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Bank of New York Mellon

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA
11

12 THE BANK OF NEW YORK MELLON,
13 FKA THE BANK OF NEW YORK AS
14 SUCCESSOR IN INTEREST TO JP
15 MORGAN CHASE BANK NA AS TRUSTEE
16 FOR STRUCTURED ASSET MORTGAGE
17 INVESTMENTS II INC. BEAR STEARNS
18 ALT-A TRUST 2005-9, MORTGAGE PASS-
19 THROUGH CERTIFICATES, SERIES 2005-
20 9,

21 Plaintiff,

22 vs.

23 LAS VEGAS DEVELOPMENT GROUP
24 LLC, a Nevada limited-liability company;
25 ROYAL HIGHLANDS STREET AND
26 LANDSCAPE MAINTENANCE
27 CORPORATION, a Nevada non-profit
28 corporation; ALESSI & KOENIG, LLC, a
Nevada limited-liability company; and
AIRMOTIVE INVESTMENTS, LLC, a
Nevada limited-liability company,

Defendants.

Case No.: 2:16-cv-00478-JCM-GWF

FIRST AMENDED COMPLAINT

Plaintiff, The Bank of New York Mellon, fka The Bank of New York as Successor in Interest to JP Morgan Chase Bank NA as Trustee for Structured Asset Mortgage Investments II

1 Inc. Bear Stearns ALT-A Trust 2005-9, Mortgage Pass-Through Certificates, Series 2005-9
2 (“BNYM” or “Plaintiff”), by and through its counsel, Snell & Wilmer L.L.P., submits this First
3 Amended Complaint and states as follows:

4 **PARTIES, JURISDICTION, AND VENUE**

5 1. Plaintiff BNYM is the beneficiary of a mortgage loan secured by a Deed of Trust
6 recorded on or about August 5, 2005, against the real property located at 10912 Fishers Island
7 Street, Las Vegas, Nevada 89141, APN 177-31-714-009 (the “Property”).

8 2. Upon information and belief, Defendant Las Vegas Development Group, LLC
9 (“LVDG”) is a Nevada limited-liability company doing business in Clark County, Nevada.

10 3. Upon information and belief, Defendant Royal Highlands Street and Landscape
11 Maintenance Corporation (the “HOA”) is a Nevada non-profit corporation doing business in, and
12 with its principal place of business in, Clark County, Nevada.

13 4. Defendant Alessi & Koenig, LLC (“Alessi”) is a Nevada limited-liability company
14 doing business in Clark County, Nevada.

15 5. Upon information and belief, Defendant Airmotive Investments, LLC
16 (“Airmotive”) is a Nevada limited-liability company doing business in Clark County, Nevada.

17 6. This Court has jurisdiction over the counts of the present action pursuant to 28
18 U.S.C. § 1331.

19 7. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over
20 Plaintiff’s claims arising under the laws of the State of Nevada, because those claims are related
21 to Plaintiff’s claims under federal law, form part of the same case or controversy, and are derived
22 from a common nucleus of operative facts.

23 8. Venue is proper in this district because Defendants reside and conduct business
24 within this district, as provided in 28 U.S.C. § 1391(b)(1). Alternatively, venue is proper in this
25 district because a substantial part of the events or omissions giving rise to the claim occurred in
26 this judicial district, as provided in 28 U.S.C. § 1391(b)(2).

27 9. This Court has personal jurisdiction over Defendants because Defendants reside
28 and conduct business within this district and the State of Nevada.

GENERAL ALLEGATIONS

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2 10. This case is about the constitutionality of Nevada Revised Statute (“NRS”) 116.3116, both on its face and as applied. In particular, it concerns the purported extinguishment of BNYM’s Deed of Trust—and also a large debt owed to BNYM—by the foreclosure of a small homeowners’ association lien on the Property, though the mortgage debt came before the lien.

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6 11. Chapter 116 of the Nevada Revised Statutes generally provides a non-judicial foreclosure scheme for a homeowners’ association to conduct a non-judicial foreclosure where the unit owner fails to pay its monthly assessments.

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9 12. NRS 116.3116 makes a homeowners’ association lien for assessments junior to a first deed of trust beneficiary’s secured interest in the property with one limited exception: a homeowners’ association lien is senior to a first deed of trust beneficiary’s secured interest “to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]” NRS 116.3116(2)(c).

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16 13. The Ninth Circuit Court of Appeals has recently declared certain portions of Chapter 116 of the Nevada Revised Statutes unconstitutional because the notice provisions do not meet minimum standards of due process under the Fourteenth Amendment to the U.S. Constitution. *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 832 F.3d 1154 (9th Cir. 2016).

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21 14. On or about July 25, 2005, Ronald Burnside (the “Borrower”) executed a Promissory Note (“Note”) secured by a Deed of Trust in the amount of Three Hundred Fifty-Four Thousand Two Hundred Fifty and 00/100 Dollars (\$354,250.00) in favor of Stearns Lending, Inc. as the beneficiary, Mortgage Electronic Registration Systems, Inc. as the nominee for the lender (Stearns), and First American Title as the trustee.

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26 15. The Deed of Trust was recorded in the Office of the Clark County Recorder (“Recorder’s Office”) on August 8, 2005, as Instrument Number 20050805-0004376 (the “Deed of Trust”) and was filed against the Property.

- 1 16. On or about July 25, 2005, Borrower executed a second promissory note in the
2 amount of Ninety Four Thousand Four Hundred Fifty and 00/100 Dollars (\$94,450.00) in favor of
3 Stearns Lending, Inc. which was secured by a second deed of trust filed on the Property with the
4 Recorder's Office on August 8, 2005, as Instrument Number 20050805-0004377.
- 5 17. Thereafter, BNYM is informed and believes, and thereon alleges, that Borrower
6 stopped making payments due under the Deed of Trust and likewise stopped paying HOA dues.
- 7 18. On or about November 5, 2010, a Notice of Delinquent Assessment was recorded
8 with the Recorder's Office as Instrument Number 201011050003208. The Notice of Delinquent
9 Assessment was submitted by Alessi on behalf of the HOA for outstanding amounts owed as of
10 October 7, 2010, in the amount of \$1,314.11.
- 11 19. On or about January 13, 2011, a Notice of Default and Election to Sell under
12 Homeowners Association Lien was recorded with the Recorder's Office as Instrument Number
13 201101130001575. The Notice of Default and Election to Sell under Homeowners Association
14 Lien was submitted by Alessi on behalf of the HOA for outstanding amounts owed as of April 19,
15 2011, in the amount of \$2,149.52.
- 16 20. On or about May 4, 2011, Mortgage Electronic Registration Systems, Inc., as
17 nominee for Stearns Lending, Inc., transferred and assigned any beneficial interest in the Note
18 and Deed of Trust to BNYM, pursuant to that certain Assignment of Deed of Trust, recorded in
19 the Recorder's Office as Instrument Number 201104040002575.
- 20 21. On or about April 2, 2012, a Notice of Trustee's Sale was recorded with the
21 Recorder's Office as Instrument Number 201204020001883. The Notice of Trustee's Sale was
22 submitted by Alessi on behalf of the HOA pursuant to the November 5, 2010 Notice of
23 Delinquent Assessment and listed outstanding amounts owed as \$4,622.25. The Notice of
24 Trustee's Sale set a date of sale for April 25, 2012.
- 25 22. On or about October 2, 2012, a Notice of Violation (Lien) was recorded with the
26 Recorder's Office as Instrument Number 201210020001741. The Notice of Violation was
27 submitted by Alessi on behalf of the HOA for outstanding amounts owed as of September 18,
28 2012, in the amount of \$26,200.00.

1 23. On or about December 13, 2012, a Substitution of Trustee was recorded with the
2 Recorder's Office as Instrument Number 201212130002175 removing First American Title as the
3 trustee and naming Quality Loan Service Corporation as the trustee under the Deed of Trust.

4 24. On or about February 28, 2013, a Notice of Breach and Default and of Election to
5 Cause Sale of Real Property under Deed of Trust was recorded with the Recorder's Office as
6 Instrument Number 201302280003226. The Notice of Breach and Default and of Election to Sell
7 under Deed of Trust was submitted by Quality Loan Service Corporation as the trustee for
8 outstanding amounts owed on the Deed of Trust.

9 25. On or about March 18, 2013, a Trustee's Deed upon Sale was recorded with the
10 Recorder's Office as Instrument Number 201303080003502. The Trustee's Deed upon Sale was
11 submitted by Alessi on behalf of the HOA and showed LVDG purchased the Property for
12 \$25,100.00 at public auction on March 6, 2013, and noted that the amount of unpaid debt together
13 with costs was \$7,896.56.

14 26. On or about June 3, 2013, a Notice of Trustee's Sale was recorded with the
15 Recorder's Office as Instrument Number 201306030003905. The Notice of Trustee's Sale was
16 submitted by Quality Loan Service Corporation as the trustee, noting that the amount of
17 \$442,002.26 was outstanding on the Deed of Trust.

18 27. On or about August 12, 2013, a Certificate with respect to the State of Nevada
19 foreclosure mediation program was recorded with the Recorder's Office as Instrument Number
20 201308120001430. The Certificate was submitted by Quality Loan Service Corporation, the
21 trustee.

22 28. On or about August 19, 2013, a Notice of Trustee's Sale was recorded with the
23 Recorder's Office as Instrument Number 201308190002005. The Notice of Trustee's Sale was
24 submitted by Quality Loan Service Corporation as the trustee, noting that the amount of
25 \$448,108.87 was outstanding on the Deed of Trust.

26 29. On or about September 12, 2013, an Amended Lis Pendens was recorded with the
27 Recorder's Office as Instrument Number 201309120001184. The Amended Lis Pendens was
28 filed by LVDG.

1 30. On or about January 4, 2017, LVDG purported to convey the Property to
2 Airmotive for "\$1.00" by a Grant Deed recorded with the Recorder's Office as Instrument
3 Number 20170105-0002752.

4 31. BNYM is the beneficiary of the Deed of Trust, with standing and authority to
5 initiate this action.

6 32. On or about March 6, 2013, the HOA and Alessi wrongfully foreclosed against the
7 Property in reliance upon NRS 116.3116 *et seq.* (the "Statute").

8 33. The purported foreclosure sale under NRS 116.3116 *et seq.* did not extinguish
9 BNYM's Deed of Trust, which continues to constitute a valid encumbrance against the Property.

10 34. Upon information and belief, the HOA and Alessi failed to give notice, and/or
11 failed to give constitutionally adequate notice to BNYM of the HOA's assessment lien as
12 required by the Supreme Court in *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983),
13 given that NRS 116.3116 *et seq.* on its face violates BNYM's rights to due process secured by
14 both the Fifth and Fourteenth Amendments to the United States Constitution.

15 35. Upon information and belief, the HOA and Alessi also failed to give notice, and/or
16 failed to give constitutionally adequate notice to BNYM of the HOA's Notice of Default and
17 Election to Sell.

18 36. Upon information and belief, the HOA and Alessi also failed to give notice, and/or
19 failed to give constitutionally adequate notice to BNYM of the HOA's Notice of Sale.

20 37. The HOA and Alessi failed to identify the super-priority amount claimed by the
21 HOA and failed to describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1) in
22 the HOA's Notice of Default.

23 38. The HOA and Alessi failed to identify the super-priority amount claimed by the
24 HOA and failed to describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1) in
25 the HOA's Notice of Trustee's Sale.

26 39. The HOA and Alessi failed to provide notice of the purported super-priority lien
27 amount, where to pay the amount, how to pay the amount, or the consequences for the failure to
28 do so in any of the recorded documents.

1 40. The HOA and Alessi failed to identify the amount of the alleged lien that was for
2 late fees, interest, fines/violations, or collection fees/costs in any of the recorded documents.

3 41. The HOA and Alessi failed to identify if the HOA was foreclosing on the super-
4 priority portion of its lien, if any, or on the sub-priority portion of its lien in any of the recorded
5 documents.

6 42. The HOA and Alessi failed to specify in any of the recorded documents that
7 Plaintiff's interest in the Property would be extinguished by the HOA foreclosure.

8 43. The HOA and Alessi failed to market, sell, or auction the Property for a
9 commercially reasonable value.

10 44. Defendant LVDG purports to have purchased the Property at the March 6, 2013,
11 foreclosure sale for \$25,100.00.

12 45. The Property has an approximate fair market value well in excess of the
13 \$25,100.00 purchase price.

14 46. The sale and purchase of the Property was unconscionable and commercially
15 unreasonable.

16 47. The HOA and Alessi failed to remit any excess proceeds from the foreclosure sale
17 to Wells Fargo in violation of NRS 116.3116 *et seq.*

18 48. Concurrent with filing this action and pursuant to NRS 30.130, BNYM has
19 notified the Nevada Attorney General's Office of this constitutional challenge to NRS 116.3116,
20 *et seq.*

21 **FIRST CAUSE OF ACTION**

22 **(Declaratory Relief under Amendment V to the United States Constitution –**
23 **Takings Clause – Against All Defendants)**

24 49. BNYM repeats and re-alleges the allegations set forth in Paragraphs 1-48 herein.

25 50. Pursuant to 28 U.S.C. § 2201, this Court is empowered to declare the rights and
26 legal relations of the parties in this matter, both generally and in relation to the foreclosure sale
27 and the Property.
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51. The foreclosure pursuant to NRS 116.3116 *et seq.* effected a regulatory taking of BNYM’s secured interest in the Property without just compensation, in violation of the Fifth Amendment to the United States Constitution which prohibits “private property be[ing] taken without just compensation.” U.S. Const. amend. V.

52. NRS 116.3116 *et seq.* on its face effects a regulatory taking of BNYM’s secured interest in the Property without just compensation, in violation of the Fifth Amendment.

53. An actual and justiciable controversy exists between BNYM and Defendants regarding the purported foreclosure sale and the rights associated with the foreclosure sale.

54. Without declaratory relief, an interpretation of NRS 116.3116 *et seq.*, and an interpretation of the constitutional validity of NRS 116.3116 *et seq.*, BNYM’s rights and secured interest in the Property will be adversely affected.

55. Based upon the foregoing, BNYM requests an order declaring that the purported foreclosure sale under NRS 116.3116 *et seq.* did not extinguish BNYM’s Deed of Trust, which continues as a valid encumbrance against the Property.

56. Based upon the foregoing, BNYM requests an order declaring that the purported foreclosure sale be voided and set aside because the foreclosure pursuant to NRS 116.3116 *et seq.* effected a regulatory taking of BNYM’s secured interest in the Property without just compensation, in violation of the Fifth Amendment to the United States Constitution.

57. BNYM has been damaged by the HOA, Alessi, LVDG, and Airmotive’s conduct as specified herein in an amount to be proven at trial hereof.

58. BNYM has been compelled to retain the undersigned counsel to represent it in this matter and has and will continue to incur attorney’s fees and costs.

SECOND CAUSE OF ACTION

(Declaratory Relief under Amendments V and XIV to the United States Constitution – Due Process Clauses – Against All Defendants)

59. BNYM repeats and re-alleges the allegations set forth in Paragraphs 1-58 herein.

1 60. Pursuant to 28 U.S.C. § 2201, this Court is empowered to declare the rights and
2 legal relations of the parties in this matter, both generally and in relation to the foreclosure sale
3 and the Property.

4 61. NRS 116.3116 *et seq.* on its face violates BNYM’s constitutional rights, in
5 particular those rights to due process secured by the Fifth and Fourteenth Amendments to the
6 United States Constitution which provide that the government shall not deprive any person “of
7 life, liberty, or property, without due process of law” and is thus void and unenforceable. U.S.
8 Const. amend. V, XIV.

9 62. Any purported notice provided was inadequate, insufficient, and in violation of
10 BNYM’s rights to due process under the Fifth and Fourteenth Amendment to the United States
11 Constitution.

12 63. An actual and justiciable controversy exists between BNYM and Defendants
13 regarding the purported foreclosure sale and the rights associated with the foreclosure sale.

14 64. Without declaratory relief, an interpretation of NRS 116.3116 *et seq.*, and an
15 interpretation of the constitutional validity of NRS 116.3116 *et seq.*, BNYM’s rights and secured
16 interest in the Property will be adversely affected.

17 65. Based upon the foregoing, BNYM requests an order declaring that the purported
18 foreclosure sale under NRS 116.3116 *et seq.* did not extinguish BNYM’s Deed of Trust, which
19 continues as a valid encumbrance against the Property.

20 66. Based upon the foregoing, BNYM requests an order declaring that the purported
21 foreclosure sale be voided and set aside because NRS 116.3116 *et seq.* on its face violates
22 BNYM’s rights to due process under the Fifth and Fourteenth Amendments to the United States
23 Constitution.

24 67. BNYM has been damaged by Defendants’ conduct as specified herein in an
25 amount to be proven at trial hereof. BNYM has been compelled to retain the undersigned counsel
26 to represent it in this matter and has and will continue to incur attorney’s fees and costs.

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THIRD CAUSE OF ACTION
(Wrongful Foreclosure against All Defendants)

68. BNYM repeats and re-alleges the allegations set forth in Paragraphs 1-67 herein.

69. Defendant LVDG wrongfully purported to purchase BNYM’s Property in violation of NRS 116.3116 et seq. and common law.

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

(a) NRS 116.3116 *et seq.* on its face violates BNYM’s constitutional rights, in particular those rights to due process secured by the Fifth and Fourteenth Amendments to the United States Constitution which provide that the government shall not deprive any person “of life, liberty, or property, without due process of law” and is thus void and unenforceable. U.S. Const. amend. V, XIV.

(b) The foreclosure pursuant to NRS 116.3116 *et seq.* effected a regulatory taking of BNYM’s secured interest in the Property without just compensation, in violation of the Fifth Amendment to the United States Constitution which prohibits “private property be[ing] taken without just compensation.” U.S. Const. amend. V.; and

(c) Any purported notice provided was also inadequate, insufficient, and in violation of BNYM’s rights to due process under the Fifth and Fourteenth Amendments to the United States Constitution.

71. Defendant LVDG is not a bona fide purchaser of the Property.

72. Defendant LVDG’s \$25,100.00 purchase price for the Property was unconscionable.

73. Defendant LVDG’s \$25,100.00 purchase price for the Property was not commercially reasonable.

74. Based upon the foregoing, BNYM requests an order declaring that the purported foreclosure sale did not extinguish BNYM’s Deed of Trust, which continues as a valid encumbrance against the Property.

75. Based upon the foregoing, BNYM requests an order declaring that the purported

1 foreclosure sale be voided and set aside because neither LVDG nor Airmotive are bona fide
2 purchasers of the Property.

3 76. Based upon the foregoing, BNYM requests an order setting aside the purported
4 foreclosure sale as void because LVDG's \$25,100.00 purchase price for the Property was not
5 commercially reasonable.

6 77. Based upon the foregoing, BNYM requests an order declaring that the purported
7 foreclosure sale be voided and set aside because LVDG's \$25,100.00 purchase price for the
8 Property was unconscionable.

9 78. BNYM has been damaged by Defendants' conduct as specified herein, by the
10 potential loss of its security interest in the Property, in an amount to be proven at trial hereof.
11 BNYM has been compelled to retain the undersigned counsel to represent it in this matter and has
12 and will continue to incur attorney's fees and costs.

13 **FOURTH CAUSE OF ACTION**

14 **(Violation of NRS 116.1113 *et seq.* – Against the HOA and Alessi)**

15 79. BNYM repeats and re-alleges the allegations set forth in Paragraphs 1-78 herein,
16 and in particular reasserts the allegations set forth in Paragraphs 32-41 herein.

17 80. The HOA and Alessi wrongfully foreclosed upon the Property in violation of the
18 Statute.

19 81. Given the above-enumerated violations of the NRS 116.3116 *et seq.*, and
20 particularly NRS 116.31162(1)(b)(1) and NRS 116.31164(3)(c), BNYM reasserts that the sale of
21 the Property be voided and set aside and requests any and all damages flowing from these
22 violations.

23 **FIFTH CAUSE OF ACTION**

24 **(Intentional Interference with Contract against All Defendants)**

25 82. BNYM repeats and re-alleges the allegations set forth in Paragraphs 1-81 herein.

26 83. BNYM had a valid contract with Borrower as evidenced by the Note and Deed of
27 Trust, which included as part of the benefit of the bargain a first priority secured interest in the
28 Property.

1 84. The HOA, Alessi, LVDG, and Airmotive knew or should have known of the
2 contract between BNYM and the Borrower.

3 85. The HOA and Alessi knowingly interfered with the contract between BNYM and
4 the Borrower by failing to market, sell, or auction the Property for a commercially reasonable or
5 fair market value, thus evidencing intent to harm BNYM.

6 86. LVDG and Airmotive knowingly interfered with the contract between BNYM and
7 the Borrower by wrongfully obtaining possession of the Property for an unconscionable and
8 commercially unreasonable amount, thus evidencing intent to harm BNYM.

9 87. LVDG and Airmotive knowingly interfered with the contract between BNYM and
10 the Borrower by wrongfully obtaining possession of the Property and attempting to extinguish
11 BNYM's security interest in the Property.

12 88. The HOA, Alessi, LVDG, and Airmotive all lacked justification for these
13 interferences, because of the many constitutional infirmities in NRS 116.3116 *et seq.* described
14 within this Complaint, including:

- 15 (a) NRS 116.3116 *et seq.* on its face violates BNYM's constitutional rights, in
16 particular those rights to due process secured by the Fifth and Fourteenth
17 Amendments to the United States Constitution which provide that the government
18 shall not deprive any person "of life, liberty, or property, without due process of
19 law" and is thus void and unenforceable. U.S. Const. amend. V, XIV.
- 20 (b) The foreclosure pursuant to NRS 116.3116 *et seq.* effected a regulatory taking of
21 BNYM's secured interest in the Property without just compensation, in violation
22 of the United States Constitution. U.S. Const. amend. V.; and
- 23 (c) Any purported notice provided was also inadequate, insufficient, and in violation
24 of BNYM's rights to due process under the Fifth and Fourteenth Amendments to
25 the United States Constitution. U.S. Const. amend. V, XIV.

26 89. BNYM has been damaged by Defendants' conduct as specified herein, by the
27 potential loss of its security interest in the Property, in an amount to be proven at trial hereof.
28

1 BNYM has been compelled to retain the undersigned counsel to represent it in this matter and has
2 and will continue to incur attorney's fees and costs.

3 **SIXTH CAUSE OF ACTION**

4 **(Quiet Title – Against All Defendants)**

5 90. BNYM repeats and re-alleges the allegations set forth in Paragraphs 1-89 herein.

6 91. For all of the independent reasons cited above in Causes of Action 1-5, the HOA
7 sale did not extinguish the senior Deed of Trust.

8 92. For all of the independent reasons cited above in Causes of Action 1-5, BNYM
9 requests an order declaring that the purported HOA foreclosure sale did not extinguish BNYM's
10 Deed of Trust, which continues as a valid encumbrance against the Property.

11 93. For all of the independent reasons cited above in Causes of Action 1-5, BNYM
12 requests an order declaring that the purported HOA foreclosure sale be voided and set aside
13 because LVDG and Airmotive are not bona fide purchasers of the Property.

14 94. For all of the independent reasons cited above in Causes of Action 1-5, BNYM
15 requests an order setting aside the purported HOA foreclosure sale as void because LVDG's
16 \$25,100.00 purchase price for the Property was not commercially reasonable.

17 95. For all of the independent reasons cited above in Causes of Action 1-5, BNYM
18 requests an order declaring that the purported HOA foreclosure sale be voided and set aside
19 because LVDG's \$25,100.00 purchase price for the Property was unconscionable.

20 96. BNYM has been damaged by Defendants' conduct as specified herein, by the
21 potential loss of its security interest in the Property, in an amount to be proven at trial. BNYM
22 has been compelled to retain the undersigned counsel to represent it in this matter and has and
23 will continue to incur attorney's fees and costs.

24 97. Accordingly, BNYM requests that title be quieted, the cloud of title caused by
25 Defendants' alleged interests and purported claims in the Property be removed, and BNYM's
26 Deed of Trust continue as a valid encumbrance against the Property.

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NOW, THEREFORE, The Bank of New York Mellon requests a judgment in its favor against Defendants Royal Highlands Street and Landscape Maintenance Corporation, Alessi & Koenig, LLC, Las Vegas Development Group, LLC, and Airmotive Investments, LLC as follows:

- A. A declaration in favor of BNYM that the Deed of Trust is not extinguished and continues as a valid encumbrance against the Property;
- B. That title in the Property be quieted in favor of BNYM’s Deed of Trust;
- C. A declaration that the Deed of Trust is superior to the interest of LVDG, Airmotive, and any other defendants or claimants;
- D. That the HOA foreclosure sale be declared void and set aside;
- E. For consequential damages resulting from the HOA foreclosure sale;
- F. For judgment in an amount proven at trial in excess of \$200,000;
- G. That BNYM be awarded attorney’s fees and costs, plus interest accruing thereon, in its favor at the maximum rate allowed by law; and
- H. That the Court award such other and further relief as it may deem appropriate.

Dated: December __, 2017.

SNELL & WILMER L.L.P.

By: _____
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