EXHIBIT “3”

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DISTRICT COURT
CLARK COUNTY, NEVADA

TALMER WEST BANK, *fka* BANK OF LAS VEGAS, as successor in interest to BLACK MOUNTAIN COMMUNITY BANK, Plaintiff, v. DAVID R. FANDEL, individually; DAWN C. FANDEL, individually; DOES I-X; *and* ROE CORPORATIONS XI-XX, *inclusive*, Defendants.	Case No.: A-14-697579-C Dept. No.: XXXI **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**

PLEASE TAKE NOTICE that the Court's Findings of Fact and Conclusions of Law ("Order") was entered on October 5th, 2015. A true and correct copy of the Order is attached hereto as Exhibit "1".

Dated this 6th day of October, 2015.

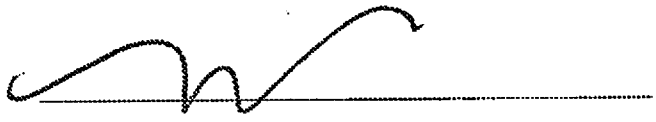
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CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on the 6th of October 2015, a true and correct copy of NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW was electronically served to the parties listed in the court's electronic service to parties as listed in Exhibit "2".

Dated this 6th day of October, 2015.



an employee of MORRIS POLICH & PURDY, LLP

EXHIBIT 1

EXHIBIT 1

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

TALMER WEST BANK, *fka* BANK OF LAS VEGAS, as successor in interest to BLACK MOUNTAIN COMMUNITY BANK, Plaintiff, v. DAVID R. FANDEL, individually; DAVID R. FANDEL, representative and/or executor of the estate of DAWN C. FANDEL,; DOES I-X; *and* ROE CORPORATIONS XI-XX, *inclusive*, Defendants.	Case No.: A-14-697579-C Dept. No.: XXXI **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On August 27, 2015, an Evidentiary Trial on Plaintiff, Talmer West Bank's ("Talmer" or "Plaintiff")'s Complaint and Request for a Deficiency Judgment against Defendants, David R. Fandel, individually, and David R. Fandel as representative and/or executor of the estate of Dawn C. Fandel (collectively, "Fandel") was commenced. The trial concluded on September 9, 2015. Present at the trial were Matthew R. Carlyon, Esq. and Candace C. Carlyon, Esq. of Morris, Polich & Purdy on behalf Talmer; and John H. Gutke, Esq. and Tara Popova Esq. of Fox Rothschild, LLP on behalf of Fandel. Prior to the trial, the Court heard and granted Partial Summary Judgment in favor of Talmer. Also, prior to trial, the parties submitted a Joint Pretrial Memorandum on 8/20/2015 which included certain stipulations of fact which are adopted by the Court.

The Court, having considered the papers submitted, heard arguments made on behalf of the parties, considered the testimony at trial and the credibility

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of the witnesses, and reviewed the exhibits introduced at trial, the Court makes the following:

FINDINGS OF FACT

ADOPTION OF STIPULATED FACTS. The following facts are adopted from the Parties' Joint Pretrial Memorandum. The following facts are not in dispute:

1. On November 23, 2005, Fandel took out two separate business loans (the "Loans") from Black Mountain Community Bank ("Black Mountain") with a combined principal amount of $2,230,000.00.

2. In conjunction with the Loans, Fandel executed and delivered to Black Mountain, Deeds of Trust (the "Deeds of Trust") encumbering the Real Property located in Clark County, Nevada commonly described as 2480 East Tompkins, Las Vegas, Nevada 89121, and identified as Clark County Assessor's Parcel Number 162-24-302-005 (the "Property").

3. These Deeds of Trust were recorded with the Clark County Recorder's Office and constituted liens upon the Property.

4. In January of 2013, Fandel defaulted on both Loans by failing to make payments due and failing to pay property tax on the Property.

5. Fandel was served with a Notice of Default for the loans, and on May 23, 2013 a Non-Judicial Foreclosure of the Property was commenced.

6. On September 19, 2013, the Trustee conducted a foreclosure of the Property.

7. At the time of the foreclosure sale, the total amount due on the

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Loans was $2,041,187.47.

8. $16,888.63 of State and County Taxes was also due on the Property at the time of sale.

9. Bank of Las Vegas was the prevailing bidder at the foreclosure and obtained the Property with a bid of $1,062,000.00.

10. A complaint and application for deficiency judgment was filed against Defendants on March 12, 2014, in accordance with NRS 40.455(1).

11. On April 18, 2014, Plaintiff filed an Amended Complaint and Application for Deficiency Judgment, wherein the Plaintiff was listed as Talmer West Bank *fka* Bank of Las Vegas. These changes in Plaintiff are due to a series of Mergers; the first occurring in January of 2010 whereby Black Mountain merged into Bank of Las Vegas, and the second occurring in January of 2014 whereby Bank of Las Vegas merged into Michigan Commerce Bank (*dba* Talmer West Bank). It is through these Mergers that Talmer West ultimately acquired its interest in the Loans and the Deeds of Trust.

SUMMARY JUDGMENT. The Court incorporates the undisputed facts established in connection with the Summary Judgment Hearings.

12. After reviewing the legal authority submitted by the parties in connection with their Motions for Summary Judgment, relevant case law and relevant legislative history surrounding NRS 40.459(1)(c) (as amended by the Nevada Legislature in 2011 by AB 273), and reviewing the parties' supplemental briefing related to the recent Nevada Supreme Court cases of Branch Banking and Trust Company v. Windhaven & Tollway, LLC, et al. 131 Nev. Advance

Opinion 20 (2015) and Munoz v. Branch Banking and Trust Company, Inc., 131 Nev. Advance Opinion 23 (2015), the Court determined that NRS 40.459(1)(c) does not apply in the instant case to limit Plaintiff's potential deficiency because Plaintiff became a successor creditor with rights to pursue a deficiency judgment via merger with Bank of Las Vegas, who acquired the Loans via a separate merger with Black Mountain Bank, who was the original lender on the Loans. See Findings of Fact and Conclusions of Law and Order, filed 7/16/2015, Pg 5-6.

EVIDENCE AT TRIAL. The Court makes the following Findings of Fact based on the evidence adduced at trial:

13. David Rennick, Plaintiff's Chief Regional Credit Officer, testified that following the foreclosure, Plaintiff actively marketed the property including hiring a broker and negotiating in good faith to obtain the best possible price for the Property.

14. Plaintiff received a purchase offer in the amount of $960,000.00 on October 15, 2013. (Exhibit 4).

15. Ultimately, Plaintiff negotiated with Par Homes I, LLC for the purchase of the Property for a price of $1,180,000.00. (Exhibit 7).

16. At the time of foreclosure, the property was 27% occupied. There was only one tenant.

17. Prior to the foreclosure, Defendant had attempted to market the property for sale and for lease. Defendants advertised starting lease rates as low as 49 cents per square foot, but were unable to obtain additional tenants.

18. Richard Smith, MAI, testified for Plaintiff that the value of the Property on the date of foreclosure was $1,180,000.00.

19. Mr. Smith considered both a comparable sale and an income capitalization methodology, relying most heavily on the income capitalization approach.

20. In conducting a comparable sale analysis, Mr. Smith compared comparable sales closer geographically to the Property, as well as more consistent with the Property's age and (lack of) major street frontage than the comparable sales considered by Defendant's expert.

21. Mr. Smith also made clear mathematical adjustments to illustrate the adjustments he considered to be appropriate in order to compare the value of the comparable sales to the subject Property.

22. Utilizing the comparable sale methodology, Mr. Smith derived an "as stabilized" value of $1,350,000.00.

23. Mr. Smith's income capitalization analysis included his opinion that the rental rate which could be commanded by the subject Property on the date of foreclosure was 66 cents per square foot, after consideration of free rent and other incentives necessary to obtain new leases in the then current market, and his opinion that it would take approximately two years for the property to be fully leased.

24. Again, Mr. Smith made clear mathematical adjustments to the comparable rentals that he analyzed as part of the application of the income capitalization approach.

25. Using the income capitalization analysis, Mr. Smith derived an "as stabilized" value of $1,370,000.00.

26. Mr. Smith reconciled the two values, finding the "as stabilized" value of the Property at the date of foreclosure, September 19, 2015, to be $1,370,000.00.

27. Mr. Smith then calculated the investment required to bring the property to the "as stabilized value", creating an "as is" value of $1,180,000.00.

28. Defendants called Tio DeFederico, MAI as their valuation expert.

29. Like Mr. Smith, Mr. DeFederico performed an analysis under both the sales comparison and income capitalization approaches.

30. With regard to his sales comparison analysis, although Mr. DeFederico utilized more current sales (including sales occurring after the foreclosure date, and sales which would not have been available to buyers or sellers prior to the foreclosure date.)

31. Although Mr. DeFederico testified (and his report states, at p. 55), that the most likely purchaser for the Property was not an owner-occupant, but an investor, most of his comparables involved owner-users.

32. For example, his Comparable Sale #1 is the purchase by the Nevada State Bar of a property which was never listed on the market. His Comparable Sale #2 did not involve any brokers; the purchaser was previously a tenant in the same office complex, and the seller provided $1.7 million of financing on the $1.9 million reported sale price. Exhibit N at p. 64. His

Comparable 3 was a purchase by Westar Credit Union, also involving no brokers.

33. Mr. DeFederico also used comparables which were all newer than the Subject Property and all located either on major streets or, in the case of his Comparable #5, part of the Galleria Mall commercial development.

34. Further, Mr. DeFederico's adjustments were not stated in mathematical terms, but were a series of pluses and minuses by which, according to Mr. DeFederico's testimony, he attempted to "triangulate" a value by determining that the value of the Subject Property would lie between comparables he found to be superior to the subject and the one comparable he found to be inferior to the Subject (Comparable #5).

35. Mr. DeFederico's conclusion that Comparable #5 represented an "inferior" property does not appear supported by the facts given the location of that sale, its 90.5% occupancy rate, and the fact that it is ten years newer than the Subject Property. Each of these factors appear to be more favorable rather than less favorable to the Subject Property.

36. Mr. DeFederico also performed an analysis utilizing the income capitalization approach.

37. However, Mr. DeFederico's analysis of comparable leases was not consistent with the discovery presented to Plaintiffs. The Court was informed that although Plaintiffs served discovery requesting copies of all of Mr. DeFederico's notes and all documents reviewed, Mr. DeFederico did not produce any notes of any conversations by which he confirmed information regarding

comparable leases, nor were copies of leases or listings produced. In the absence of any confirming evidence of the analysis presented, the Court could not find that Mr. DeFederico's analysis had a greater rate than Mr. Smith's analysis.

38. This is particularly true since Mr. Smith testified that he had personally investigated the comparable leases analyzed by Mr. DeFederico, and that in many cases the actual leases contained free rent and other incentives, and were in many cases not triple-net leases, such that adjustments had to be made in order to utilize the rental rates attributable to those comparables.

39. Mr. DeFederico concluded that the Subject Property could command rental rates of 90 cents per square foot and be fully leased within one year; the Court rejects both of these conclusions as they are not consistent with the facts and evidence presented as to the status of the Subject Property at the relevant time periods and was not supported by an appropriate foundation.

40. Overall, the Court finds that Mr. Smith's analysis is more reasoned and persuasive, and adopts Mr. Smith's conclusion of value of the Subject Property as of September 19, 2013, as $1,180,000.00.

41. Independently, the fact that the Subject Property actually sold for $1,180,000.00 supports the Court's conclusion that the fair market value of the Subject Property on the date of the foreclosure was $1,180,000.00.

42. It is appropriate to adjust that value downward by the amount of real property taxes due ($16,006.00) and real property transfer taxes paid in connection with the foreclosure ($5,416.20), resulting in an as-is value of the

Subject Property on the date of the foreclosure sale, September 19, 2013, of $1,158,577.80.

43. Subtracting this sum from the amount due of $2,041,187.47 yields a deficiency of $882,609.67 as of September 19, 2013.

44. In addition, Plaintiff is entitled to interest at the rate of 12.875% from and after the date of foreclosure.

45. Plaintiff is also, pursuant to its contracts (Exhibits 13, 20 at pages BLV 8, BLV 52), entitled to reasonable attorneys' fees incurred in connection with this case.

46. Any Findings of Fact, which may also contain legal conclusions, shall also be considered as Conclusions of Law.

CONCLUSIONS OF LAW

1. Plaintiff commenced this action within the 6-month time limit imposed pursuant to NRS 40.455(1). As discussed above, the Foreclosure Sale in this matter occurred on September 19, 2013. This case was commenced on March 12, 2014, 5 months and 21 days following the Foreclosure Sale.

2. Pursuant to NRS 40.455, where the consideration recited in a trustee's deed is less than the amount of a debt, "the court shall award a deficiency":

> NRS 40.455 Deficiency judgment: Award to judgment creditor or beneficiary of deed of trust; exceptions. and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriffs return or the recital of consideration in the

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trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively.

3. NRS 40.457 requires that the Court take evidence to determine the fair market value of the Subject Property as of the date of the foreclosure sale.

4. "Fair market value is generally defined as the price which a purchaser, willing but not obliged to buy, would pay an owner willing but not obliged to sell, taking into consideration all the uses to which the property is adapted and might in reason be applied." *Unruh v. Streight*, 615 P.2d 247, 248, 96 Nev. 684, 685 (1980). Quoting *Union Nat. Bank of Pittsburgh v. Crump*, 349 Pa. 339, 37 A.2d 733 (1944).

5. In determining the fair market value of the Real Subject Property in this matter, the Court considered several factors including: "the economic conditions at the time of the foreclosure, and the actual marketing and sale history of the property." *Lee v. Verex Assur., Inc.*, 103 Nev. 515, 518, 746 P.2d 140, 142 (1987).

6. The Court notes that both parties' experts opined that the greatest weight in their reports should be given to a method described as "the income capitalization approach" as the most likely purchaser of the Subject Property would be an investor rather than an owner-occupant. In reviewing the report of Defendants' Expert, it became apparent that the income capitalization approach utilized was replete with inaccuracies. For example, it appeared that the Defendants' Expert did not conduct a thorough investigation of the data used for comparable leases which caused there to be questions as to the accuracy of his

rental rates. Further, the Defendants' Expert based his valuation, at least partially, on the idea that the Subject Property could be fully leased within one year, while the relevant evidence does not support this analysis.

7. Plaintiff's Expert, on the other hand, utilized what this Court feels to be more accurate and reproducible methods of valuating the property, conducted his own investigation of the publicly available data, and provided a more reliable and, thus, a more accurate valuation method for the Subject Property.

8. Further, the Plaintiff's Expert independently estimated the value of the Subject Property at $1,180,000.00, the exact amount at which the Subject Property ultimately sold. While that factor is not determinative, pursuant to *Halfon v. Title Ins. & Trust Co.*, 97 Nev. 421, 424, 634 P.2d 660, 661 (1981), this Court does find the amount for which the Subject Property sold, at an arm's length sale negotiated approximately two months after the foreclosure, to be relevant.

9. Because this Court finds the Plaintiff's Expert conclusions more reliable than that of the Defendants' Expert, and because the actual amount at which the Subject Property ultimately sold comports with the value estimated by Plaintiff's Expert, this Court concludes that the Fair Market Value of the Property, at the date of sale was $1,180,000.00.

10. Further, this Court finds that it is appropriate to deduct from that Fair Market Value the amount of unpaid taxes due at the time of the sale[1], the

[1] In accordance with *Douglas Cnty. Bank & Trust Co. v. Stamper*, 244 Neb. 226, 229, 505 N.W.2d 693, 696 (1993)

evidence here showing that such amount was $16,006.00 as well as the real property transfer taxes paid in connection with the foreclosure ($5,416.20).

11. Thus, this Court concludes that Plaintiff is entitled to Judgment against Defendants in the amount of $882,609.67 (the difference between the $2,041,187.47 owing on the Loan on the date of foreclosure and the adjusted Fair Market Value of the Property at that date of $1,158,577.80) plus interest from and after September 19, 2013, at the contractual rate. (See, Exhibits 13,15, 20 and 23).

12. Plaintiff, as the prevailing party, pursuant to NRS 18.020, is entitled to its costs of suit and shall file a Memorandum of Costs within the time permitted by the Nevada Rules of Civil Procedure.

13. The issue of attorneys' fees is held in abeyance pending any timely motion practice.

NOW, THEREFORE, IT IS HEREBY SO FOUND AND CONCLUDED, and IT IS FURTHER ORDERED that Plaintiff shall have Judgment accordingly, the same to be entered concurrently with the entry hereof.

Dated this 5st day of October, 2015.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

EXHIBIT 2

EXHIBIT 2

E-Service Master List
For Case

null - Nations Fund I, LLC, Plaintiff(s) vs. Capriati Construction Corp Inc, Defendant(s)

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