

FIRST DEED OF TRUST
(Continued)

Page 16

forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Nevada as to all Indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Bank of Nevada, and its successors and assigns.

Borrower. The word "Borrower" means RED CARD LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default."

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means RED CARD LLC.

FIRST DEED OF TRUST
(Continued)

Page 17

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future Improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means Bank of Nevada, its successors and assigns.

Note. The word "Note" means the Promissory Note (Note A) dated March 30, 2011, in the original principal amount of One Million Four Hundred Forty-Four Thousand Eight Hundred Ninety-Eight and No/100 Dollars (\$1,444,898.00) from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Personal Property. The words "Personal Property" mean all equipment, fixtures, mobile homes, manufactured homes or modular homes which have not been legally acceded to the real property in accordance with Nevada law, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to or used in the operation of the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

FIRST DEED OF TRUST
(Continued)

Page 18

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means NEVADA TITLE COMPANY, whose address 2500 N. BUFFALO DRIVE, SUITE 150, LAS VEGAS, NV 89128, and any substitute or successor trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

RED CARD LLC

By: 

MURRAY PETERSEN, Manager of RED CARD LLC

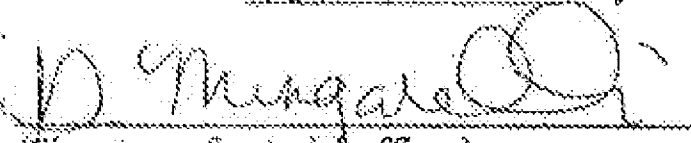
FIRST DEED OF TRUST
(Continued)

Page 19

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on 2/3/11 by MURRAY
PETERSEN, Manager of RED CARD LLC.


(Signature of notarial officer)

Notary Public in and for State of NEVADA

(Seal, if any)

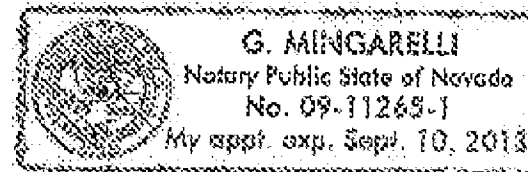


EXHIBIT "A"

LEGAL DESCRIPTION

That portion of the West Half (W ½) of the Southwest Quarter (SW ¼) of the Southwest Quarter (SW ¼) of Section 28, Township 20 South, Range 60 East, M.D.B.&M., more particularly described as follows:

Parcel One (1) as shown by map thereof on file in File 81 of Parcel Maps, Page 4 in the Office of the County Recorder of Clark County, Nevada.

EXHIBIT 5

EXHIBIT 5

The undersigned hereby affirms that
this document submitted for recording
does not contain a Social Security Number.

Assessor Parcel No(s):
138-28-401-009

WHEN RECORDED MAIL TO:
Bank of Nevada
West Sahara Regional Office
2700 W. Sahara Avenue
Las Vegas, NV 89102

SEND TAX NOTICES TO:
RED CARD LLC
1003 ROBIN OAKS DR.
LAS VEGAS, NV 89117

Inst #: 201104010000103
Fees: \$33.00
N/C Fee: \$0.00
04/01/2011 08:02:02 AM
Receipt #: 725311
Requestor:
SNELL & WILMER
Recorded By: SAO Pgs: 20
DEBBIE CONWAY
CLARK COUNTY RECORDER

FOR RECORDER'S USE ONLY

SECOND DEED OF TRUST

THIS DEED OF TRUST is dated March 30, 2011, among RED CARD LLC, A NEVADA LIMITED LIABILITY COMPANY, whose address is 1003 ROBIN OAKS DR., LAS VEGAS, NV 89117 ("Grantor"); BANK OF NEVADA, whose address is 2700 W SAHARA AVE., SUITE 420, LAS VEGAS, NV 89102 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and NEVADA TITLE COMPANY, whose address 2500 N. BUFFALO DRIVE, SUITE 150, LAS VEGAS, NV 89128 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor irrevocably grants, bargains, sells and conveys to Trustee with power of sale for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in CLARK County, State of Nevada:

SEE ATTACHED EXHIBIT "A"

The Real Property or its address is commonly known as 8490 WESTCLIFF DR., LAS VEGAS, NV 89145. The Real Property tax identification number is 138-28-401-009.

Grantor presently, absolutely, and irrevocably assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property.

SECOND DEED OF TRUST

(Continued)

Page 2

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS INCLUDING FUTURE ADVANCES AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

STATUTORY COVENANTS. The following Statutory Covenants are hereby adopted and made a part of this Deed of Trust: Covenants Nos. 1, 3, 4, 5, 6, 7, 8 and 9 of N.R.S. 107.030. For Covenant 4, upon default, including failure to pay upon final maturity, the interest rate on the Note shall be increased by adding a 5.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law. The percent of counsel fees under Covenant No. 7 shall be ten percent (10%). Except for Covenants Nos. 6, 7, and 8, to the extent any terms of this Deed of Trust are inconsistent with the Statutory Covenants the terms of this Deed of Trust shall control. Covenants 6, 7, and 8 shall control over the express terms of any inconsistent terms of this Deed of Trust.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened

SECOND DEED OF TRUST
(Continued)

Page 3

litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

SECOND DEED OF TRUST

(Continued)

Page 4

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property or any mobile home or manufactured home located on the property whether or not it is legally a part of the real property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Nevada law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

SECOND DEED OF TRUST
(Continued)

Page 5

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$1,000.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that

SECOND DEED OF TRUST

(Continued)

Page 6

coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$1,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any

SECOND DEED OF TRUST
(Continued)

Page 7

time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

SECOND DEED OF TRUST

(Continued)

Page 8

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation. Grantor waives any legal or equitable interest in the net proceeds and any right to require any apportionment of the net proceeds of the award. Grantor agrees that Lender is entitled to apply the award in accordance with this paragraph without demonstrating that its security has been impaired.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2)

SECOND DEED OF TRUST

(Continued)

Page 9

contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

SECOND DEED OF TRUST
(Continued)

Page 10

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Default on Subordinate Indebtedness. Default by Grantor under any subordinate obligation or instrument securing any subordinate obligation or commencement of any suit or other action to foreclose any subordinate lien on the Property.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member,

SECOND DEED OF TRUST
(Continued)

Page 11

the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

SECOND DEED OF TRUST

(Continued)

Page 12

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property, and, whether or not Lender takes possession, collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

SECOND DEED OF TRUST

(Continued)

Page 13

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Notices given by Lender or Trustee under the real property foreclosure proceedings shall be deemed reasonable. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. The power of sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempts to sell) as to all or any portion of the Real Property remaining unsold, but shall continue unimpaired until all of the Real Property has been sold by exercise of the power of sale and all Indebtedness has been paid in full.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law. Fees and expenses shall include attorneys' fees that Lender, Trustee, or both incur, if either or both are made parties to any action to enjoin foreclosure or to any legal proceeding that Grantor institutes. The fees and expenses are secured by this Deed of Trust and are recoverable from the Property.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

SECOND DEED OF TRUST

(Continued)

Page 14

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of CLARK County, State of Nevada. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net Operating Income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

SECOND DEED OF TRUST
(Continued)

Page 15

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Nevada.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of

SECOND DEED OF TRUST

(Continued)

Page 16

forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Nevada as to all Indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Bank of Nevada, and its successors and assigns.

Borrower. The word "Borrower" means RED CARD LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default."

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means RED CARD LLC.

SECOND DEED OF TRUST
(Continued)

Page 17

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future Improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means Bank of Nevada, its successors and assigns.

Note. The word "Note" means the Promissory Note (Note A) dated March 30, 2011, in the original principal amount of One Million Ninety-Two Thousand Five Hundred Ninety-One and No/100 Dollars (\$1,092,591.00) from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Personal Property. The words "Personal Property" mean all equipment, fixtures, mobile homes, manufactured homes or modular homes which have not been legally acceded to the real property in accordance with Nevada law, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to or used in the operation of the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

SECOND DEED OF TRUST

(Continued)

Page 18

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means NEVADA TITLE COMPANY, whose address 2500 N. BUFFALO DRIVE, SUITE 150, LAS VEGAS, NV 89128, and any substitute or successor trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

RED CARD LLC

By: 
MURRAY PETERSEN, Manager of RED CARD LLC

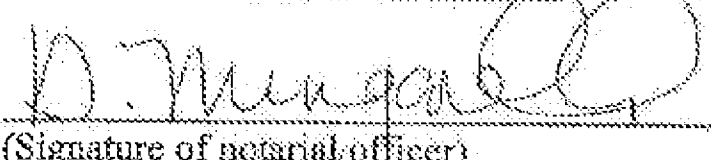
SECOND DEED OF TRUST
(Continued)

Page 19

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on 3/31/11 by MURRAY
PETERSEN, Manager of RED CARD LLC.


(Signature of notarial officer)

Notary Public in and for State of NEVADA

(Seal, if any)

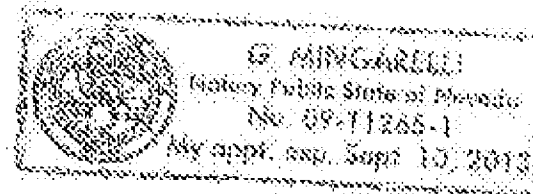


EXHIBIT "A"

LEGAL DESCRIPTION

That portion of the West Half (W ½) of the Southwest Quarter (SW ¼) of the Southwest Quarter (SW ¼) of Section 28, Township 20 South, Range 60 East, M.D.B.&M., more particularly described as follows:

Parcel One (1) as shown by map thereof on file in File 81 of Parcel Maps, Page 4 in the Office of the County Recorder of Clark County, Nevada.

EXHIBIT 6

EXHIBIT 6

LW# 103344768

LW# 103344771

COMMERCIAL GUARANTY

Borrower: RED CARD LLC
1003 ROBIN OAKS DR.
LAS VEGAS, NV 89117

Lender: Bank of Nevada
2700 W Sahara Ave., Suite 420
Las Vegas, NV 89102

Guarantor: MURRAY PETERSEN
1003 ROBIN OAKS DR.
LAS VEGAS, NV 89117

Copy

CONTINUING GUARANTEE OF PAYMENT AND PERFORMANCE. For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the Indebtedness of Borrower to Lender, and the performance and discharge of all Borrowers obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents. Under this Guaranty, Guarantor's liability is unlimited and Guarantor's obligations are continuing.

INDEBTEDNESS. The word "Indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, attorneys' fees, arising from any and all debts, liabilities and obligations of every nature or form, now existing or hereafter arising or acquired, that Borrower individually or collectively or interchangeably with others, owes or will owe Lender. "Indebtedness" includes, without limitation, loans, advances, debts, overdraft indebtedness, credit card indebtedness, lease obligations, liabilities and obligations under any interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, other obligations, and liabilities of Borrower, and any present or future judgments against Borrower, future advances, loans or transactions that renew, extend, modify, refinance, consolidate or substitute these debts, liabilities and obligations whether: voluntarily or involuntarily incurred; due or to become due by their terms or acceleration; absolute or contingent; liquidated or unliquidated; determined or undetermined; direct or indirect; primary or secondary in nature or arising from a guaranty or surety; secured or unsecured; joint or several or joint and several; evidenced by a negotiable or non-negotiable instrument or writing; originated by Lender or another or others; barred or unenforceable against Borrower for any reason whatsoever; for any transactions that may be voidable for any reason (such as infancy, insanity, ultra vires or otherwise); and originated then reduced or extinguished and then afterwards increased or reinstated.

If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Guarantor, Lender's rights under all guaranties shall be cumulative. This Guaranty shall not (unless specifically provided below to the contrary) affect or invalidate any such other

COMMERCIAL GUARANTY

(Continued)

Page 2

guaranties. Guarantor's liability will be Guarantor's aggregate liability under the terms of this Guaranty and any such other untermiated guaranties.

CONTINUING GUARANTY. THIS IS A "CONTINUING GUARANTY" UNDER WHICH GUARANTOR AGREES TO GUARANTEE THE FULL AND PUNCTUAL PAYMENT, PERFORMANCE AND SATISFACTION OF THE INDEBTEDNESS OF BORROWER TO LENDER, NOW EXISTING OR HEREAFTER ARISING OR ACQUIRED, ON AN OPEN AND CONTINUING BASIS. ACCORDINGLY, ANY PAYMENTS MADE ON THE INDEBTEDNESS WILL NOT DISCHARGE OR DIMINISH GUARANTOR'S OBLIGATIONS AND LIABILITY UNDER THIS GUARANTY FOR ANY REMAINING AND SUCCEEDING INDEBTEDNESS EVEN WHEN ALL OR PART OF THE OUTSTANDING INDEBTEDNESS MAY BE A ZERO BALANCE FROM TIME TO TIME.

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty will apply only to advances or new indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the term "new Indebtedness" does not include the Indebtedness which at the time of notice of revocation is contingent, unliquidated, undetermined or not due and which later becomes absolute, liquidated, determined or due. This Guaranty will continue to bind Guarantor for all the Indebtedness incurred by Borrower or committed by Lender prior to receipt of Guarantor's written notice of revocation, including any extensions, renewals, substitutions or modifications of the Indebtedness. All renewals, extensions, substitutions, and modifications of the Indebtedness granted after Guarantor's revocation, are contemplated under this Guaranty and, specifically will not be considered to be new Indebtedness. This Guaranty shall bind Guarantor's estate as to the Indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of Guarantor's death. Subject to the foregoing, Guarantor's executor or administrator or other legal representative may terminate this Guaranty in the same manner in which Guarantor might have terminated it and with the same effect. Release of any other guarantor or termination of any other guaranty of the Indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty. It is anticipated that fluctuations may occur in the aggregate amount of the Indebtedness covered by this Guaranty, and Guarantor specifically acknowledges and agrees that reductions in the amount of the Indebtedness, even to zero dollars (\$0.00), prior to Guarantor's written revocation of this Guaranty shall not constitute a termination of this Guaranty. This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long as any of the indebtedness remains unpaid and even though the Indebtedness may from time to time be zero dollars (\$0.00).

COMMERCIAL GUARANTY

(Continued)

Page 3

GUARANTOR'S AUTHORIZATION TO LENDER. Guarantor authorizes Lender, either before or after any revocation hereof, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) prior to revocation as set forth above, to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the Indebtedness or any part of the Indebtedness, including increases and decreases of the rate of interest on the Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the Indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the Indebtedness; (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the Indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

GUARANTOR'S REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to Lender that (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the dates the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

COMMERCIAL GUARANTY
(Continued)

Page 4

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Indebtedness or of any nonpayment related to any collateral, or notice of any action or nonfiction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of (A) Nevada Revised Statutes Section 40.430 and any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the Indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the Indebtedness; (D) any right to claim discharge of the Indebtedness on the basis of unjustified impairment of any collateral for the Indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding Indebtedness which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the Indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the Indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the Indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be

COMMERCIAL GUARANTY

(Continued)

Page 5

contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, any trust accounts for which setoff would be prohibited by law, or monies in any accounts that were received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR. Guarantor agrees that the Indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the Indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such

COMMERCIAL GUARANTY

(Continued)

Page 6

enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

Governing Law. This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. This Guaranty has been accepted by Lender in the State of Nevada.

Choice of Venue. If there is a lawsuit, Guarantor agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada.

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parol evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

Notices. Any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when

COMMERCIAL GUARANTY
(Continued)

Page 7

deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. All revocation notices by Guarantor shall be in writing and shall be effective upon delivery to Lender as provided in the section of this Guaranty entitled "DURATION OF GUARANTY." Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Unless otherwise provided or required by law, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Successors and Assigns. Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

PROVISION FOR PROVIDING FINANCIAL INFORMATION (GUARANTORS).
Guarantor agrees to provide Bank with the following:

- (a) Annual federal income tax returns including all schedules and K-1s due within 30 days of the due date. If an extension is filed a copy of the extension request must be submitted within 30 days of the due date.
- (b) Annual financial statements of Guarantor within 30 days of year end.

RELEASE. As a material part of the consideration for Lender entering into the Loan Documents, Guarantor agrees as follows (the "Release Provision"):

- (a) Guarantor hereby releases and forever discharges Lender and Lender's predecessors, successors, assigns, participants, officers, managers, directors, shareholders, employees, agents, attorneys, representatives, parent corporations, subsidiaries, and affiliates (hereinafter all of the above collectively referred to as "Lender Group") from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, offsets, rights, actions, and causes of action of any nature whatsoever, including, without limitation, all claims, demands, and causes of action for contribution and

COMMERCIAL GUARANTY
(Continued)

Page 8

indemnity, whether arising at law or in equity, whether presently possessed or possessed in the future, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether presently accrued or to accrue hereafter, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, which Guarantor may have or claim to have against any of Lender Group, accruing prior to the date of this Amendment, except as expressly provided in the Loan Documents; provided, however, that Lender shall not be released hereby from any obligation to pay to Guarantor any amounts that Guarantor may have on deposit with Bank, in accordance with applicable law and the terms of the documents establishing any such deposit relationship.

(b) Guarantor agrees not to sue any of Lender Group or in any way assist any other person or entity in suing Lender Group with respect to any claim released herein. The Release Provision may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of the release contained herein.

(c) Guarantor acknowledges, warrants, and represents to Lender Group that:

(i) Guarantor has read and understands the effect of the Release Provision. Guarantor has had the assistance of independent counsel of its own choice, or has had the opportunity to retain such independent counsel, in reviewing, discussing, and considering all the terms of the Release Provision; and if counsel was retained, counsel for Guarantor has read and considered the Release Provision and advised Guarantor to execute the same. Before execution of this Agreement, Guarantor has had adequate opportunity to make whatever investigation or inquiry it may deem necessary or desirable in connection with the subject matter of the Release Provision.

(ii) Guarantor is not acting in reliance on any representation, understanding, or agreement not expressly set forth herein. Guarantor acknowledges that Lender Group has not made any representation with respect to the Release Provision except as expressly set forth herein.

(iii) Guarantor has executed this Agreement and the Release Provision thereof as its free and voluntary act, without any duress, coercion, or undue influence exerted by or on behalf of any person.

(iv) Guarantor is the sole owner of the claims released by the Release Provision, and Guarantor has not heretofore conveyed or assigned any interest in any such claims to any other person or entity.

(d) Guarantor understands that the Release Provision was a material consideration in the agreement of Lender to enter into the Loan Documents.

(e) It is the express intent of Guarantor that the release and discharge set forth in the Release Provision be construed as broadly as possible in favor of Lender Group so as to foreclose forever the assertion by Guarantor of any claims released hereby against Lender Group.

COMMERCIAL GUARANTY
(Continued)

Page 9

(f) If any term, provision, covenant, or condition of the Release Provision is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of the provisions shall remain in full force and effect.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means RED CARD LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Guarantor. The word "Guarantor" means everyone signing this Guaranty, including without limitation MURRAY PETERSEN, and in each case, any signer's successors and assigns.

Guaranty. The word "Guaranty" means this guaranty from Guarantor to Lender.

Indebtedness. The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

Lender. The word "Lender" means Bank of Nevada, its successors and assigns.

Loan Documents. The words "Loan Documents" mean the Note and the Related Documents.

Note. The word "Note" means and includes without limitation all of Borrower's promissory notes and/or credit agreements evidencing Borrower's loan obligations in favor of Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for promissory notes or credit agreements.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY." NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO

COMMERCIAL GUARANTY
(Continued)

Page 10

MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED MARCH 30, 2011.

GUARANTOR:

By: 

MURRAY PETERSEN

EXHIBIT 7

EXHIBIT 7

Snell & Wilmer

LLP

LAW OFFICES

3883 Howard Hughes Parkway
Suite 1100
Las Vegas, NV 89169
702.784.5200
702.784.5252 (Fax)
www.swlaw.com

Stephen B. Yoken
702.784.5235
syoken@swlaw.com

DENVER

LAS VEGAS

LOS ANGELES

LOS CABOS

ORANGE COUNTY

PHOENIX

SALT LAKE CITY

TUCSON

November 22, 2011

BY MESSENGER

Red Card LLC
1003 Robin Oaks Drive
Las Vegas, Nevada 89117

BY MESSENGER

Murray Peterson
1003 Robin Oaks Drive
Las Vegas, Nevada 89117

Re: Loan (the "*Loan*") made by Bank of Nevada ("*Lender*") to Red Card LLC, a Nevada limited liability company ("*Borrower*"); Notice of Defaults and Acceleration and Demand for Payment and Cure

Sir or Madam:

We have been retained by Lender in connection with the Loan. The Loan is evidenced by a certain Promissory Note (Note A) dated March 30, 2011, in the principal amount of \$1,444,898.00, payable by Borrower to Lender ("*Note A*"), a certain Promissory Note (Note B) dated March 30, 2011, in the principal amount of \$1,092,591.00, payable by Borrower to Lender ("*Note B*" and together with Note A, the "*Notes*"), and a certain Business Loan Agreement dated March 31, 2011, between Borrower and Lender (the "*Loan Agreement*"). The Loan proceeds were used to repay the loan previously made by Lender to Borrower as described on page 1 of the Loan Agreement. All capitalized terms used and not otherwise defined herein shall have the meanings provided in the Loan Agreement.

Note A is secured by a certain First Deed of Trust from Borrower to Nevada Title Company, as Trustee, for the benefit of Lender, dated March 30, 2011, and recorded in the Official Records of Clark County, Nevada ("*Official Records*"), on March 31, 2011, in Book No. 20110331 as Document No. 0004688 (the "*First Deed of Trust*"). Note B is secured by a certain Second Deed of Trust from Borrower to Nevada Title Company, as Trustee, for the benefit of Lender, dated March 30, 2011, and recorded in the Official Records on April 1, 2011, in Book No. 20110401 as Document No. 0000103 (the "*Second Deed of Trust*" and together with the First Deed of Trust, the "*Deeds of Trust*"). The Notes, Deeds of Trust, Loan Agreement, and all other documents pertaining to the Loan, as each may have been amended, modified, assigned, supplemented or replaced, are herein collectively referred to as the "*Loan Documents*."

Snell & Wilmer

LLP

Red Card LLC
Murray Peterson
November 22, 2011
Page 2

The Loan was guaranteed by Murray Petersen as provided in the Commercial Guaranty dated March 30, 2011 (the "*Guaranty*").

Borrower has failed to make the monthly payment due on September 30, 2011, and all subsequent payments (each a "*Payment Default*"). Each such Payment Default is an Event of Default under the Loan Documents. As a result of the Payment Defaults, Lender hereby declares the entire unpaid principal balance under the Notes together with all accrued and unpaid interest immediately due, as permitted under the Notes.

The Loan is in default, furthermore, based on (i) Borrower's failure to pay and discharge when due all taxes imposed upon the real property encumbered by the Deeds of Trust, (ii) Borrower's failure to provide Lender with quarterly internally prepared financial statements of Borrower within thirty (30) days of quarter end, and (iii) the outstanding principal amount of the Loan exceeds seventy-five percent (75%) of the As-Is value of the Property (each an "*Additional Default*"). Each such Additional Default is an Event of Default under the Loan Documents. Lender hereby demands that Borrower cure each Additional Default within fifteen (15) days of receipt of this notice.

The outstanding principal balance of the Loan as of November 21, 2011, is \$2,529,169.57. Please contact Joel Nichols of Bank of Nevada for the full payment amount, which will include the unpaid principal balance plus interest, late charges, default interest, attorneys' fees, and costs and expenses.

Effective November 18, 2011, per diem interest on the outstanding principal amount has been and will be calculated at the rate set forth in the Notes under the heading "Interest After Default" which is the Initial Rate (as defined in each Note) plus 5.000% per annum.

Please immediately remit to Lender all Rents as provided in each of the Deeds of Trust. This letter is also Lender's demand under Nevada Revised Statutes Section 107A.270 that Borrower pay over to Lender the proceeds of any Rents of the property securing the Loan which have accrued but remain unpaid as of the date on which you receive this letter or which accrue on or after that date.

Snell & Wilmer

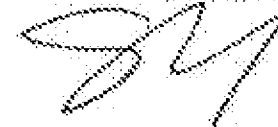
LLP

Red Card LLC
Murray Peterson
November 22, 2011
Page 3

Lender is currently evaluating its remedies under the Loan Documents and reserves the right to exercise any and all such remedies including, without limitation, foreclosure on the property described in the Deed of Trust and legal action to enforce the Guaranties.

Very truly yours,

SNELL & WILMER LLP.



Stephen B. Yoken

SBY/caa
cc: Joel Nichols *(by e-mail)*

Snell & Wilmer

LLP

LAW OFFICES

3883 Howard Hughes Parkway
Suite 1100
Las Vegas, Nevada 89169
(702) 784-5200
Fax: (702) 784-5252
www.swlaw.com



Murray Petersen

8490 Westcliff Dr. (Durango & Summerlin Hwy) Las Vegas, NV 89145
Store: 702-982-6207 Fax: 702-982-6205 murrayp@css-lv.com

RUNNER'S SLIP

Date: 11/22/2011

Time: 11:17:39
AM

Sender: Cheryl

Atty Initials: SBY

Client: Bank of Nevada

Matter: Red Card LLC

File No. 43046-0049

Document Name:

Destination:

☐ County
☐ Federal
☐ Bankruptcy
☐ Recorder

☐ Secretary of State
☐ Master Calendar
☐ Judge Signature
☐ State Bar

☐ ROC
☐ Deliver
☐ Pick up
☐ Other

Address: Red Card LLC

~~1001 Robin Oaks Drive~~

Las Vegas, Nevada ~~89117~~

Special Instructions:

Murray Peterson

~~1001 Robin Oaks Drive~~

Las Vegas, Nevada ~~89117~~

8490 Westcliff Dr.
89145

Received by: RJ

Date and Time Completed: 11-22-11 / 11-23-11

Mileage:

x 3 stops 22 + 22 +

COPY

Snell & Wilmer

LLP

LAW OFFICES

3883 Howard Hughes Parkway
Suite 1100
Las Vegas, Nevada 89169
(702) 784-5200
Fax: (702) 784-5252
www.swlaw.com

RUNNER'S SLIP

Date: 11/22/2011

Time: 11:17:39
AM

Sender: Cheryl

Atty Initials: SBY

Client: Bank of Nevada

Matter: Red Card LLC

File No. 43046-0049

Document Name:

Destination:

☐ County
☐ Federal
☐ Bankruptcy
☐ Recorder

☐ Secretary of State
☐ Master Calendar
☐ Judge Signature
☐ State Bar

☐ ROC
☐ Deliver
☐ Pick up
☐ Other

Address: Red Card LLC
1003 Robin Oaks Drive
Las Vegas, Nevada 89117

Murray Peterson
1003 Robin Oaks Drive
Las Vegas, Nevada 89117

Special Instructions:

2 attempts at Robin Oaks Dr.
Guard at gate gave me a card with new address
with instructions from Mr. Peterson to
deliver @ 8490 Westcliff
Dr.

Received by:

Date and Time Completed: 11-23-11

Mileage:

EXHIBIT 8

EXHIBIT 8

Inst #: 201112220000692

Fee: \$222.00

N/C Fee: \$0.00

12/22/2011 08:04:08 AM

CONFIRM COPY
Requestor:

NEVADA TITLE LAS VEGAS

Recorded By: MSH Pgs: 5

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 138-28-401-009

RETURN TO/TRUSTEE CONTACT INFO:

NEVADA TITLE COMPANY
2500 N. BUFFALO DRIVE #150
LAS VEGAS, NEVADA 89128
(702) 251-5236

NOTICE OF BREACH AND ELECTION TO SELL UNDER DEED OF TRUST

FORECLOSURE NO. B1-11-0022-FCL

NOTICE IS HEREBY GIVEN:

That Nevada Title Company, a Nevada corporation, is the current Trustee under the First Deed of Trust recorded on March 31, 2011 in Book 20110331 as Document No. 0004688 of Official Records in the office of the County Recorder of Clark County, Nevada ("Official Records"), and the Second Deed of Trust recorded on April 1, 2011 in Book 20110401 as Document No. 0000103 of Official Records, each as modified or amended, if applicable (together, the "Deeds of Trust"), made by Red Card LLC, a Nevada limited liability company, as Grantor ("Borrower"), securing obligations presently in favor of Bank of Nevada ("Beneficiary").

That a breach of the obligations for which such Deeds of Trust is security has occurred in that the installment of principal and interest due on September 30, 2011 under that certain Promissory Note (Note A), dated March 30, 2011, which was made by Borrower ("Note A"), and all subsequent payments, which have not been paid, remain due, owing and delinquent together with all sums (if any) advanced by the Beneficiary and any interest accrued thereon to preserve the security of the Beneficiary.

Each such non-payment is an Event of Default under Note A and that certain Promissory Note (Note B), dated March 30, 2011, which was made by Borrower ("Note B" and together with Note A, the "Notes"). That by reason thereof, the undersigned, present Beneficiary under such Deeds of Trust, has executed and delivered to said Trustee a written Declaration of Default and Demand for Sale, and has declared and does hereby declare all sums secured thereby immediately due and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Furthermore, Beneficiary herein elects to conduct a unified foreclosure sale pursuant to the provisions of the Nevada Uniform Commercial Code (NRS Chapter 104) and to include in the

non-judicial foreclosure of the estate described in this Notice of Default and Election to Sell any and all personal property and fixtures described in the Deeds of Trust and in any other instruments in favor of Beneficiary. Beneficiary reserves the right to revoke its election as to some or all of the personal property and/or fixtures, or to add additional personal property and/or fixtures to the elections herein expressed, at Beneficiary's sole election from time to time and to any time until the consummation of the Trustee's sale to be conducted pursuant to the Deeds of Trust and this Notice of Default and Election to Sell.

Additional defaults have occurred, furthermore, based on (i) Borrower's failure to pay and discharge when due all taxes imposed upon the real property encumbered by the Deeds of Trust, (ii) Borrower's failure to provide Beneficiary with quarterly internally prepared financial statements of Borrower within thirty (30) days of quarter end, and (iii) the outstanding principal amount of the loan exceeds seventy-five percent (75%) of the As-Is value of the Property (each an "Additional Default"). Each such Additional Default is an Event of Default under the Notes and subject to Borrower's right to cure each such Additional Default in the manner provided in the Deeds of Trust.

NOTICE

YOU MAY HAVE THE RIGHT TO CURE THE DEFAULTS DESCRIBED HEREIN AND REINSTATE THE OBLIGATION SECURED BY SUCH DEEDS OF TRUST ABOVE DESCRIBED. SECTION 107.080 OF NRS PERMITS CERTAIN DEFAULTS TO BE CURED UPON THE PAYMENT OF THE AMOUNTS REQUIRED BY THAT SECTION WITHOUT REQUIRING PAYMENT OF THAT PORTION OF PRINCIPAL AND INTEREST WHICH WOULD NOT BE DUE HAD NO DEFAULT OCCURRED. WHERE REINSTATEMENT IS POSSIBLE, IF THE DEFAULT IS NOT CURED WITHIN THE REINSTATEMENT PERIOD, THE RIGHT OF REINSTATEMENT WILL TERMINATE AND THE PROPERTY MAY THEREAFTER BE SOLD.

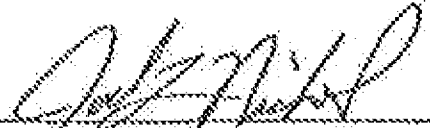
To determine if reinstatement is possible and the amount, if any, necessary to cure the default, contact the Beneficiary, whose name and address as of the date of this notice is:

Bank of Nevada
2700 W. Sahara Avenue
Las Vegas, NV 89102
Attn: Joel Nichols
Phone: (702) 252-6123

[Signature and acknowledgment on following page.]


DATED: December 21, 2011

BANK OF NEVADA

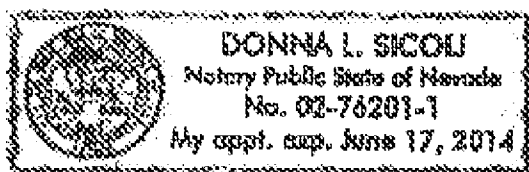
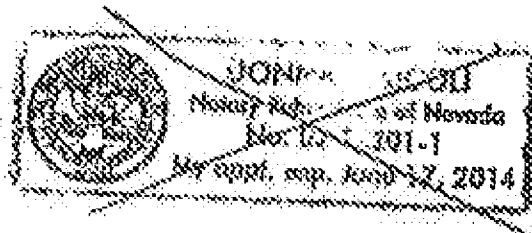
BY: 
Joel Nichols, Vice President
Joel Nichols

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on 12/21, 2011 by Joel Nichols as Vice President of Bank of Nevada.

Signature 
(Notary Public)

[Exhibit A on following page.]



Donna L. Sicou
NO. 02-76201-1
June 17, 2014

AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

STATE OF NEVADA)
)
COUNTY OF CLARK) ss:

5. Bank of Nevada, having an address of 2700 West Sahara Avenue, Las Vegas, Nevada 89102, is (a) the current beneficiary of record of the First Deed of Trust recorded on March 31, 2011 in Book 20110331 as Document No. 0004688 of Official Records in the office of the County Recorder of Clark County, Nevada ("Official Records"), which is referenced in the Notice of Breach (the "First Deed of Trust"); (b) the current beneficiary of record of the Second Deed of Trust recorded on April 1, 2011 in Book 20110401 as Document No. 0000103 of Official Records, each as modified or amended, if applicable (the "Second Deed of Trust" and together with the First Deed of Trust, the "Deeds of Trust"), which is referenced in the Notice of Breach, (c) the current holder of the Promissory Note (Note A), dated March 30, 2011 ("Note A") which is secured by the First Deed of Trust affecting certain real and personal property described therein (the "Property"), (d) the current holder of the Promissory Note (Note B), dated

March 30, 2011 ("Note B" and together with Note A, the "Notes") which is secured by the Second Deed of Trust affecting the Property, and (e) the current servicer of the Loan.

6. There are no known prior beneficiaries of each of the Deeds of Trust and no known instruments conveying the beneficial interest of Bank of Nevada in either Deed of Trust.

7. Bank of Nevada is in actual or constructive possession of each Note.

8. Nevada Title Company, a Nevada corporation, having an address of 2500 North Buffalo Drive, Suite #150, Las Vegas, Nevada 89128, is the current trustee under each of the Deeds of Trust and has authority to exercise the power of sale with respect to the Property pursuant to the instruction of Bank of Nevada.

9. The amount of principal and interest in default as of December 13, 2011 for Note A is \$1,471,617.29 (including outstanding principal in the amount of \$1,436,578.57), plus additional amounts recoverable under the Loan Documents as a result of the default.

10. The amount of principal and interest in default as of December 13, 2011 for Note B is \$1,149,062.17 (including outstanding principal in the amount of \$1,092,591.00), plus additional amounts recoverable under the Loan Documents as a result of the default.

11. The aggregate amount of principal and interest in default as of December 13, 2011 for the Loan (Note A and Note B together) is \$2,620,679.46 (including outstanding principal in the amount of \$2,529,169.57), plus additional amounts recoverable under the Loan Documents as a result of the default.

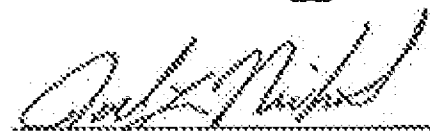
12. The maximum principal amount secured by the First Deed of Trust is \$1,444,898.00 and the maximum principal amount secured by the Second Deed of Trust is \$1,092,591.00.

13. A good faith estimate of all fees imposed and to be imposed (including legal fees) because of the default described in the Notice of Breach is \$5,000.00, plus additional fees and charges which may accrue in connection with collection efforts relating to such default.

14. A good faith estimate of the total costs and fees to be charged to the Borrower in connection with the exercise of the power of sale by the Trustee is \$6,200.00, plus additional fees and charges as may be imposed in connection with the Trustee's foreclosure services.

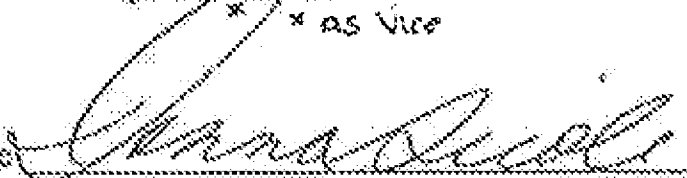
[Signature and certifications on following page.]

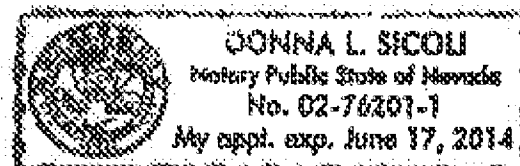
Dated: December 21, 2011


Joel Nichols in his representative capacity
as Vice President of Bank of Nevada
Joel Nichols

STATE OF NEVADA
COUNTY OF CLARK

Signed and sworn (or affirmed) to me on December __, 2011 by Joel Nichols, in his
representative capacity as Vice President of Bank of Nevada.

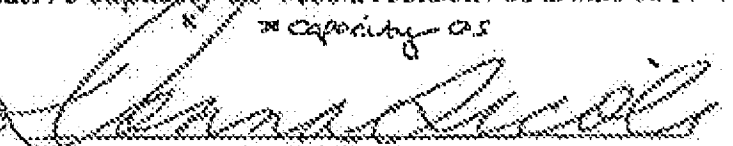
Signature  * as Vice

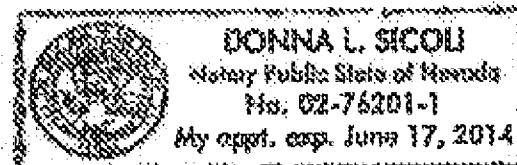


STATE OF NEVADA
COUNTY OF CLARK

Donna L. Sicoli
No. 02-76201-1
June 17, 2014

This instrument was acknowledged before me on December __, 2011 by Joel Nichols, in his
representative capacity as Vice President of Bank of Nevada.

Signature  * capacity as
(Notary Public)



Donna L. Sicoli
No. 02-76201-1
June 17, 2014

Exhibit H

CIVIL COVER SHEET A-13-680012-C

Clark County, Nevada

I

Case No. _____
(Assigned by Clerk's Office)**I. Party Information**Plaintiff(s) (name/address/phone): BANK OF NEVADA, a
Nevada banking corporationDefendant(s) (name/address/phone): MURRAY PETERSON, an
individual

Attorney (name/address/phone):

Michael Stein, Esq., Snell & Wilmer, 3883 Howard Hughes
Pkwy., #1100, Las Vegas, NV 89169, (702) 784-5200

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and
applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases****Real Property**

- ☐ **Landlord/Tenant**
- ☐ Unlawful Detainer
- ☐ **Title to Property**
- ☐ Foreclosure
- ☐ Liens
- ☐ Quiet Title
- ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
- ☐ Partition
- ☐ Planning/Zoning

Torts

- ☐ **Negligence**
- ☐ Negligence - Auto
- ☐ Negligence - Medical/Dental
- ☐ Negligence - Premises Liability
(Slip/Fall)
- ☐ Negligence - Other
- ☐ **Product Liability**
- ☐ Product Liability/Motor Vehicle
- ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
- ☐ Torts/Defamation (Libel/Slander)
- ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
- ☐ Anti-trust
- ☐ Fraud/Misrepresentation
- ☐ Insurance
- ☐ Legal Tort
- ☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
- ☐ Individual Trustee
- ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
- ☐ Chapter 40
- ☐ General
- ☒ **Breach of Contract**
- ☐ Building & Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☐ Other Contracts/Acct/Judgment
- ☐ Collection of Actions
- ☐ Employment Contract
- ☒ Guarantee
- ☐ Sale Contract
- ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
- ☐ Foreclosure Mediation
- ☐ Other Administrative Law
- ☐ Department of Motor Vehicles
- ☐ Worker's Compensation Appeal
- ☐ **Appeal from Lower Court** (also check
applicable civil case box)
- ☐ Transfer from Justice Court
- ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
- ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
- ☐ Compromise of Minor's Claim
- ☐ Conversion of Property
- ☐ Damage to Property
- ☐ Employment Security
- ☐ Enforcement of Judgment
- ☐ Foreign Judgment - Civil
- ☐ Other Personal Property
- ☐ Recovery of Property
- ☐ Stockholder Suit
- ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category, for Clark or Washoe Counties only)

- ☐ NRS Chapters 78-88
- ☐ Investments (NRS 104A-81)
- ☐ Commodities (NRS 90)
- ☐ Deceptive Trade Practices (NRS 502)
- ☐ Securities (NRS 90)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

April 12, 2013

Date

Signature of initiating party or representative

See other side for family-related case filings.

Attorneys for Plaintiff
Bank of Nevada, a Nevada banking corporation

5. Venue in Clark County, Nevada is proper pursuant to N.R.S. § 13.010.

6. Plaintiff repeats and incorporates all preceding allegations

7. Red Card, LLC, a Nevada limited liability company ("Borrower") and Lender entered into a Business Loan Agreement dated March 30, 2011 (the "*Loan Agreement*") for a loan to replace a loan previously made by Lender to Borrower as described on page 1 of the Loan Agreement (the "*Loan*").

9. Borrower executed a Promissory Note (Note A) dated March 30, 2011 in favor of Lender, through which Borrower promised to pay Lender the principal amount of \$1,444,898 plus interest on the unpaid principal balance from the date of the Note until paid ("*Note A*").

11. Borrower executed a Promissory Note (Note B) dated March 30, 2011 in favor of Lender, through which Borrower promised to pay Lender the principal amount of \$1,092,591 plus interest on the unpaid principal balance from the date of the Note until paid ("*Note B*").

13. Borrower, as Grantor, executed a First Deed of Trust dated March 30, 2011 for the benefit of Lender.

15. The First Deed of Trust was recorded in Clark County, Nevada, on March 31,

2011 as Instrument No. 201103310004688, Official Records, Clark County, Nevada.

16. The First Deed of Trust encumbers the land described in Exhibit A attached to the First Deed of Trust and commonly known as 8490 Westcliff Dr., Las Vegas, Nevada 89145 bearing Assessor Parcel No. 138-28-401-009 (the "*Property*").

17. Borrower, as Grantor, executed a Second Deed of Trust dated March 30, 2011 for the benefit of Lender.

18. An authentic copy of the Second Deed of Trust is attached hereto as **Exhibit 5** and incorporated herein by this reference.

19. The Second Deed of Trust was recorded in Clark County, Nevada, on April 1, 2011 as Instrument No. 2011004010000103, Official Records, Clark County, Nevada.

20. The Second Deed of Trust encumbers the Property.

21. The Loan Agreement, Note A, Note B, First Deed of Trust and Second Deed of Trust are hereafter referred to collectively as the "*Loan Documents*."

22. Under the Loan Agreement, an Event of Default has occurred if Borrower fails to make any payment when due under the Loan.

23. Under the Loan Agreement, an Event of Default has occurred if Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in the Loan Agreement or any of the "*Related Documents*," as defined in the Loan Agreement, or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

24. Under Note A, an Event of Default has occurred if Borrower fails to make any payment when due under Note A.

25. Under Note A, an Event of Default has occurred if Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in Note A or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

26. Under Note B, an Event of Default has occurred if Borrower fails to make any

1 payment when due under Note B.

2 27. Under Note B, an Event of Default has occurred if Borrower fails to comply with
3 or to perform any other term, obligation, covenant or condition contained in Note B or in any of
4 the related documents or to comply with or to perform any term, obligation, covenant or condition
5 contained in any other agreement between Lender and Borrower.

6 28. Under the First Deed of Trust, an Event of Default has occurred if Borrower fails
7 to make any payment when due under the "Indebtedness," as defined in the First Deed of Trust.

8 29. Under the First Deed of Trust, an Event of Default has occurred if Borrower fails
9 to comply with or to perform any other term, obligation, covenant or condition contained in the
10 First Deed of Trust or in any of the "Related Documents," as defined in the First Deed of Trust, or
11 to comply with or to perform any term, obligation, covenant or condition contained in any other
12 agreement between Lender and Borrower.

13 30. Under the Second Deed of Trust, an Event of Default has occurred if Borrower
14 fails to make any payment when due under the "Indebtedness," as defined in the Second Deed of
15 Trust.

16 31. Under the Second Deed of Trust, an Event of Default has occurred if Borrower
17 fails to comply with or to perform any other term, obligation, covenant or condition contained in
18 the First Deed of Trust or in any of the "Related Documents," as defined in the Second Deed of
19 Trust, or to comply with or to perform any term, obligation, covenant or condition contained in
20 any other agreement between Lender and Borrower.

21 **B. The Guaranty**

22 32. Petersen executed a Commercial Guaranty dated March 30, 2011 in favor of
23 Lender.

24 33. An authentic copy of the Commercial Guaranty is attached hereto as **Exhibit 6** and
25 incorporated herein by this reference.

26 34. Under the Loan Agreement, the execution and delivery of the Commercial
27 Guaranty was an express condition precedent to each advance made to Borrower under the Loan
28

1 Agreement.

2 35. Under the terms of the Commercial Guaranty, Petersen absolutely and
3 unconditionally guaranteed full and punctual payment and satisfaction of the Indebtedness, as
4 defined therein, of Borrower to Lender, and the performance and discharge of all Borrower's
5 obligations under the note and the related documents, as defined therein.

6 36. Pursuant to NRS 40.495 and the terms set forth in the "GUARANTOR'S
7 WAIVERS" section of the Commercial Guaranty, Petersen waived the provisions of NRS 40.430.

8 **C. The Defaults**

9 37. Borrower failed to make the monthly payments due on September 30, 2011, and
10 all subsequent payments (*"Payment Default"*).

11 38. Each Payment Default constitutes an Event of Default under the Loan Documents.

12 39. Petersen, as Guarantor, failed to make the required payments under the Loan as
13 agreed in the Commercial Guaranty, constituting an Event of Default under the Loan Documents.

14 40. As a result of the breach of the Loan Documents, Lender caused its legal counsel
15 to provide Borrower and Petersen written Notice of Defaults and Acceleration and Demand for
16 Payment and Cure (the *"Letter of Default"*).

17 41. In the Letter of Default, Plaintiff's counsel reminded Borrower and Petersen that
18 the entire unpaid principal balance under the Note with all accrued and unpaid interest was
19 immediately due and that the breaches not related to the "Indebtedness" had to be cured.

20 42. An authentic copy of the Letter of Default is attached hereto as **Exhibit 7** and
21 incorporated herein by this reference.

22 43. Lender has recorded a "Notice of Breach and Election to Sell Under Deed of
23 Trust" in Clark County, Nevada pursuant to the First Deed of Trust and Second Deed of Trust
24 (the *"Notice of Breach"*).

25 44. The Notice of Breach was recorded with the Clark County Recorder on December
26 22, 2011 as Instrument No. 201112220000692, Official Records, Clark County, Nevada.

27 45. An authentic copy of the Notice of Breach is attached hereto as **Exhibit 8** and
28

1 incorporated herein by this reference.

2 46. Pursuant to the Loan Documents, the entire unpaid balance of the loan made to
3 Borrower is immediately due and payable.

4 47. Petersen breached the terms of the Commercial Guaranty by failing to pay the
5 Loan in full when it became immediately due and payable.

6 48. Upon information and belief, the fair market value of the Property as of the
7 commencement of this action is an approximate amount of \$1,850,000.

8 III. CLAIMS FOR RELIEF

9 FIRST CLAIM FOR RELIEF

10 (Breach of Guaranty)

11 49. Plaintiff repeats every allegation contained in the preceding paragraphs.

12 50. The Commercial Guaranty is a valid and enforceable contract existing between the
13 Plaintiff and Petersen.

14 51. Plaintiff has fully performed its obligations under the Loan Documents and
15 Commercial Guaranty.

16 52. Petersen has breached the terms of the Commercial Guaranty by failing to pay the
17 loan in full at maturity.

18 53. As a result of Petersen's breach of the Commercial Guaranty, Plaintiff is entitled
19 to recover an amount no greater than:

- 20 a. The amount by which the Indebtedness exceeds the fair market value of
21 the property as of the date of commencement of this action; or
22 b. If a foreclosure sale is concluded before a judgment is entered, the amount
23 that is the difference between the amount for which the property was
24 actually sold and the Indebtedness;

25 whichever is the lesser amount.

26 54. Pursuant to the terms of the Loan Documents and Commercial Guaranty, Plaintiff
27 is entitled to recover its reasonable attorneys' fees and costs incurred in connection with the
28

1 enforcement of the Loan Documents and Commercial Guaranty, including, but not limited to,
2 costs incurred in bringing this action.

3 SECOND CLAIM FOR RELIEF

4 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

5 55. Plaintiff repeats every allegation contained in the preceding paragraphs.

6 56. Plaintiff and Petersen are parties to a contract – the Commercial Guaranty.

7 57. Under Nevada law, all contracts carry with them an implied duty of good faith
8 and fair dealing.

9 58. Petersen owed Plaintiff a duty to act in good faith.

10 59. Petersen breached that duty in performing in a manner that was unfaithful to the
11 purpose of the Commercial Guaranty.

12 60. As a result of Petersen's breach, Plaintiff's justified expectations have been
13 denied.

14 61. As a result of Petersen's breach, Plaintiff is entitled to recover an amount no
15 greater than:

16 a. The amount by which the Indebtedness exceeds the fair market value of
17 the property as of the date of commencement of this action; or

18 b. If a foreclosure sale is concluded before a judgment is entered, the amount
19 that is the difference between the amount for which the property was
20 actually sold and the Indebtedness;

21 whichever is the lesser amount.

22 62. Pursuant to the terms of the Commercial Guaranty, Plaintiff is entitled to recover
23 its reasonable attorneys' fees and other costs incurred in connection with the enforcement of the
24 Loan Documents and Commercial Guaranty, including, but not limited to, costs incurred in
25 bringing this action.

26 WHEREFORE, Plaintiff prays for relief as follows:

27 A. Judgment in favor of Plaintiff and against Petersen, the amount by which the
28

Indebtedness exceeds the (a) fair market value of the property as of the date of commencement of this action or (b) If a foreclosure sale is concluded before a judgment is entered, the amount that is the difference between the amount for which the property was actually sold and the Indebtedness, whichever is the lesser amount but is an amount in excess of \$10,000.00;

B. For Plaintiff's reasonable attorneys' fees and costs incurred in enforcing the Loan Documents and Commercial Guaranty, including, but not limited to costs incurred in bringing this action; and

C. For such other and further relief as the Court may deem just and appropriate.

Dated: April 10, 2013

SNELL & WILMER L.L.P.

By: 
Michael Stein, Esq. (Bar No. 4760)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169

Attorneys for Plaintiff

List of Exhibits to Complaint

BANK OF NEVADA vs. MURRAY PETERSEN

Exhibit Number	Description
1	Loan Agreement dated March 30, 2011
2	Promissory Note (Note A) dated March 30, 2011
3	Promissory Note (Note B) dated March 30, 2011
4	First Deed of Trust dated March 30, 2011
5	Second Deed of Trust dated March 30, 2011
6	Commercial Guaranty dated March 30, 2011
7	Letter of Default
8	Notice of Breach and Election to Sell Under Deed of Trust

EXHIBIT 1

EXHIBIT 1

LN # 103344768

LN # 103344771

BUSINESS LOAN AGREEMENT

Borrower: RED CARD LLC
1003 ROBIN OAKS DR.
LAS VEGAS, NV 89117

Lender: Bank of Nevada
2700 W Sahara Ave, Suite 420
Las Vegas, NV 89102

THIS BUSINESS LOAN AGREEMENT dated March 30, 2011, is made and executed between RED CARD LLC ("Borrower") and Bank of Nevada ("Lender") on the following terms and conditions.

This Agreement governs: (a) the Promissory Note (Note A) executed by Borrower dated March 30, 2011, in the principal amount of One Million Four Hundred Forty-Four Thousand Eight Hundred Ninety-Eight and No/100 Dollars (\$1,444,898.00), and (b) the Promissory Note (Note B) executed by Borrower dated March 30, 2011, in the principal amount of One Million Ninety-Two Thousand Five Hundred Ninety-One and No/100 Dollars (\$1,092,591.00), together with (c) all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such Promissory Notes. Proceeds of the Loans evidenced by such Promissory Notes shall be used solely for the purpose of repayment of the loan previously made by Lender to Borrower as provided in a certain Business Loan Agreement dated October 23, 2006, and evidenced by a certain Promissory Note dated October 23, 2006, in the stated principal amount of Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00) (the "Previous Loan").

TERM. This Agreement shall be effective as of March 30, 2011, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until such time as the parties may agree in writing to terminate this Agreement.

CONDITIONS PRECEDENT TO EACH ADVANCE. Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

Loan Documents. Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) Security Agreements granting to Lender security interests in the Collateral; (3) financing statements and all other documents perfecting Lender's Security interests; (4) evidence of insurance as required below; (5) guaranties; (6) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

Borrower's Authorization. Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, may require.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

BUSINESS LOAN AGREEMENT
(Continued)

Page 2

Representations and Warranties. The representations and warranties set forth in this Agreement, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any indebtedness exists:

Organization. Borrower is a limited liability company which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Nevada. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 1003 ROBIN OAKS DR., LAS VEGAS, NV 89117. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, ordure and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

Assumed Business Names. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

Authorization. Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of (a) Borrower's articles of organization or membership agreements, or (b) any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.


Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to

BUSINESS LOAN AGREEMENT
(Continued)

Page 3

Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Legal Effect. This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

Properties. Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years. 7/20/07 

Hazardous Substances. Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of the Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral. (2) Borrower has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters. (3) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the termination, expiration or satisfaction of this

Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

Taxes. To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

Lien Priority. Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

Binding Effect. This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Notices of Claims and Litigation. Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

Financial Records. Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

Financial Statements. Furnish Lender with such financial statements and other related information at such frequencies and in such detail as Lender may reasonably request.

Additional Information. Furnish such additional information and statements, as Lender may request from time to time.

Insurance. Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the

BUSINESS LOAN AGREEMENT
(Continued)

Page 5

policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

Insurance Reports. Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

Guaranties. Prior to disbursement of any Loan proceeds, furnish executed guaranties of the Loans in favor of Lender, executed by the guarantor named below, on Lender's forms, and in the amount and under the conditions set forth in those guaranties.

<u>Name of Guarantor</u>	<u>Amount</u>
MURRAY PETERSEN	Unlimited

Other Agreements. Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

Loan Proceeds. Use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits.

Performance. Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

Operations. Maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel;

BUSINESS LOAN AGREEMENT
(Continued)

Page 6

provide written notice to Lender of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

Environmental Studies. Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

Compliance with Governmental Requirements. Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, and to the use or occupancy of the Collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Collateral are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Inspection. Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

Compliance Certificates. Unless waived in writing by Lender, provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Environmental Compliance and Reports. Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on

BUSINESS LOAN AGREEMENT
(Continued)

Page 7

Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

Additional Assurances. Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security interests.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity.

NEGATIVE COVENANTS. Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

Indebtedness and Liens. (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber any of Borrower's assets (except as allowed as Permitted Liens), or (3) sell with recourse any of Borrower's accounts, except to Lender.

Continuity of Operations. (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) make any distribution with respect to any capital account, whether by reduction of capital or otherwise.

Loans, Acquisitions and Guaranties. (1) Loan, invest in or advance money or assets to any other person, enterprise or entity, (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

BUSINESS LOAN AGREEMENT
(Continued)

Page 8

Agreements. Borrower will not enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection herewith.

CESSATION OF ADVANCES. If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, any trust accounts for which setoff would be prohibited by law, or monies in any accounts that were received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the Loan.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any Loan.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the

commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

Right to Cure. If any default, other than a default on indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower or Grantor, as the case may be, after receiving written notice from Lender demanding cure of such default: (1) cure the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

EFFECT OF AN EVENT OF DEFAULT. If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will terminate (including any obligation to make further Loan Advances or disbursements), and, at Lender's option, all indebtedness immediately will become due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the "Insolvency" subsection above, such acceleration shall be automatic and not optional. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an

obligation of Borrower or of any Grantor shall not affect Lender's right to declare a default and to exercise its rights and remedies.

PROVISION FOR PROVIDING FINANCIAL INFORMATION. Borrower agrees to provide the Bank with the following:

- (a) quarterly internally prepared financial statements of Borrower in a form satisfactory to the Bank to be submitted within 30 days of quarter end.
- (b) annual compiled financial statements of Borrower prepared according to GAAP submitted within 30 days of year end.
- (c) annual federal income tax returns of Borrower including all schedules within 30 days of due date. If an extension is filed a copy of the extension request must be submitted within 30 days of the due date.
- (d) annual federal income tax returns of Guarantor including all schedules and K-1s within 30 days of the due date. If an extension is filed a copy of the extension request must be submitted within 30 days of the due date.
- (e) annual compiled financial statements of Guarantor prepared according to GAAP submitted within 30 days of year end.

DEBT SERVICE COVERAGE RATIO. Borrower shall maintain a Debt Service Coverage Ratio to be maintained at minimum of 1.25:1, to be tested quarterly.

LOAN TO VALUE RATIO. The outstanding principal amount of the Loan shall not exceed seventy-five percent (75%) of the As-Is value of the Property as determined by Bank in an appraisal satisfactory to Bank in its sole discretion from time to time.

APPRAISALS. If deemed necessary by Lender or if required by law, Lender shall have the right to order appraisal(s) of the Collateral Property from time to time from an appraiser selected by Lender, which appraisals shall comply with all federal and state standards for appraisals and otherwise shall be satisfactory to Lender in all material respects. Borrower agrees to pay the cost and expense for all appraisals and reviews thereof ordered by Lender pursuant to this paragraph.

FORBEARANCE. So long as no other Event of Default shall have occurred under this Agreement or the Related Documents, Bank shall forbear from exercising any of its rights and remedies based on a breach by Borrower of the paragraphs above entitled Debt Service Coverage Ratio and Loan to Value Ratio.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

BUSINESS LOAN AGREEMENT
(Continued)

Page 11

Attorneys' Fees; Expenses. Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Nevada.

Choice of Venue. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender

is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address. Unless otherwise provided or required by law, if there is more than one Borrower, any notice given by Lender to any Borrower is deemed to be notice given to all Borrowers.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Subsidiaries and Affiliates of Borrower. To the extent the context of any provisions of this Agreement makes it appropriate, including without limitation any representation, warranty or covenant, the word "Borrower" as used in this Agreement shall include all of Borrower's subsidiaries and affiliates. Notwithstanding the foregoing however, under no circumstances shall this Agreement be construed to require Lender to make any Loan or other financial accommodation to any of Borrower's subsidiaries or affiliates.

Successors and Assigns. All covenants and agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

Survival of Representations and Warranties. Borrower understands and agrees that in making the Loan, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the making of the Loan and delivery to Lender of the Related Documents, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

Time Is of the Essence. Time is of the essence in the performance of this Agreement.

RELEASE. As a material part of the consideration for Lender entering into this Agreement and making the Loans, Borrower agrees as follows (the "*Release Provision*"):

(a) Borrower hereby releases and forever discharges Lender and Lender's predecessors, successors, assigns, participants, officers, managers, directors, shareholders, employees, agents, attorneys, representatives, parent corporations, subsidiaries, and affiliates (all of the above collectively, "*Lender Group*") from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, offsets, rights, actions, and causes of action of any nature whatsoever, including, without limitation, all claims, demands, and causes of action for contribution and indemnity, whether arising at law or in equity, whether presently possessed or possessed in the future, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether presently accrued or to accrue hereafter, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, which Borrower may have or claim to have against any of Lender Group, accruing prior to the date of this Agreement, except as expressly provided in the Loan Documents.

(b) Borrower agrees not to sue any of Lender Group or in any way assist any other person or entity in suing Lender Group with respect to any claim released herein. The Release Provision may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of the release contained herein.

(c) Borrower acknowledges, warrants, and represents to Lender Group that:

(i) Borrower has read and understands the effect of the Release Provision. Borrower has had the assistance of independent counsel of its own choice, or has had the opportunity to retain such independent counsel, in reviewing, discussing, and considering all the terms of the Release Provision; and if counsel was retained, counsel for Borrower has read and considered the Release Provision and advised Borrower to execute the same. Before execution of this Agreement, Borrower has had adequate opportunity to make whatever investigation or inquiry it may deem necessary or desirable in connection with the subject matter of the Release Provision.

(ii) Borrower is not acting in reliance on any representation, understanding, or agreement not expressly set forth herein. Borrower acknowledges that Lender Group has not made any representation with respect to the Release Provision except as expressly set forth herein.

(iii) Borrower has executed this Agreement and the Release Provision thereof as its free and voluntary act, without any duress, coercion, or undue influence exerted by or on behalf of any person.

(iv) Borrower is the sole owner of the claims released by the Release Provision, and Borrower has not heretofore conveyed or assigned any interest in any such claims to any other person or entity.

(d) Borrower understands that the Release Provision was a material consideration in the agreement of Lender to enter into this Agreement and make the Loans.

(e) It is the express intent of Borrower that the release and discharge set forth in the Release Provision be construed as broadly as possible in favor of Lender Group so as to foreclose forever the assertion by Borrower of any claims released hereby against Lender Group.

(f) If any term, provision, covenant, or condition of the Release Provision is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of the provisions shall remain in full force and effect.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement:

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Agreement.

Agreement. The word "Agreement" means this Business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan Agreement from time to time.

Borrower. The word "Borrower" means RED CARD LLC and includes all co-signers and co-makers signing the Note and all their successors.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Debt Service Coverage Ratio. The words "Debt Service Coverage Ratio" mean the cash flow from the business operations of the Property (defined as earnings before interest tax depreciation and amortization) divided by the sum of the prior year's current

period long term debt plus the current year's interest expense. The prior year's current period long term debt will be prorated for the number of quarters being tested.

Deed of Trust. The words "Deed of Trust" mean, collectively, the First Deed of Trust and Second Deed of Trust securing the Indebtedness to be recorded in the Official Records of Clark County, Nevada.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

GAAP. The word "GAAP" means generally accepted accounting principles.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents, but does not include the Previous Loan.

Lender. The word "Lender" means Bank of Nevada, its successors and assigns.

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time, but does not include the Previous Loan.

Loan Documents. The words "Loan Documents" mean this Agreement, the Note, the Deed of Trust, and the Related Documents.

Note. The word "Note" means (a) Promissory Note (Note A) executed by Borrower dated March 30, 2011, in the principal amount of One Million Four Hundred Forty-Four Thousand Eight Hundred Ninety-Eight and No/100 Dollars (\$1,444,898.00), and (b) Promissory Note (Note B) executed by Borrower dated March 30, 2011, in the principal amount of One Million Ninety-Two Thousand Five Hundred Ninety-One and No/100 Dollars (\$1,092,591.00), together with (c) all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such Promissory Notes.

Permitted Liens. The words "Permitted Liens" mean (1) liens and security interests securing indebtedness owed by Borrower to Lender; (2) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; (3) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; (4) purchase money liens or purchase money security interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure indebtedness outstanding on the date of this Agreement or permitted to be incurred under the paragraph of this Agreement titled "Indebtedness and Liens"; (5) liens and security interests which, as of the date of this Agreement, have been disclosed to and approved by the Lender in writing; and (6) those liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower's assets.

Property. The word "Property" means the real and personal property described in the Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge,


BUSINESS LOAN AGREEMENT
(Continued)

Page 17

chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

BORROWER:

RED CARD LLC

By: 
MURRAY PETERSEN, Manager

LENDER:

BANK OF NEVADA

By: 
Authorized Signer

EXHIBIT 2

EXHIBIT 2

LN# 103.344768

Copy

PROMISSORY NOTE
(Note A)

Borrower: RED CARD LLC
1003 ROBIN OAKS DR.
LAS VEGAS, NV 89117

Lender: Bank of Nevada
2700 W Sahara Ave., Suite 420
Las Vegas, NV 89102

Principal Amount: \$1,444,898.00 **Initial Rate:** 7.240% **Date of Note:** March 30, 2011

PROMISE TO PAY. RED CARD LLC ("Borrower") promises to pay to Bank of Nevada ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million Four Hundred Forty-Four Thousand Eight Hundred Ninety-Eight and No/100 Dollars (\$1,444,898.00), together with interest on the unpaid principal balance from March 30, 2011, until paid in full.

PAYMENT. Borrower will pay this loan in regular payments of principal and interest based on amortization of principal over a hypothetical 25-year period, in the amount of \$10,535.55 per month. Borrower's first payment is due April 30, 2011, and all subsequent payments are due on the same day of each month after that. Borrower's final payment will be due on March 30, 2012, and will be for all principal and all accrued interest not yet paid. Unless otherwise agreed or required by applicable law, payments will be applied to interest; then to unpaid principal; then to late charges and other charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

FIXED INTEREST RATE. The interest rate on this Note is 7.240% per annum.

PREPAYMENT. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full," "without recourse," or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Bank of Nevada, West Sahara Regional Office, 2700 W. Sahara Avenue, Las Vegas, NV 89102.

PROMISSORY NOTE

(Note A)
(Continued)

Page 2

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$10.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by adding a 5.000 percentage point margin ("Default Rate Margin"). However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any loan.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

PROMISSORY NOTE

(Note A)
(Continued)

Page 3

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Nevada.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, any trust accounts for which setoff would be prohibited by law, or monies in any accounts that were received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability

PROMISSORY NOTE

(Note A)
(Continued)

Page 4

insurance benefits. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

COLLATERAL. Borrower acknowledges this Note is secured by a first priority Deed of Trust dated March 30, 2011, to a trustee in favor of Lender on real property located in Clark County, State of Nevada.

DISHONORED ITEM FEE. I may be charged a fee if I make a payment on my loan and the check or preauthorized charge with which I pay is later dishonored.

DUE ON SALE – CONSENT OF LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property or any mobile home or manufactured home located on the property whether or not it is legally a part of the real property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: Bank of Nevada, West Sahara Regional Office, 2700 W. Sahara Avenue, Las Vegas, NV 89102.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PROMISSORY NOTE

(Note A)
(Continued)

Page 5

The terms of this agreement shall bind and benefit the heirs, legal representatives, successors and assigns of the parties; provided, however, that Borrower may not assign this agreement or any Loan funds, or assign or delegate any rights or obligations, without the prior written consent of Lender in each instance. Lender, in its sole discretion, may (i) transfer and negotiate its interest in the Loan and the Related Documents and (ii) sell or assign participation's or other interests in all or part of the Loan on the terms and subject to the conditions of this Agreement and the Related Documents, all without notice to or the consent of Borrower. Also without notice to or the consent of Borrower, Lender may disclose to any actual or prospective purchaser or assignee of any participation or other interest in the Loan or any other loans made by Lender to Borrower (whether under this agreement or otherwise), any financial or other information, data or material in Lender's possession relating to Borrower, the Loan, the Improvements or the Property.

BORROWER:

RED CARD LLC

By:



MURRAY PETERSEN, Manager

EXHIBIT 3

EXHIBIT 3

PROMISSORY NOTE
(Note B)

Borrower: RED CARD LLC
1003 ROBIN OAKS DR.
LAS VEGAS, NV 89117

Lender: Bank of Nevada
2700 W Sahara Ave., Suite 420
Las Vegas, NV 89102

Principal Amount: \$1,092,591.00 **Initial Rate:** 7.240% **Date of Note:** March 30, 2011

PROMISE TO PAY. RED CARD LLC ("Borrower") promises to pay to Bank of Nevada ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million Ninety-Two Thousand Five Hundred Ninety-One and No/100 Dollars (\$1,092,591.00), together with interest on the unpaid principal balance from March 30, 2011, until paid in full.

PAYMENT. Borrower will pay all principal and interest on March 30, 2012. Unless otherwise agreed or required by applicable law, payments will be applied to interest; then to unpaid principal; then to late charges and other charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

FIXED INTEREST RATE. The interest rate on this Note is 7.240% per annum.

PREPAYMENT. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full," "without recourse," or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Bank of Nevada, West Sahara Regional Office, 2700 W. Sahara Avenue, Las Vegas, NV 89102.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$10.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by adding a 5.000 percentage point margin

PROMISSORY NOTE

(Note B)
(Continued)

Page 2

("Default Rate Margin"). However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any loan.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations

PROMISSORY NOTE

(Note B)
(Continued)

Page 3

arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Nevada.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, any trust accounts for which setoff would be prohibited by law, or monies in any accounts that were received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

PROMISSORY NOTE

(Note B)
(Continued)

Page 4

COLLATERAL. Borrower acknowledges this Note is secured by a second priority Deed of Trust dated March 30, 2011, to a trustee in favor of Lender on real property located in Clark County, State of Nevada.

DISHONORED ITEM FEE. I may be charged a fee if I make a payment on my loan and the check or preauthorized charge with which I pay is later dishonored.

DUE ON SALE - CONSENT OF LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property or any mobile home or manufactured home located on the property whether or not it is legally a part of the real property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: Bank of Nevada, West Sahara Regional Office, 2700 W. Sahara Avenue, Las Vegas, NV 89102.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

The terms of this agreement shall bind and benefit the heirs, legal representatives, successors and assigns of the parties; provided, however, that Borrower may not assign this agreement or any

PROMISSORY NOTE

(Note B)
(Continued)

Page 5

Loan funds, or assign or delegate any rights or obligations, without the prior written consent of Lender in each instance. Lender, in its sole discretion, may (i) transfer and negotiate its interest in the Loan and the Related Documents and (ii) sell or assign participation's or other interests in all or part of the Loan on the terms and subject to the conditions of this Agreement and the Related Documents, all without notice to or the consent of Borrower. Also without notice to or the consent of Borrower, Lender may disclose to any actual or prospective purchaser or assignee of any participation or other interest in the Loan or any other loans made by Lender to Borrower (whether under this agreement or otherwise), any financial or other information, data or material in Lender's possession relating to Borrower, the Loan, the Improvements or the Property.

BORROWER:

RED CARD LLC

By:

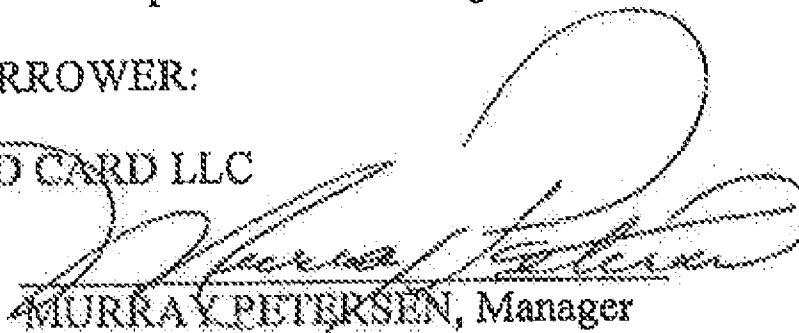

MURRAY PETERSEN, Manager

EXHIBIT 4

EXHIBIT 4

The undersigned hereby affirms that
this document submitted for recording
does not contain a Social Security Number.

Assessor Parcel No(s):
138-28-401-009

WHEN RECORDED MAIL TO:

Bank of Nevada
West Sahara Regional Office
2700 W. Sahara Avenue
Las Vegas, NV 89102

SEND TAX NOTICES TO:

RED CARD LLC
1003 ROBIN OAKS DR.
LAS VEGAS, NV 89117

Inst #: 201103310004688

Fees: \$33.00

N/C Fee: \$0.00

03/31/2011 03:18:02 PM

Receipt #: 725060

Requestor:

SNELL & WILMER

Recorded By: KGP Pgs: 20

DEBBIE CONWAY

CLARK COUNTY RECORDER

FOR RECORDER'S USE ONLY

FIRST DEED OF TRUST

THIS DEED OF TRUST is dated March 30, 2011, among RED CARD LLC, A NEVADA LIMITED LIABILITY COMPANY, whose address is 1003 ROBIN OAKS DR., LAS VEGAS, NV 89117 ("Grantor"); BANK OF NEVADA, whose address is 2700 W SAHARA AVE., SUITE 420, LAS VEGAS, NV 89102 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and NEVADA TITLE COMPANY, whose address 2500 N. BUFFALO DRIVE, SUITE 150, LAS VEGAS, NV 89128 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor irrevocably grants, bargains, sells and conveys to Trustee with power of sale for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in CLARK County, State of Nevada:

SEE ATTACHED EXHIBIT "A"

The Real Property or its address is commonly known as 8490 WESTCLIFF DR., LAS VEGAS, NV 89145. The Real Property tax identification number is 138-28-401-009.

Grantor presently, absolutely, and irrevocably assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property.

FIRST DEED OF TRUST
(Continued)

Page 2

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS INCLUDING FUTURE ADVANCES AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

STATUTORY COVENANTS. The following Statutory Covenants are hereby adopted and made a part of this Deed of Trust: Covenants Nos. 1, 3, 4, 5, 6, 7, 8 and 9 of N.R.S. 107.030. For Covenant 4, upon default, including failure to pay upon final maturity, the interest rate on the Note shall be increased by adding a 5.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law. The percent of counsel fees under Covenant No. 7 shall be ten percent (10%). Except for Covenants Nos. 6, 7, and 8, to the extent any terms of this Deed of Trust are inconsistent with the Statutory Covenants the terms of this Deed of Trust shall control. Covenants 6, 7, and 8 shall control over the express terms of any inconsistent terms of this Deed of Trust.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened

FIRST DEED OF TRUST

(Continued)

Page 3

litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

FIRST DEED OF TRUST
(Continued)

Page 4

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property or any mobile home or manufactured home located on the property whether or not it is legally a part of the real property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Nevada law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

FIRST DEED OF TRUST
(Continued)

Page 5

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$1,000.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that

FIRST DEED OF TRUST
(Continued)

Page 6

coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$1,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any

FIRST DEED OF TRUST
(Continued)

Page 7

time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

FIRST DEED OF TRUST
(Continued)

Page 8

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation. Grantor waives any legal or equitable interest in the net proceeds and any right to require any apportionment of the net proceeds of the award. Grantor agrees that Lender is entitled to apply the award in accordance with this paragraph without demonstrating that its security has been impaired.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2)

FIRST DEED OF TRUST
(Continued)

Page 9

contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

FIRST DEED OF TRUST
(Continued)

Page 10

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Default on Subordinate Indebtedness. Default by Grantor under any subordinate obligation or instrument securing any subordinate obligation or commencement of any suit or other action to foreclose any subordinate lien on the Property.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member,

FIRST DEED OF TRUST
(Continued)

Page 11

the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

FIRST DEED OF TRUST

(Continued)

Page 12

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property, and, whether or not Lender takes possession, collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

FIRST DEED OF TRUST

(Continued)

Page 13

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Notices given by Lender or Trustee under the real property foreclosure proceedings shall be deemed reasonable. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. The power of sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempts to sell) as to all or any portion of the Real Property remaining unsold, but shall continue unimpaired until all of the Real Property has been sold by exercise of the power of sale and all Indebtedness has been paid in full.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law. Fees and expenses shall include attorneys' fees that Lender, Trustee, or both incur, if either or both are made parties to any action to enjoin foreclosure or to any legal proceeding that Grantor institutes. The fees and expenses are secured by this Deed of Trust and are recoverable from the Property.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

FIRST DEED OF TRUST

(Continued)

Page 14

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of CLARK County, State of Nevada. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net Operating Income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

FIRST DEED OF TRUST
(Continued)

Page 15

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Nevada.

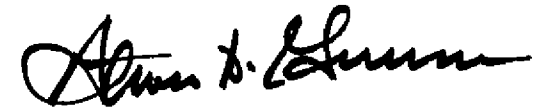
Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of

Exhibit G



CLERK OF THE COURT

1 Michael Stein, Esq.
Nevada Bar No. 4760
2 Brian R. Reeve, Esq.
Nevada Bar No. 10197
3 SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway
4 Suite 1100
Las Vegas, NV 89169
5 Telephone (702) 784-5200
Email: mstein@swlaw.com

6 *Attorneys for Plaintiff*
7 *Bank of Nevada, a Nevada banking corporation*

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 BANK OF NEVADA, a Nevada banking
12 corporation,

13 Plaintiff,

14 vs.

15 MURRAY PETERSEN, an individual,

16 Defendant.

Case No.: A-13-680012-C

Dept. No.: I

Date of Hearing:

Time of Hearing:

17
18 **PLAINTIFF'S RULE 59(e) MOTION TO ALTER OR AMEND JUDGMENT**

19 Plaintiff Bank of Nevada ("BON"), by and through its counsel, Snell & Wilmer L.L.P.,
20 files its Motion to Alter or Amend Judgment pursuant to NRCP 59(e) and requests that the Court
21 grant summary judgment in its favor. This Motion is based on the papers and pleadings on file

22 ///

23 ///

24 ///

25 ///

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27


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herein, the following Memorandum of Points and Authorities, the exhibits attached hereto and any oral argument the Court may entertain.

Dated this 23 day of May, 2014.

SNELL & WILMER L.L.P.

By:


Michael Stein, Esq. (Nevada Bar. No. 4760)
Brian R. Reeve, Esq. (Nevada Bar No. 10197)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
Attorneys for Plaintiff Bank of Nevada

NOTICE OF MOTION

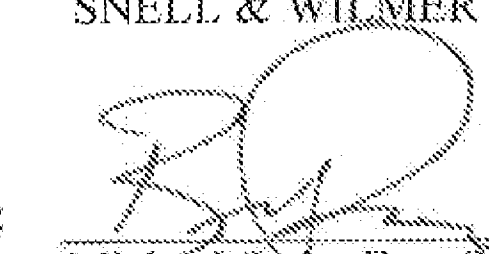
TO: DEFENDANT MURRAY PETERSEN AND HIS COUNSEL OF RECORD

PLEASE TAKE NOTICE that Plaintiff will bring the foregoing PLAINTIFF'S RULE 59(e) MOTION TO ALTER OR AMEND JUDGMENT on for hearing/decision on the 23 day of June, 2014, in Department 1 of the above-entitled Court.
In Chambers

Dated this 23 day of May, 2014.

SNELL & WILMER L.L.P.

By:


Michael Stein, Esq. (Nevada Bar. No. 4760)
Brian R. Reeve, Esq. (Nevada Bar No. 10197)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
Attorneys for Plaintiff Bank of Nevada

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The Court should alter or amend its Findings of Fact, Conclusions of Law and Judgment
4 (“Judgment”) and accompanying Order Denying Plaintiff’s Motion for Summary Judgment and
5 Granting Defendant’s Countermotion for Summary Judgment (“MSJ Order”) for three independent
6 reasons.

7 First, NRS 40.455 does not apply to Plaintiff in its capacity as a junior lienholder. There are
8 *two* promissory notes at issue in this case – Note A and Note B – evidencing two different loan
9 amounts from BON to borrower Red Card, LLC. A First Deed of Trust secured Red Card’s
10 repayment of Note A and a Second Deed of Trust secured repayment of Note B. Defendant Petersen
11 guaranteed repayment of both loans.

12 As a first deed of trust holder *and* a second deed of trust holder – *i.e.*, a junior lienholder –
13 BON is governed by two separate statutory schemes for obtaining a deficiency judgment. NRS
14 40.455 does not apply to holders of junior liens. Rather, NRS 40.4631 through 40.4639 applies to
15 junior lienholders seeking a money judgment when a foreclosure has occurred. Importantly, NRS
16 40.4639 only requires a junior lienholder to commence “[a] civil action” within six months of
17 foreclosure; it makes no mention of an “application.” Since BON indisputably commenced a “civil
18 action” for a deficiency against Petersen, it is entitled to summary judgment with respect to the
19 remaining indebtedness owed under Note B.

20 Second, by waiving the one action rule, Petersen waived the right to invoke NRS 40.455, and
21 that right is not resurrected by NRS 40.495(3). This is a second, independent reason why the six
22 month “application” requirement in NRS 40.455 does not apply.

23 Third, although NRS 40.455 is not applicable in this case because the deficiency is based
24 upon BON’s junior lienholder status, the Court’s strict interpretation of the word “application” – *i.e.*
25 that “application” means “motion” and nothing else – is inconsistent with legislative history, canons
26 of statutory construction, and case law interpreting NRS 40.455. These sources of interpretation
27 mandate a broader construction of the term “application” – one that encompasses the initiation of an
28

1 “action” as well as a “motion.”

2 II. RELEVANT FACTUAL BACKGROUND¹

3 BON and borrower Red Card, LLC entered into two promissory notes, Note A and Note B,
4 evidencing two loans. Note A was in the amount of \$1,444,898.00 and was secured by a First Deed
5 of Trust. Note B was in the amount of \$1,092,591.00 and was secured by a Second Deed of Trust.
6 See Exhibits 1, 4, 5 and 6 to MSJ; Judgment at ¶¶ 1-7.

7 Petersen executed a Commercial Guaranty in favor of BON guaranteeing full and punctual
8 payment of both loans. See Exhibit 7 to MSJ; Judgment at ¶¶ 9-11. Under NRS 40.495 and the
9 terms in the “GUARANTOR’S WAIVERS” section of the Commercial Guaranty, Petersen *waived*
10 the provisions of NRS 40.430. *Id.*

11 The Court found that Red Card failed to make the required loan payments and Petersen failed
12 to repay Red Card’s indebtedness as agreed in the Commercial Guaranty. See Judgment at ¶ 12; *see*
13 *also* Exhibit 3 to MSJ. As a result of Petersen’s default, BON filed this guarantor deficiency action
14 on April 12, 2013 pursuant to NRS 40.495. As of the date of the commencement of this action, the
15 amount of indebtedness due under Note A was \$1,843,726.54 and the amount of indebtedness due
16 under Note B was \$1,256,071.75 for a total indebtedness in the sum of \$3,099,798.29. See Judgment
17 at ¶ 16; *see also* Exhibit 14 to MSJ.

18 On June 18, 2013, the property securing the loans was sold via trustee’s sale for the amount
19 of \$1,400,000. See Judgment at ¶ 12; Exhibit 10 to MSJ. A Stipulation and Order was entered on
20 December 13, 2013, wherein BON and Petersen agreed that the fair market value of the Property,
21 as of April 12, 2013 (the commencement of the action), was \$1,990,000. See Exhibit 11 to MSJ.

22 III. LEGAL STANDARD

23 NRCP 59(e) allows a party to file a motion to alter or amend a judgment within 10 days
24 after service of written notice of entry of the judgment. The requirements for filing a Rule 59(e)
25 motion are minimal; in addition to being timely filed, the motion must “be in writing, . . . state
26 with particularity [its] grounds [and] set forth the relief or order sought.” *AA Primo Builders,*

27 ¹ A complete recitation of the material facts is set forth in Plaintiff’s Motion for Summary
28 Judgment filed on January 16, 2014.

1 *LLC v. Washington*, 245 P.3d 1190, 1192 (Nev. 2010). Rule 59(e) motions have been interpreted
2 as “cover[ing] a broad range of motions, [with] the only real limitation on the type of motion
3 permitted [being] that it must request a substantive alteration of the judgment, not merely
4 correction of a clerical error, or relief of a type wholly collateral to the judgment.” *Id.* at 1193.
5 “Among the ‘basic grounds’ for a Rule 59(e) motion are ‘correct[ing] manifest errors of law or
6 fact,’ ‘newly discovered or previously unavailable evidence,’ the need ‘to prevent manifest
7 injustice,’ or a ‘change in controlling law.’” *Id.*

8 Plaintiff files the instant Motion to correct a manifest error of law and prevent a manifest
9 injustice.

10 IV. LEGAL ARGUMENT

11 A. BON, as a Junior Lienholder, is Entitled to Summary Judgment On the Debt 12 Evidenced by Note B and Formerly Secured by the Second Deed of Trust

13 The Court’s Judgment concludes that NRS 40.455 applies to this deficiency action and
14 that BON did not comply with the statute because it did not file a “motion” for a deficiency
15 judgment within six months after foreclosure. BON is entitled to an amended judgment in its
16 favor because NRS 40.455 does not apply to BON in its capacity as a junior lienholder. As a first
17 deed of trust holder *and* a second deed of trust holder, BON is governed by two separate statutory
18 schemes for obtaining a deficiency judgment. NRS 40.455 does not apply to holders of junior liens.
19 Rather, NRS 40.4631 through 40.4639 applies to junior lienholders seeking a deficiency judgment.

20 1. NRS 40.4631 through 40.4639 govern deficiency actions by junior lienholders

21 In 2011, the Legislature enacted a statutory scheme governing deficiency actions by junior
22 lienholders. See NRS 40.4631-40.4639. NRS 40.4639 provides:

23 *A civil action* not barred by NRS 40.430 or 40.4638 by a person to
24 whom an obligation secured by a junior mortgage or lien on real
25 property is owed to obtain a money judgment against the debtor
26 after a foreclosure sale of the real property or a sale in lieu of a
foreclosure sale *may only be commenced within 6 months* after the
date of the foreclosure sale or sale in lieu of a foreclosure.

27 (Emphasis added). This statute specifies that a junior lienholder must commence a “civil action”
28

1 within six months of foreclosure to obtain a deficiency judgment. The statute does not use the term
2 “application” when referencing the institution of a deficiency judgment proceeding within six
3 months of foreclosure like it does in NRS 40.455. A junior lienholder need only file a civil action,
4 *i.e.* a complaint, to satisfy the requirements of NRS 40.4639.²

5 Here, Petersen waived the one action rule allowing BON to file suit before foreclosure in
6 accordance with NRS 40.495(2) and (4). *See* Judgment at ¶¶ 9-11. Plaintiff filed this action on
7 April 12, 2013 and subsequently foreclosed on the Property on June 18, 2013. BON filed its
8 complaint before foreclosure, instead of within six months after foreclosure, but this is not a basis for
9 denying BON’s motion for summary judgment. First, the United States District Court for the
10 District of Nevada has rejected the argument that a lender fails to comply with the statute by filing a
11 complaint before foreclosure instead of after foreclosure:

12 The opposition is based on Defendants’ contention that N.R.S.
13 40.430, the “one action rule” and N.R.S. 40.455, the “deficiency
14 judgment statute”, protect them from a deficiency judgment,
15 requiring application for judgment within six months after the date
16 of the foreclosure sale. Plaintiff brought this action before the
17 foreclosure sale, not after the foreclosure sale. The Court rejects
18 the argument that this action could not be brought until after
19 the foreclosure sale. Defendant guarantors waived the one
20 action rule. The subject time provision acts only as a limitation
21 of time within which an action may be brought. It does not
22 purport to address when the cause of action accrued.
23 Defendants’ interpretation flies in the face of N.R.S. 40.495
24 which allows actions against guarantors before a sale has
25 occurred. Plaintiff’s cause of action accrued upon default. The
26 deficiency statute only functions to limit damages.

27 *Interim Capital, LLC v. Herr Law Grp., Ltd.*, 2:09-CV-1606-KJD-LRL, 2011 WL 7053806 at *1
28 (D. Nev. Aug. 23, 2011) (emphasis added). Based on the reasoning of *Herr*, where a guarantor
has waived the one action rule a lender may file a deficiency action before foreclosure under NRS
40.495 without running afoul of NRS 40.455 or 40.4639. The six month limitation period in NRS
40.4639 simply sets a deadline by which a civil action must be filed; it does not prescribe when a
deficiency action accrues.

BON’s pre-foreclose deficiency complaint satisfied the requirements of NRS 40.4639
such that no “amendment” was required after foreclosure. Like the defendant in *Herr*, Petersen

² Under NRCP 3, “[a] civil action is commenced by filing a complaint with the court.”

1 waived the one action rule allowing BON to file suit separately and independently from the
2 foreclosure sale. In addition, like the plaintiff in *Herr*, BON filed its complaint under NRS
3 40.495, which specifically authorizes a lender to file suit against a guarantor before foreclosure.

4 Second, as set forth in Plaintiff's Reply in support of Motion for Summary Judgment, the
5 argument that BON was required to "amend" its complaint within six months after foreclosure yields
6 an unreasonable and absurd result. See Reply at 16-17. Where a guarantor deficiency action is
7 already pending, it makes no sense to require a party to "amend" its complaint within six months
8 of a foreclosure to re-assert the same claim against the same party under the same facts. The
9 entire purpose of an amended complaint is to add new parties, new claims or new material facts.
10 See NRCP 15. The "amendment" contemplated by Petersen does none of these things.

11 Further, it is well-established that the law does not require the performance of idle or
12 unnecessary acts. See *Allenbach v. Ridenour*, 51 Nev. 437, 279 P. 32, 37 (1929) ("the law does
13 not require idle acts" that are unnecessary to do justice.); *Cox v. United States*, 31 U.S. 172, 202
14 (1832) ("the law surely ought not to be so construed as to require of a party a mere idle
15 ceremony[,] the law was intended for real and substantial purposes[.]"); *Southern Pac. Co. v. Cal.*
16 *Adjustment Co.*, 237 F. 954 (9th Cir. 1916) ("The law looks to the substance of things, and does
17 not require useless forms or ceremonies."). When a lender has already filed a complaint seeking
18 a deficiency against a guarantor pre-foreclosure, as permitted by NRS 40.495, it would be
19 unnecessary to make the lender "amend" its complaint within six months of foreclosure to allege
20 the same facts and the same claims. Such a needless act improperly exalts form over substance in
21 contravention of Nevada law.

22 Third, this Court has previously recognized that an amended complaint is unnecessary:

23 I tend to agree that it does not necessarily require an amendment to
24 the Complaint but, you know, a literal reading of 455 just says an
25 application for a deficiency judgment. That sounds like a motion to
me.

26 See Transcript of Proceedings at 12:22-13:1 attached hereto as **Exhibit 1**. After hearing the Court's
27 comments, Defendant's counsel changed his stance and began to argue that there is no need for an
28

amended complaint, only an "application":

THE COURT: Is -- is the purpose notice only? Is the purpose of 455 --

MR. MCKNIGHT: The purpose is to make sure there is an application. He's saying --

THE COURT: Well, but I mean that's --

MR. MCKNIGHT: I don't -- Amended Complaint, *there's no need for an Amended Complaint*. The day after the stipulation they could've asked -- made an application and said, we got the amount, and this is what our fees are, and this is what the interest is, and et cetera, et cetera, give us a judgment. That would be an application.

See Exhibit 1 at 31:4-14 (emphasis added). Ultimately, the Court's Judgment was based on the finding that Plaintiff had not filed an "application" -- *i.e.* a "motion" -- within six months after foreclosure under NRS 40.455. *But the Court's conclusion only applies to Plaintiff in its capacity as a first deed of trust holder.* The "application" requirement in NRS 40.455 does not apply to Plaintiff in its capacity as a second deed of trust holder; instead, junior lienholders only have to commence a "civil action," which is accomplished by filing a complaint. *See* NRS 40.4639. As a junior lienholder, BON was only required to file "an action" for a deficiency judgment, which it did, and was not required to subsequently amend its complaint or otherwise file an "application." Accordingly, the Court should grant summary judgment in BON's favor with respect to the indebtedness owed on Note B.

2. BON is entitled to summary judgment on Note B in the amount of \$1,109,798.29

As a junior lienholder, BON is entitled to summary judgment on Note B, which was secured by the now wiped-out Second Deed of Trust. As of the date of the commencement of this action, the amount of indebtedness on Note A was \$1,843,726.54. *See* Exhibit 14 to MSJ. The amount of indebtedness on Note B as of the same date was \$1,256,071.75. The parties entered into a stipulation and order setting the fair market value ("FMV") of the Property at \$1,990,000. *See* Exhibit 11 to MSJ. The Property was sold via trustee's sale for \$1,400,000, but since the FMV is

more than the price paid at foreclosure, FMV is used to calculate the deficiency amount. See Exhibit 10 to MSJ; *see also* NRS 40.495(4).

The FMV was sufficient to satisfy the entire indebtedness on Note A secured by the First Deed of Trust and a portion of the indebtedness on Note B. Specifically, after subtracting \$1,843,726.54 (indebtedness on Note A) from \$1,990,000 (FMV), there is \$146,273.46 left over to apply towards the indebtedness on Note B. After subtracting \$146,273.46 from \$1,256,071.75 (indebtedness on Note B), the deficiency remaining on Note B is \$1,109,798.29, plus prejudgment interest in the amount of \$150,932. See Exhibit 14 to MSJ.

The Court should amend its Judgment by awarding Plaintiff the following amounts and denying Petersen's counter-motion for summary judgment:

Calculation of Deficiency

Indebtedness on Note A	\$	1,843,726.54
FMV on Action Commencement	\$	(1,990,000.00)
Amt. FMV exceeds indebtedness on Note A	\$	(146,273.46)
Indebtedness on Note B	\$	1,256,071.75
Amt. FMV exceeds indebtedness on Note A	\$	(146,273.46)
Deficiency remaining on Note B	\$	<u>1,109,798.29</u>

Calculation of Interest

Default Interest Rate	12.24%
Interest Period (4/26/2013 to 5/20/2014)	400 days
Total Interest	\$ <u>150,932.00</u> (\$377.33 X 400 days)

B. NRS 40.455 Does Not Apply Because Petersen Waived the One Action Rule

Under NRS 40.430(1), an action filed pursuant to NRS 40.495(2) is not required to conform to the provisions of NRS 40.430 to NRS 40.459, inclusive. NRS 40.430(1) provides:

Except in cases where a person proceeds under subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, and except as otherwise provided in NRS 118C.220, there may be but one action for the recovery any debt, or for the enforcement of any right

1 secured by a mortgage or other lien upon real estate. *That action*
2 *must be in accordance with the provisions of NRS 40.430 to*
3 *40.459, inclusive.* In that action, the judgment must be rendered for
4 the amount found due the plaintiff, and the court, by its decree or
judgment, may direct a sale of the encumbered property, or such
part thereof as is necessary, and apply the proceeds of the sale as
provided in NRS 40.462.

5 (Emphasis added). NRS 40.495(2) provides:

6 Except as otherwise provided in subsection 5, a guarantor, surety or
7 other obligor, other than the mortgagor or grantor of a deed of trust,
8 may waive the provisions of NRS 40.430. If a guarantor, surety or
9 other obligor waives the provisions of NRS 40.430, an *action* for
10 the enforcement of that person's obligation to pay, satisfy or
11 purchase all or part of an indebtedness or obligation secured by a
12 mortgage or lien upon real property *may be maintained separately*
and independently from: (a) An action on the debt; (b) The
exercise of any power of sale; (c) Any action to foreclose or
otherwise enforce a mortgage or lien and the indebtedness or
obligations secured thereby; and (d) Any other proceeding against a
mortgagor or grantor of a deed of trust.

13 (Emphasis added).

14 NRS 40.430(1) states that *unless* an action is brought pursuant to 40.495(2), *that action* must
15 comply with NRS 40.430 to 40.459. Hence, actions brought under NRS 40.495(2) are *not* required
16 to be in accordance with NRS 40.430 to 40.459, which includes NRS 40.455. Any other
17 interpretation would render the first sentence of NRS 40.430(1) meaningless and the Nevada
18 Supreme Court has held that “[n]o part of a statute should be rendered meaningless[.]” *City of Reno*
19 *v. Bldg. & Const. Trades Council of N. Nevada*, 12 Nev. Adv. Op. 2, 251 P.3d 718, 722 (2011).

20 Here, Petersen expressly waived the provisions of NRS 40.430 and BON indisputably filed
21 its *action* under NRS 40.495 – *i.e.* the “exception” to the one action rule. See Exhibit 7 to MSJ;
22 Judgment at ¶¶ 9-11. Petersen cannot waive the one action rule and then later assert its protections.
23 Such a reading of the statutes would eviscerate the direct and express language of NRS 40.430 and
24 40.495(2), which provide that when a guarantor waives the provisions of NRS 40.430, a Lender
25 may maintain an *action* against a guarantor “separately and independently from” an action on the
26 debt or any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness secured
27 thereby, and that under such circumstances the lender need not comply with NRS 40.430 to NRS
28

1 40.459.

2 NRS 40.495(3) does not change the result. That provision states that “[i]f the obligee
3 *maintains an action* to foreclose or otherwise enforce a mortgage or lien and the indebtedness or
4 obligations secured thereby, the guarantor, surety, or other obligor may assert any legal or equitable
5 defenses provided pursuant to the provisions of NRS 40.451 to 40.4639, inclusive.” (Emphasis
6 added). Petersen argues that NRS 40.495(3) applies and that one of the available legal defenses is
7 the application of NRS 40.455. Petersen is incorrect. NRS 40.495(3) does not apply in this case
8 because BON has never maintained an *action* to foreclose or otherwise enforce a mortgage or lien
9 and the indebtedness or obligation secured thereby.” A trustee’s sale pursuant to NRS 107.080 is
10 *not* “an action” and therefore the trustee’s sale of the property in this case did *not* trigger NRS
11 40.495(3). See NRS 40.430(6) (“As used in this section, an ‘action’ does not include any act or
12 proceeding: . . . (e) For the exercise of a power of sale pursuant to NRS 107.080.”) In order to
13 trigger NRS 40.495(3), one must initiate an *action* to foreclose or otherwise enforce a lien.
14 Otherwise, without an action, a guarantor would have no forum in which to assert legal and
15 equitable defenses. No such action to foreclose or otherwise enforce a lien has been filed by BON.

16 Neither is the instant case “an action to foreclose or otherwise enforce a mortgage or lien and
17 the indebtedness secured thereby.” Pursuant to the unambiguous language of NRS 40.495(2), BON
18 initiated this action against Petersen on the Commercial Guaranty *separate and independent* from
19 the type of foreclosure action contemplated in NRS 40.495(3). Because neither the trustee’s sale of
20 the property nor the instant action constitutes “an action to foreclose or otherwise enforce a
21 mortgage or lien and the indebtedness secured thereby,” NRS 40.495(3) does not apply. Petersen
22 cannot assert NRS 40.455 as a legal defense³ and BON is entitled to summary judgment in its favor.

23 **C. Legislative History, Canons of Statutory Construction and Relevant Case Law Support**
24 **BON’s Interpretation of NRS 40.455**

25 Assuming for sake of argument that BON’s deficiency wasn’t based upon being a junior

26 ³ Any concern that Petersen’s waiver of the one action rule might result in a double recovery
27 because NRS 40.455 through 40.459 do not apply is unfounded because the Legislature
28 specifically included analogous “fair value” provision in NRS 40.495(4) that exist in NRS 40.455
through 40.459. Hence, guarantors are still protected from a double recovery.

lienholder and that NRS 40.455 applies, which for the reasons articulated above it does not, the Court's strict interpretation of the word "application" — *i.e.* that "application" means "motion" and nothing else — is inconsistent with legislative history, well-settled canons of statutory construction, and case law interpreting NRS 40.455. These sources of interpretation dictate a broader construction of the term "application" than the Court adopted in its Judgment — one that includes the initiation of an "action" as well as the filing of a "motion."

When construing a statute, courts first look to the statute's plain language. *Estate of Maxey v. Darden*, 124 Nev. 447, 454, 187 P.3d 144, 149 (2008). "When, however, a statute is susceptible to more than one reasonable interpretation, it is ambiguous, and we must then look beyond the plain language to 'examine the statute in the context of the entire statutory scheme, reason, and public policy to effect a construction that reflects the Legislature's intent.'" *Id.* "When a statute is ambiguous, this court determines the Legislature's intent by evaluating the legislative history and construing the statute in a manner that conforms to reason and public policy." *Great Basin Water Network v. State Eng'r*, 126 Nev. Adv. Op. 20, 234 P.3d 912, 918 (2010). "[W]here a statute has no plain meaning, a court should consult other sources such as legislative history, legislative intent, and analogous statutory provisions." *State Farm Mut. Auto. Ins. Co. v. Comm'r of Ins.*, 114 Nev. 535, 540-41, 958 P.2d 733, 736 (1998).

1. The term "application" in NRS 40.455 is ambiguous

The meaning of the term "application" in NRS 40.455 is ambiguous because it is susceptible to more than one reasonable interpretation. When the Legislature does not specifically define a term, the Nevada Supreme Court "presume[s] that the Legislature intended to use words in their usual and natural meaning." *Wyman v. State*, 125 Nev. 592, 607, 217 P.3d 572, 583 (2009). The term "application" has several common definitions, including "request" and "petition." See www.merriam-webster.com/dictionary/application. Both complaints and motions alike "request" or "petition" the court for relief and thus either document could qualify as an "application" under a plain meaning definition. The term is also ambiguous because it is inconsistent with the Legislature's use of the phrase "civil action" in NRS 40.4639. This

1 inconsistency is especially troubling given the fact that both NRS 40.455 and NRS 40.4639 impose
2 the same six-month limitations period.

3 Under this Court's interpretation of NRS 40.455, which was enacted in 1969, a beneficiary
4 of a first deed of trust is required to file a "motion" for a deficiency within six months after
5 foreclosure,⁴ while under the plain language of NRS 40.4639, which was enacted in 2011, a junior
6 deed of trust holder is only required to commence a "civil action" within six months of foreclosure.
7 Why would the Legislature treat junior lienholders differently than senior lienholders? The answer
8 is simple: it did not intend to treat them differently. The discrepancy between the two statutes can be
9 reconciled by consulting legislative history, which clarifies that the Legislature intended for both
10 statutes to be "statutes of limitation" and to put junior and senior lienholders on equal footing when it
11 comes to deficiency actions. Legislative history reveals that the Legislature enacted NRS 40.455 and
12 NRS 40.4639 to force secured parties to *commence the process* of obtaining a deficiency within six
13 months of foreclosure.

14 **2. Legislative history shows the Legislature intended for NRS 40.455 to operate as**
15 **a statute of limitations**

16 The legislative history pertaining to NRS 40.455 teaches that the statute was patterned after
17 California's deficiency statute and that one of the purposes of the six-month rule was to avoid stale
18 claims such that the "debtor cannot be left hanging in limbo for a number of months. *Action* has
19 to be started within three months.⁵ You are not faced with the problem of trying to find out what
20 the property was worth say five years ago." See Minutes of Meeting -- Assembly Committee on
21 Judiciary, 55th Session, March 13, 1969 at 5, 7, attached hereto as Exhibit 2 (emphasis added).
22 Legislative history reveals the Legislature intended for "action" to be started within (at that time)
23 three months of the foreclosure. See footnote 5. The Legislature's use of the term "application"
24 therefore is specifically tied to the term "action."

25 ⁴ The Court's definition of "application" is presumably based on NRCP 7(b)(1) which provides
26 that an "application to the court for an order shall be by motion" However, this definition of
27 the term "application" is *not* in the statute and, an analysis of the plain language of the statute
28 alone – *i.e.* without consulting the extra-textual Nevada Rules of Civil Procedure – yields more
than one reasonable interpretation of the term.

⁵ NRS 40.455 originally had a three month statute of limitation. In 1987, the statute of limitation
was increased from three months to six months. See AB 300, 64th Session (1987).

1 In 2011, the Legislature significantly changed NRS Chapter 40 in several significant
2 respects, including the addition of NRS 40.4631 through 40.4639. The legislative history
3 pertaining to these sections sheds critical light into the meaning of NRS 40.455.

4 On March 23, 2011, Assemblyman Marcus Conklin, the sponsor of the proposed addition
5 of NRS 40.4631-40.4639, testified that the amendment:

6 deals with the *statute of limitations on the junior lienholder* and
7 was part of the original intent, but was never part of the bill. There
8 are a lot of homes going through the foreclosure process because
9 they cannot find a suitable short sale. In a short sale, particularly
10 for a home that has two lienholders, *the junior lienholder has a*
11 *statute of limitations after foreclosure of six years to get a*
12 *deficiency judgment. The first lienholder has a statute of*
13 *limitation of six months . . .* The second lienholder does not want to
14 approve the short sale because he knows if he goes to foreclosure,
15 he will have six years to wait for the economic circumstances to
16 improve for the borrower before he chooses to sue them for any
17 deficiency he did not get paid. Why should the second lienholder
18 be in a better position than the first? The result is the first
19 lienholder is not able to get a short sale done because the junior
20 lienholder is holding up the short sale process. *This amendment*
21 *seeks to put the second lienholder in the same statute of*
22 *limitations position of six months as the primary lienholder.*

23 See Minutes of Meeting – Assembly Committee on Commerce and Labor, 76th Session, March
24 23, 2011 at 5, attached hereto as Exhibit 3 (emphasis added). Assemblyman Conklin reiterated
25 later that under the law as it existed pre-2011, junior lienholders had a six year statute of
26 limitations to collect a deficiency judgment after foreclosure, but “[b]y shortening the time and
27 putting the junior lender on equal footing with the primary lender, it would be more likely that
28 they would be willing to deal at the front end, because they know things are not going to get
better before the statute of limitations runs out.” *Id.* at 6.

On May 3, 2011, Assemblyman Conklin explained the interplay between NRS 40.455 and
NRS 40.4639 as follows:

Senior lienholders have six months from the commencement of a
foreclosure sale *to file for a deficiency judgment . . .* On the other
hand, the *junior lienholder has six years to commence this action.*
All the junior lienholder needs to do is wait for the economic
situation to get better and file a deficiency judgment at that time.
This bill puts the second lienholder in the same position as the first
lienholder. . . . *[Junior lienholders currently] have a six-year*
statute of limitations that no one else has. They need to be on the

1 *same basis as the primary lender*, who stands to lose far more and
2 is willing to deal.

3 See Minutes of Meeting -- Senate Committee on Judiciary, 76th Session, May 3, 2011 at 3-4,
4 attached hereto as **Exhibit 4** (emphasis added). Assemblyman Conklin's Talking Points on A.B.
5 273, attached as an exhibit to the committee meeting, explain that A.B. 273 requires "a second or
6 junior lender to *commence an action* for a money judgment against a borrower within six
7 months—rather than the current six years—*just as the senior lender is required to do[.]*" See
8 **Exhibit 5** attached hereto (emphasis added).

9 In addition, the Legislative Counsel's Digest concerning A.B. 273 provides:

10 Under existing law, a judgment creditor or a beneficiary of a deed
11 of trust may obtain, after a hearing, a deficiency judgment after a
12 foreclosure sale or trustee's sale if it appears from the sheriff's
13 return or the recital of consideration in the trustee's deed that there
14 is a deficiency of the proceeds of the sale and a balance remaining
15 due the judgment creditor or beneficiary of the deed of trust.
16 *Existing law requires a judgment creditor or beneficiary of a deed
17 of trust to bring an action for such a deficiency judgment within 6
18 months after the foreclosure sale or trustee's sale. . . . Sections 3,
19 3.3 and 5.7 of this bill enact similar provisions to govern deficiency
20 judgments sought by junior lienholders after a foreclosure sale. . .
21 the [junior lienholder] may bring an action to obtain a personal
22 judgment against the debtor only if the **action** is brought within 6
23 months after the foreclosure sale, trustee's sale or the sale in lieu of
24 a foreclosure sale or trustee's sale.*

25 See Legislative Counsel's Digest on A.B. 273 attached hereto as **Exhibit 6** (emphasis added).

26 According to legislative history, NRS 40.455 and NRS 40.4639 were both enacted as statutes
27 of limitation. In discussing NRS 40.4639, the Legislature repeatedly stated that it wanted to impose
28 the same six-month "statute of limitations" on junior lienholders that governed senior lienholders.
29 "Statutes of limitation are procedural bars to a plaintiff's action[.]" *G&H Assoc. v. Ernest W. Hahn,*
30 *Inc.*, 113 Nev. 265, 272, 934 P.2d 229, 233 (1997) (emphasis added); *see also* NRS 11.190. By
31 repeatedly referring to NRS 40.455 as a statute of limitation and explaining that senior lienholders
32 have six months to file a deficiency "action," legislative history clarifies that the Legislature intended
33 the word "application" to mean "to start the deficiency judgment process."

34 In the case of a *non-judicial* foreclosure, *i.e.* a trustee's sale, one can only initiate the

1 deficiency judgment process by filing “an action” via complaint. The filing of the complaint
2 satisfies the six-month “statute of limitation” intended by the Legislature. In the case of a *judicial*
3 foreclosure, however, the term “application” certainly can mean “motion” because a foreclosure
4 “action” is already pending and there would be no need to file a new action to obtain a deficiency.

5 **3. Canons of statutory construction support BON’s interpretation**

6 Three additional canons of statutory construction support BON’s interpretation. First,
7 “[w]hen a former statute is amended or a doubtful interpretation rendered certain by subsequent
8 legislation, it ha[s] been held that such amendment is persuasive evidence of what the Legislature
9 intended by the first statute.” *Woofler v. O’Donnell*, 91 Nev. 756, 762, 542 P.2d 1396, 1400 (1975).
10 The Legislature’s amendment of NRS Chapter 40 in 2011 to include NRS 40.4639 is persuasive
11 evidence of what the Legislature intended when it enacted NRS 40.455 – *i.e.* to impose a six month
12 statute of limitation within which a lender had to file a document making it known that a deficiency
13 was being sought.

14 Second, it is well settled that the “meaning of a statute may be determined by referring to
15 laws which are “in pari materia.”” *State Farm Mut. Auto Ins. Co. v. Comm’r of Ins.*, 114 Nev. 535,
16 541, 958 P.2d 733, 737 (1998). When two statutory “sections relate to the same subject-matter” or
17 “have the same purpose or object” they are “in pari materia” and should be construed together. *Id.*;
18 *State v. Esser*, 35 Nev. 429, 129 P. 557, 559 (1913). “In so far as there is an irreconcilable conflict
19 between the two sections, the section which last became a law controls the provisions of the earlier
20 enactment.” *Esser*, 129 P. at 559.

21 Here, the meaning of NRS 40.455 may be determined by referring to NRS 40.4639 because
22 these provisions are “in pari materia.” Both sections relate to the same subject matter as they impose
23 a six month limitation period on lenders after foreclosure to seek a deficiency judgment. NRS
24 40.4639’s unequivocal use of the phrase “civil action” informs the proper interpretation of the term
25 “application” in NRS 40.455. Moreover, as NRS 40.4639 is the more recently enacted statute, its
26 clear directive to commence a civil action controls over the seemingly inconsistent requirement to
27 file an application in the forty-five year old NRS 40.455.

1 Third, courts are required “to interpret provisions within a common statutory scheme
2 ‘harmoniously with one another in accordance with the general purpose of those statutes’ and to
3 avoid unreasonable or absurd results, thereby giving effect to the Legislature’s intent.” *S. Nev.*
4 *Homebuilders Ass’n v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (emphasis
5 added). In order to interpret NRS 40.455 harmoniously with NRS 40.4639, the Court must
6 interpret “application” more broadly to include “complaint.” Under NRCP 3, the filing of a
7 complaint commences a civil action. NRS 40.4639 requires the commencement of an action
8 within six months of foreclosure.

9 Interpreting “application” in NRS 40.455 to solely mean “motion” puts NRS 40.455 in
10 conflict with NRS 40.4639 and produces an unreasonable result. It makes no sense for the
11 Legislature to require senior lienholders to file a “motion” within the six months, but require
12 junior lienholders to commence a civil action. To harmonize the statutes, NRS 40.455 should be
13 interpreted as requiring the *commencement of the deficiency judgment process* within six months
14 of foreclosure, whether via the filing of a complaint if no judicial foreclosure action is pending, or
15 a motion if a judicial foreclosure proceeding is pending.

16 4. Relevant case law supports BON’s interpretation

17 In addition to legislative history and canons of statutory construction, several courts have
18 interpreted NRS 40.455 as requiring the institution of an “action” within six months of
19 foreclosure. *See e.g. FBW Enterprises v. Victorio Co.*, 821 F.2d 1393, 1395-96 (9th Cir. 1987)
20 (explaining that under NRS 40.455 “an action for deficiency judgment must be brought within
21 three months after the date of the foreclosure or trustee’s sale.”);⁶ *Behringer Harvard Lake*
22 *Tahoe, LLC v. Bank of Am., N.A.*, 3:13-CV-00057-MMD, 2013 WL 4006867 (D. Nev. Aug. 5,
23 2013) (“NRS § 40.455 prevents a lender from bringing an action for a deficiency judgment after 6
24 months of a foreclosure sale[.]”); *Nevada State Bank v. Jamison Family Partnership*, 106 Nev.
25 792, 797-98, 801 P.2d 1377, 1381-82 (1990) (referring to NRS 40.455 as a statute of limitation
26 and explaining that the lender’s “opportunity to make a claim for a deficiency judgment resulting
27 from the trustee’s sale” expired on February 12, 1986 under NRS 40.455.). These cases support

28 ⁶ See footnote 5.

1 the interpretation that the timely commencement of "an action" satisfies the requirement of NRS
2 40.455.

3 V. CONCLUSION

4 Based on the foregoing, BON respectfully requests that the Court alter or amend its
5 Judgment and accompanying MSJ Order. Specifically, the Court should grant summary
6 judgment in favor of BON with respect to the remaining indebtedness owed on Note B in the
7 amount of \$1,109,798.29, plus prejudgment interest in the amount of \$150,932. The Court should
8 also deny Petersen's Countermotion for Summary Judgment and vacate any award of costs to
9 Petersen.

10 Dated: May 23, 2014.

SNELL & WILMER LLP.

11
12 By: 

13 Michael Stein, Esq. (Nevada Bar No. 4760)
14 Brian R. Reeve, Esq. (Nevada Bar No. 10197)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169

15 *Attorneys for Plaintiff*

16
17 CERTIFICATE OF SERVICE

18 As an employee of Snell & Wilmer LLP., I certify that I served a copy of the foregoing
19 PLAINTIFF'S RULE 59(e) MOTION TO ALTER OR AMEND JUDGMENT on May 23
20 2014, via United States Postal Service, postage prepaid, to the following:

21 Richard McKnight, Esq.
22 The McKnight Law Firm, PLLC
528 S. Casino Center Blvd., #335
23 Las Vegas, NV 89101

24 *Attorney for Defendant Murray Petersen*

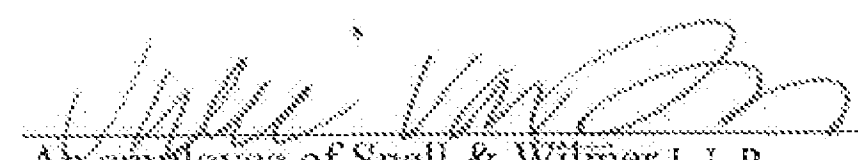
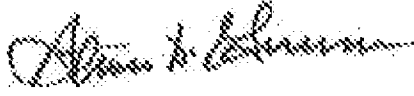
25 
26 An employee of Snell & Wilmer LLP.

EXHIBIT 1


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

BANK OF NEVADA,

Plaintiff,

vs.

MURRAY PETERSON,

Defendant.
* * * * *

CASE NO. A-680012

DEPT. I

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

TUESDAY, APRIL 15, 2014

APPEARANCES:

FOR THE PLAINTIFF:

BRIAN R. REEVE, ESQ.
MICHAEL D. STEIN, ESQ.

FOR THE DEFENDANT:

RICHARD MCKNIGHT, ESQ.

COURT RECORDER:

BEVERLY SIGURNIK
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 it's there in 455, but it's inconsistent with 495. So that's
2 one reason of the three that I'm going to give you as to why
3 you should grant our summary judgment.

4 Also, you know, guarantors are automatically
5 entitled to a fair market value offset under the statutory
6 scheme of 495(4) post-Layl. Before, they were not. So you
7 had to look to 455 in order to determine what, if any, offset
8 they were entitled to. Again, general over specific.

9 Now, two; courts are required to interpret
10 provisions with a common statutory scheme harmoniously and
11 with one another in accordance with the general purpose of
12 those statutes. This allows you to avoid an unreasonable and
13 an absurd result.

14 We argue that Mr. Peterson's argument yields an
15 unreasonable and absurd result. You see, where a guarantor's
16 deficiency action is already pending the statutory -- it would
17 make no sense to require a party to amend its Complaint within
18 six months of a foreclosure to reassert the same claim.
19 That's absurd. In fact, it violates Rule 1 of our Rules of
20 Civil Procedure. The very first rule that governs procedure,
21 it violates.

22 THE COURT: You know, here's my thinking on this so
23 far. I tend to agree that it does not necessarily require an
24 amendment to the Complaint but, you know, a literal reading of
25 455 just says an application for a deficiency judgment. That

1 sounds like a motion to me.

2 MR. STEIN: You know, in certain contexts it is,
3 Your Honor. But, you know, you start -- you start a civil
4 matter by Complaint. So when you come to the Court, you come
5 to make your complaint or to assert your rights by Complaint,
6 by Complaint. But nevertheless, under 495(4) it instructs you
7 as a Judge what to do exactly if after the guarantor lawsuit
8 is started a foreclosure occurs. It's very clear. It strikes
9 you to now look to the value that was taken from that
10 Trustee's Sale, the sales price at the Trustee sale. And if
11 it's greater, if it's greater than the value of -- or greater
12 than the fair market value at the time the Complaint was
13 filed, that's the number you subtract from the amount owed to
14 get a lesser deficiency.

15 You know what's really important about this to show
16 you this distinction and why 495 is self-contained? Remember,
17 under 455, you take the amount that's owed and you subtract
18 one of two numbers, whichever is greater. The amount of fair
19 market value at the time of the Trustee's sale, or the amount
20 that the property sold for, at the time of the Trustee's sale.
21 495 is -- has to govern over that, because it instructs you,
22 it mandates that you don't use the fair market value at the
23 time of the Trustee's sale. You -- it mandates you to use the
24 fair market value at the time the Complaint was filed. Not
25 any application or motion filed, but the time the Complaint

1 our legal civil process. Not only does it violate Rule 15 --
2 think about this, Your Honor. Let me digress one moment. If
3 I came to you with a Rule 15 motion -- remember, Lavi's
4 unpublished. I've never seen that case. I show up to Court
5 and say, Your Honor, I'm moving to amend my Complaint. All
6 right, Mr. Stein, I do see you've attached an Amended
7 Complaint, a proposed Amended Complaint as required by the
8 rules. And I see it's -- my clerk tells me it's virtually
9 identical to the one you filed. Can you tell me, Mr. Stein,
10 why I shouldn't sanction you for violating Rule 1, Local Rule
11 7.60, and Rule 15? You've added nothing to this Complaint,
12 but you've taken up judicial time and resources. And for
13 what? And I wouldn't know what to tell you, sir. I would
14 have no answer to that question because --

15 THE COURT: Well, that's if we accept the
16 defendant's argument that -- which seems to say that your only
17 way to comply is to file an Amended Complaint. What's wrong
18 with just saying, you don't have to file an Amended Complaint,
19 just file the motion?

20 MR. STEIN: That doesn't bring us any closer to
21 anything either, Your Honor. Remember, the reason under 455
22 for the six months is so that borrowers weren't hanging. They
23 weren't hanging out there wondering if they're going to get
24 sued. This isn't the legislative history. They -- there's a
25 date certain we need to -- when to close it off certain for

1 MR. McKNIGHT: Thank you.

2 THE COURT: Mr. McKnight?

3 MR. McKNIGHT: Yes, sir. The real --

4 THE COURT: Is -- is the purpose notice only? Is
5 the purpose of 455 --

6 MR. McKNIGHT: The purpose is to make sure there is
7 an application. He's saying --

8 THE COURT: Well, but I mean that's --

9 MR. McKNIGHT: I don't -- Amended Complaint, there's
10 no need for an Amended Complaint. The day after the
11 stipulation they could've asked -- made an application and
12 said, we got the amount, and this is what our fees are, and
13 this is what the interest is, and et cetera, et cetera, give
14 us a judgment. That would be an application.

15 THE COURT: So I guess my question is, why would the
16 legislature care enough to say, 455 should still apply, i.e.
17 there should be a --

18 MR. McKNIGHT: Because --

19 THE COURT: -- six month -- if it's anything -- I
20 mean, what other consideration besides notice would there be?

21 MR. McKNIGHT: There is nothing in the statutes that
22 he is citing to you, 457, 495, that says when you do this. So
23 we could sign that stipulation and then according to them,
24 five years later, come back to court and figure out how much
25 Mr. Peterson owes. There's got to be -- to follow his

1 MR. STEIN: Judge --

2 THE COURT: -- with guarantors?

3 MR. STEIN: -- just 455(1) is the only one we're
4 dealing with that's not harmonious with the 495, Your Honor.

5 THE COURT: Well, okay, I thought that your argument
6 described it as -- that there were several that would be
7 non-harmonious.

8 MR. STEIN: Well, I gave you examples of how the
9 application of those, but in our case, those other ones don't
10 apply. Only 455(1), but I --

11 THE COURT: Okay, well, I leave it to the Supreme
12 Court to make the determination of -- on both levels, that is,
13 of whether or not 495 means 455 is out in a guarantee action,
14 and also what other provisions between 455 and 463(9), being
15 non-harmonious, are no longer applicable when it comes to a
16 guarantee action. That's something our Supreme Court should
17 deal with.

18 MR. STEIN: Yeah. But, Your Honor, do you -- are
19 you -- because this order has to be reviewed by both of us,
20 are you finding that our stipulation didn't satisfy that six
21 month period, the stip and order that you signed?

22 THE COURT: No. I am finding that your motion is
23 denied. And it seems to me that I am compelled by that logic
24 to say that the countermotion is granted, because there was no
25 application within the six months. And as illogical as that

1 may seem in light of 40.495, as it may seem to the bank, I
2 think I as a trial court am required to make that ruling. And
3 if there -- if there's to be the differentiation that is
4 inherent in your logical argument about how 495 is an all
5 inclusive act, then I think our Supreme Court's going to have
6 to be the one to make that determination. It's the only way I
7 know to get resolution. It's going to go up either way.

8 MR. McKNIGHT: Thank you. I'll draft the order and
9 run it past counsel?

10 THE COURT: Yeah. It's -- either way it's got to go
11 up there to get it resolved. So, you know, I'm going to --

12 MR. STEIN: Oh, no, I understand.

13 THE COURT: -- I'm going to give -- I'm going to try
14 to give deference to the legislative acts I have before me and
15 leave it to the Supreme Court to decide where you --

16 MR. STEIN: Understood. I thank you for your time
17 though.

18 THE COURT: -- how you parse those. Yeah.

19 MR. McKNIGHT: Thank you.

20 THE COURT: Okay.

21 (Proceeding concluded at 11:04 a.m.)

22 * * * * *

23

24

25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Verbatim Digital Reporting, LLC
Englewood, CO 80110
(303) 798-0890

Julie Lord

JULIE LORD, TRANSCRIBER

5-5-14
DATE

Verbatim Digital Reporting, LLC ♦ 303-798-0890

000008

EXHIBIT 2

2- 91

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session
March 13, 1969

Meeting was called to order at 3:35 P.M. by Chairman Torvinen.

PRESENT: Torvinen, Kean, Fry, Reid, Prince, Bryan, Schouweiler, Lowman

ABSENT: Swackhamer

MR. TORVINEN: This is the day set for a hearing on AB 297, AB 298, AB 493, AB 494 and we will add AB 199.

MR. REID: There is another bill on this in the Senate. If these people know about it, I would like them to comment on that one, too. I would also like Mr. Van Patten to tell us how the California law is working.

MR. VAN PATTEN: Lawyer from California: The present law in Nevada is basically inadequate. It permits the creditor who forecloses under deed of trust to hold a sale and no one knows of it. He can get in 5 to 10% and then wait for the statute of limitations to run out and then bring suit against the borrower and recover the full amount. The debtor may lose his property at 10 cents on the dollar and yet end up having to pay the full amount of the debt later. Many times the creditor has collected twice and the debtor has lost twice. It is only because of the restraint and good sense of public relations of the banks and building and loan institutions that this has not happened oftener.

One safeguard against this "so-called" purchase money method - no deficiency judgment permitted then.

Mr. Hilbrecht's bill, AB 298, proposes to adopt this purchase money deed of trust for the method. In my experience, which is more than that of any other attorney in the State of California, and I have represented both sides, this is a strange method, a rather clumsy device. The only reason for it is a certain common law sanction which made it possible for it to be put into effect during the depression. I could talk for hours on purchase money deeds. It has a nice ring to it, but it is very difficult to determine. It is not an economical approach to this kind of thing because, simply by accident, some will fall into this category and some will not. While the deed is in your hands you cannot get a deficiency judgment. If you sell it to the bank, he may be able to exercise it. It has nothing to do with the borrower. In some states in the hands of the owner, in due course, it would be a purchase money deed.

Another problem: A third party lender comes in and loans the \$70,000. In some states this would be a purchase money deed and in some states it would not. It was finally decided by the courts that in the hands of a third party purchase money deed still applies.

With AB 298 you are closing doors and it would take many many cases before an attorney could advise his client whether it was or was not purchase money deed, or trust.

AB 493 would have an adverse effect to some degree on lenders. We think that in so far as savings and loans are concerned, they are willing to live with this restriction.

After the deed of trust is sold, the deficiency judgment can only be the difference in amount of the sale and the value of the property. It doesn't hurt the debtor and it doesn't enable the creditor to deal unfairly. The debtor is not left to a haphazard situation.

AB 493 also provides that the debtor cannot be left hanging in limbo for a number of months. Action has to be started within three months. You are not faced with the problem of trying to find out what the property was worth say five years ago.

I believe that AB 493 would solve most of the problems. 494 is good if the committee feels that one should protect the small home buyer against deficiency judgment. This was the purpose of the California law. 494 does this for you.

One thing: There is a slight ambiguity in section 2 which ends with "under a contract of sale executed after Dec. 31, 1969." It should be made clear that this is talking about a secured instrument of sale. Also contract of sale that can be like a broker's contract of receipt. It should be clear we are referring here to the words "contract of sale" so add "all of the purchase price".

I think Clark Guild has pointed out to me there is a point of the Senate side, SB 35, which deals with deficiency judgment, sort of a shorthand version of the California law on this subject.

There are several things you should do. One, you should introduce fair market value for the protection of the debtor, same as in 493. However, it goes further and introduces the purchase money device which is not a good approach to the problem.

After 30 years in California, there have been cases interpreting different sections of this. We still do not know how the Supreme Court is going to interpret it. We have had three cases.

Second, you need a so-called judicial foreclosure procedure which applies to all. Provides for two trials. One, to provide valid deed of trust, then you get an interlocutory decree and then after the sale is held, two, they go back to decide what the fair market value was. Debtor still owes it, so a period of sometimes almost two years the property can be in the hands of a receiver. It is a very expensive process. It puts everyone to the burden of two trials. When you are all done, these are all court costs and the debtor ends up paying them.

This law is one which most of the attorneys in California think is a very bad law but we can't agree on how to change it. However, there is unanimous agreement that it is a bad law. This is one California law that Nevada should not copy.

MR. REID: What is in most of the other states?

MR. VAN PATTEN: Only eight or nine states that permit deeds of trust as opposed to mortgages so you are not really comparable to other states. Nevada is the only state which permits deficiency judgment after sale of trust.

About 40 of the states have the fair market limitation. A foreclosed debtor should not have to rely on the vagaries of a trust sale.

MR. GUILD: 494 could stand on itself then. 493 just gives some protection.

MR. REID: Could we logically adopt both? It wouldn't have to be one or the other, would it?

MR. VAN PATTEN: You could adopt both. 493 would correct the present situation. 494 defines whether the burden should be on the small home owner or on the creditor.

MR. GUILD: I disagree. I think if you pass both bills there would be a problem of interpretation. Section 1 of 494 says judgment deficiencies shall not be rendered but 493 sets up a system for getting these deficiencies.

MR. VAN PATTEN: 493 brings Nevada law into accord with the laws of most other states. 494 goes one step further than that. I am only speaking in favor of 493.

BRUCE BECKLEY: Attorney from Las Vegas for Savings and Loan companies. The position of the three Savings and Loan companies for which I am speaking is substantially the same as that of Mr. Van Patten. We are opposed to SB 35 and we are opposed to the California law, AS 298. Mr. Van Patten has given us some idea of the difficulties with this. It was only two years ago that we even knew that there was a deficiency judgment under a trust deed.

We do support 493 and believe it will go a long way in preventing serious inequities in sale of property. We do not take a position of support of 494. However, we think we could live with it if we had to.

We believe 493 will do the job here in the state.

MR. BRYAN: Is there a statute in another jurisdiction after which 493 has been patterned? If so, are there decisions to guide us?

MR. VAN PATTEN: Yes. 493 is virtually the same as in the fair market value protection in the California law and very much the same as about ten other states have.

MR. GUILD: There would be states, then, to give you previous judicial decisions.

EDWARD HALE: Attorney from Reno: One technical matter: I think the policy of this legislation is very good. However, it seems to me there is no technical definition of indebtedness. I would like to suggest the following seven things which should be included in a definition of "indebtedness." (Mr. Hale's statement attached to minutes.)

1. Property money
2. Interest
3. Costs. Cycle of consideration in the trustee deed. Cycle of consideration not necessary in indebtedness.
4. Trustee's fees should be included.
5. Advances made during the period of foreclosure, such as insurance and taxes.
6. Additional indebtedness under an omnibus clause.
7. Provisions for creditor holding 1st, 2nd, and 3rd loans.

EXHIBIT 3

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Sixth Session
March 23, 2011

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:42 p.m. on Wednesday, March 23, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Ocegueda
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

None

Minutes ID: 595

CM595

protected against deficiency judgments. What was not in that bill was that some loans are complicated and have junior lienholders. We are attempting to go back to include in that legislation that all of the loans that are originally used to secure the house are now covered under deficiency. If it is part of the original purchase money mortgage deal, it will now be covered under deficiency protection.

There are two proposed amendments. The first amendment (Exhibit C) deals with the statute of limitations on the junior lienholder and was part of the original intent, but was never part of the bill. There are a lot of homes going through the foreclosure process because they cannot find a suitable short sale. In a short sale, particularly for a home that has two lienholders, is the junior lienholder has a statute of limitations after foreclosure of six years to get a deficiency judgment. The first lienholder has a statute of limitation of six months. The first lienholder sees that if he approves the short sale, he will never have to own or maintain the property, and he will take a loss no matter what he does. It is a simple transaction to a new homeowner. The lienholder can write off the asset, write off the loan, and walk away because he knows in six months the situation will not improve and the transaction does not make sense anymore. The second lienholder does not want to approve the short sale because he knows if he goes to foreclosure, he will have six years to wait for the economic circumstances to improve for the borrower before he chooses to sue them for any deficiency he did not get paid. Why should the second lienholder be in a better position than the first? The result is the first lienholder is not able to get a short sale done because the junior lienholder is holding up the short sale process. This amendment seeks to put the second lienholder in the same statute of limitations position of six months as the primary lienholder. It seems fair for the property owner because there will be more short sales and fewer properties waiting in foreclosure and more transactions taking place. I believe it will help the homeowner and the economy get back on track.

The second proposed amendment (Exhibit D) deals with commercial lending. This amendment revises *Nevada Revised Statutes* 40.495. If you are a guarantor of a loan, there is a loophole in the law that allows the bank to file a suit but not take the property when the loan is secured by the property, which may bankrupt the guarantor. The bank has as much risk as the borrower, and that is why they use property as collateral. I am trying to close that loophole with this amendment. If a bank wants to take action against a borrower to purchase land, and the loan is secured by the land, then before they can sue for money, they have to at least get a judicial appraisal of the property and subtract its value from the amount of the loan. Otherwise, what was the reason for the secured loan in the first place? The amendment provides that, in order to

secure a judgment against a creditor who has a loan that is secured by property, you must get a judicial appraisal and subtract the value from any loan amount.

Chair Atkinson:

Thank you for this bill, because it will help our constituents. My district was the number-one district in growth and is the number-one district in foreclosures. People are looking for relief but feel their hands are tied. They are concerned about the banks coming after them in six years. If a bank and the second lender sign off on the short sale, does that take the borrower out of the six years or six months for the deficiency collection?

Assemblyman Conklin:

There is no statute of limitations on a transaction of sale prior to foreclosure. It is the standard practice of a trained real estate agent that if we are going to conduct a short sale, there is a release for deficiency. What homeowner would "short sale" their house without a document? It is a standard course of practice. The law does not prevent a deficiency judgment for a transaction of sale that takes place prior to foreclosure. That is a standard practice and is what the homeowners expect. The bank is losing less, in that they never have to own or maintain the property or transfer a deed, and can sell it and write it off the books as opposed to a lengthy court process and ownership. It is a win-win situation, but when there are two banks dealing with this and one has a much longer period to collect for a deficiency, why would they ever sign away that right?

Chair Atkinson:

Do you feel that second lenders will be less likely to sign?

Assemblyman Conklin:

We have real estate salespeople who are negotiating these deals daily in Las Vegas, but the reality is there is currently no incentive for the junior lienholder to sign a transaction of sale prior to foreclosure. They have six years to wait for the economy to improve and collect their deficiency. By shortening the time and putting the junior lender on equal footing with the primary lender, it would be more likely that they would be willing to deal at the front end, because they know things are not going to get better before the statute of limitations runs out.

Chair Atkinson:

So the real estate people will say that the homeowners are insisting that the bank sign?

EXHIBIT 4

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
May 3, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:06 a.m. on Tuesday, May 3, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

COMMITTEE MEMBERS ABSENT:

Senator Ruben J. Kihuen (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus Conklin, Assembly District No. 37
Assemblyman Jason Erlerson, Assembly District No. 8

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Joanne Levy, Nevada Association of Realtors
Venicia Considine, Legal Aid Center of Southern Nevada

Senate Committee on Judiciary
May 3, 2011
Page 3

pennies on the dollar. Section 2, subsection 2 and section 5, subsection 1, paragraph (c) state that collection agencies can only go after the amount they actually expended. For example, if a deficiency judgment is \$100,000 and the bank sells it to a collection agency for \$20,000, the agency can only come after the former homeowner for \$20,000 plus interest and fees. It is a chain of profiteering against the original homeowner. The purpose of this bill is clear. If the bank was willing to accept \$20,000, it should have negotiated with the homeowner for that amount. We are trying to create an environment in which it is in everyone's best interest to negotiate at the spot where the loan was originally negotiated.

Section 3 applies protections to borrowers of secondary or junior loans under the same conditions as those given to senior loans by A.B. No. 471 of the 75th Session. That bill gave those protections only to the primary lienholder, the bank that made the primary loan. However, because there are many cases in which a second loan was used in the original purchase alone, it is necessary to include secondary loans under those protections. Under A.B. 273, the loan package in the original purchase is included in the protections under our deficiency judgment laws.

I have a proposed amendment to the bill (Exhibit D). Section 6 of the amendment adds back some language inadvertently left out when the bill was reprinted.

The purpose of section 3.3 is clear. If you are a homeowner trying to short sell your house, many primary banks are willing to negotiate with you. However, many loan packages were made such that the second lienholder is actually in the primary lienholder spot because the statute of limitations for secondary loans is significantly longer than for primary loans. Senior lienholders have six months from the commencement of a foreclosure sale to file for a deficiency judgment. They are only going to win a deficiency judgment if the person has the assets to pay out on a deficiency. It is unlikely that the person's financial situation will change enough in six months for him or her to have the assets to pay a deficiency. On the other hand, the junior lienholder has six years to commence this action. There is no benefit for the junior lienholder to help the homeowner get out from under the loan. All the junior lienholder needs to do is wait for the economic situation to get better and file a deficiency judgment at that time. This bill puts the second lienholder in the same position as the

Senate Committee on Judiciary
May 3, 2011
Page 4

first lienholder. That way, everyone negotiates from the same position and sees the same financial benefit or lack of benefit in a foreclosure versus a short sale.

Many banks have told me, "We'd like to help your constituent on this, but the problem is they have a \$10,000 secondary note, and the secondary lienholder isn't willing to deal." Why are those secondary lenders not willing to deal? Because they do not have to. They have a six-year statute of limitations that no one else has. They need to be on the same basis as the primary lender, who stands to lose far more and is willing to deal.

Section 5.5 is a little harder to understand. The standard investor who invests in land requires two people: one who is willing to loan money and one who is willing to risk. For example, an investor might say, "I want to buy \$30 million worth of land, and I have \$5 million cash." That person goes to a bank and gets a loan secured by the land and the personal guarantee of the investor, who is known to have \$5 million. This is not an unsecured loan.

What is happening from time to time is that if there is a foreclosure, instead of going after the land first and then going after the guarantor for the difference, banks are choosing to go after the guarantor for the total amount of the loan. If we allow banks to continue to do that, people will not invest in Nevada. No one is going to take that kind of position to guarantee a loan secured by property. It would be different if it was an unsecured loan. What we are trying to do here is force banks to choose one course of action. They can still choose to sue the guarantor, but they have to take the land first.

Think of it this way. If you cosigned a loan for your child and your child could not make the payments, would you think the bank could come after you for the total amount of the loan and leave the house? You would not; that is not what happens when you cosign a loan. The loan was secured by land, and all we are doing is clearing this up so the banks do not get two bites of the apple—a lawsuit and a potential foreclosure—but only one. If the bank chooses to file a suit, that is fine, but the bank must take the value of the property out of what is collected from the guarantor. That is what this provision does.

CHAIR WIENER:
Does Exhibit D, Amendment 6738, cover all your concerns?

EXHIBIT 5

TALKING POINTS ON A.B. 273 (First Reprint)
Relates to deficiency judgments

ASSEMBLYMAN MARCUS CONKLIN

May 3, 2011

INTRODUCTION

This bill relates to deficiency judgments, which are judgments a court may award under Chapter 40 of NRS after a foreclosure sale, if the proceeds from the sale are less than what the borrower owes the lender.

Last session, in A.B. 471, we tightened up the law on deficiency judgments to protect homeowners who borrowed from a financial institution to purchase a home after October 1, 2009, who continuously occupied the home as their principal residence, and who didn't refinance.

In this bill, we are again tightening up the rules on deficiency judgments by:

- Preventing a lender from receiving double payment by obtaining a judgment for a loss that is covered by insurance;
- Preventing a creditor from profiting from a judgment in excess of the amount the creditor paid for the right to pursue the judgment;
- Extending the protections in A.B. 471 from the 2009 session to borrowers who take out "piggy-back" loans for the purchase of their home;

EXHIBIT C House Committee on Judiciary

Date: 5/3/11 Page: 1 of 5

- Requiring a second or junior lender to commence an action for a money judgment against a borrower within six months—rather than the current six years—just as the senior lender is required to do; and
- In general, making our laws on deficiencies apply to both senior and junior lenders.

A.B. 273 also includes another change to Chapter 40 dealing with guaranteed loans and actions against the persons who guarantee them.

WHAT THE BILL DOES

Preventing double payments

In subsection 1 of section 2, and in section 5 (page 5, lines 15 to 20), the bill eliminates the ability of a lender to go to court and get a judgment against a borrower for a loss that is covered by insurance. The court must reduce the amount of the judgment by the amount of any insurance proceeds received by or payable to the lender. Section 2 covers the junior lenders (i.e., second loans) and section 5 covers the senior lenders.

Preventing a lender from profiting from a judgment

In subsection 2 of section 2, and in section 5 (page 5, lines 7 to 13), the bill prevents a person who has purchased the rights to a loan from receiving a judgment for more than what they paid, plus interest. Again, section 2 covers second or junior lenders, and section 5 covers the senior lenders.

C-2

Extending the protections from 2009 to borrowers in "piggy-back" loans

Section 3 of the bill takes the provisions of A.B. 471 from the 2009 session and applies them to a junior lender, if the borrower is in the same circumstances—he borrows from a financial institution, uses the loan to buy a home, continuously occupies the home, and does not refinance.

Like the bill last session, these first three provisions apply to new loans commencing on or after the effective date.

Requiring the junior lender to commence action within 6 months

Section 3.3 of the bill is the section that requires a junior lender to commence action for a money judgment against a borrower, after a foreclosure sale or sale in lieu of foreclosure ("short sale"), within six months.

Under the current law, the junior lender has six years to commence an action, which just prolongs the agony for borrowers who have already lost their homes in the downturn, discourages short sales, and extends the time it takes for Nevada to get its economy back on track.

In the Assembly committee, we had intended for this section to apply to any action commenced after a foreclosure sale or sale in lieu of foreclosure occurring on or after July 1, 2011. This was inadvertently left out of the amendment and the first reprint, and therefore I am proposing an amendment today that would make this so.

C-3

Comment on the "single action rule"

After this bill was introduced in the Assembly, one concern was that the bill not inadvertently create a loophole in what is known as the "single action rule," which is found in NRS 40.430. It says, "[T]here may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate."

So, in sections 2 and 3.3, the bill includes language to make sure we don't create a loophole. (See page 3, lines 24 and 37, and page 4, line 31.)

Actions against a guarantor of a mortgage or deed of trust

Finally, section 5.5 of the bill relates to a different situation—primarily having to do with commercial lending and NRS 40.495. If, for example, a developer takes out a loan to develop a large parcel of land, the bank not only takes a secured position—with the land as collateral—but also may ask for and get a guarantee from someone to pay the debt in case the borrower fails to do so.

Section 5.5 says this:

- If the lender—before foreclosing on the property—sues the person who guaranteed the loan to require them to pay off the debt, the court must hold a hearing concerning the fair market value of the property.
- And if the court decides the person who guaranteed the loan is liable for the debt, the judgment can only be for the amount by which the debt exceeds the fair market value (or, if the foreclosure sale has gone through, the amount by which the debt exceeds the sale price).

C-4

- In other words, before the bank can get a judgment against the guarantor, they must get the property appraised, and subtract that amount from the what they seek to get from the guarantor.

It has come to my attention that there needs to be another small change in the bill in this section, on page 6, line 11. I want to make it clear that the court is not required to award a judgment against the person who guaranteed the loan, but if—after a hearing—such a judgment is warranted, then the provisions of this section would apply.

Conclusion

That concludes my remarks. Thank you, madam chair.

Prepared by:
Legislative Counsel Bureau
Research Division
May 2, 2011
W111296

C-5

EXHIBIT 6

Assembly Bill No. 273--Committee
on Commerce and Labor

CHAPTER.....

AN ACT relating to real property; revising provisions governing the amount which a person holding a junior lien on real property may recover in a civil action under certain circumstances; prohibiting certain persons holding a junior lien on certain residential property from bringing a civil action under certain circumstances; revising provisions governing the amount of a deficiency judgment after the foreclosure of a mortgage or a deed of trust; limiting the amount of certain judgments against guarantors, sureties or other obligors of obligations secured by real property under certain circumstances; revising provisions governing mortgages and deeds of trust; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a judgment creditor or a beneficiary of a deed of trust may obtain, after a hearing, a deficiency judgment after a foreclosure sale or trustee's sale if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust. Existing law requires a judgment creditor or beneficiary of a deed of trust to bring an action for such a deficiency judgment within 6 months after the foreclosure sale or trustee's sale. For an obligation secured by a mortgage or deed of trust on or after October 1, 2009, a court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if: (1) the creditor or beneficiary is a financial institution; (2) the real property is a single-family dwelling and the debtor or grantor was the owner of the property; (3) the debtor or grantor used the loan to purchase the property; (4) the debtor or grantor occupied the property continuously after obtaining the loan; and (5) the debtor or grantor did not refinance the loan. (NRS 40.455)

Sections 3, 3.3 and 5.7 of this bill enact similar provisions to govern deficiency judgments sought by junior lienholders after a foreclosure sale, a trustee's sale or any sale or deed in lieu of a foreclosure sale or trustee's sale. Section 3 provides that, if the circumstances prohibiting a deficiency judgment after a foreclosure sale or trustee's sale under current law exist with respect to a junior lienholder, the creditor may not bring a civil action to recover the debt owed to it after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.

Existing law authorizes a creditor under an obligation secured by a junior mortgage or deed of trust to bring an action to obtain a personal judgment against the debtor only if the action is commenced within 6 years after the date of the debtor's default. (NRS 11.199) Under sections 3.3 and 5.7 of this bill, if the real property securing such an obligation is the subject of a foreclosure sale, a trustee's sale or a sale or deed in lieu of such a sale, the creditor may bring an action to obtain a personal judgment against the debtor only if the action is brought within 6 months after the foreclosure sale, the trustee's sale or the sale in lieu of a foreclosure sale or trustee's sale.



Under existing law, the amount of a deficiency judgment after a foreclosure sale or a trustee's sale may not exceed the lesser of: (1) the amount of the indebtedness minus the fair market value of the foreclosed property at the time of the sale; or (2) the amount of the indebtedness minus the amount for which the foreclosed property actually sold. (NRS 40.459) Section 5 of this bill provides that, for a deficiency judgment sought by a secured creditor after a foreclosure sale, trustee's sale or sale in lieu of a foreclosure sale or trustee's sale, the amount of the deficiency judgment must be reduced by the amount of any insurance proceeds received by, or payable to, the creditor. Section 2 of this bill enacts a corresponding provision for money judgments sought against a debtor by a junior lienholder after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.

Sections 2 and 5 also limit the recovery of a creditor who acquired the right to obtain payment for an obligation secured by the real property from another person who owned that obligation. If the creditor is seeking a deficiency judgment after a foreclosure sale, a trustee's sale or a sale in lieu of a foreclosure sale or trustee's sale, section 5 provides that the creditor may not receive an amount which exceeds the lesser of: (1) the consideration paid for the obligation minus the fair market value of the property at the time of the foreclosure sale, with interest from the date of sale and reasonable costs; or (2) the consideration paid for the obligation minus the amount for which the property actually sold, with interest from the date of sale and reasonable costs. If the creditor is a junior lienholder who filed a civil action to obtain a money judgment against the debtor, section 2 provides that the creditor may not receive an amount greater than the consideration paid for the obligation, with interest from the date on which the person acquired the right to obtain payment and reasonable costs.

Section 5.5 of this bill limits the amount of a judgment against a guarantor, surety or other obligor, other than a mortgagor or grantor of a deed of trust, in an action commenced before a foreclosure sale or trustee's sale to enforce the obligation to pay, satisfy or purchase all or part of an obligation secured by a mortgage or other lien on real property. Under section 5.5, the amount of the judgment may not exceed the lesser of: (1) the amount of the indebtedness minus the fair market value of the real property at the time of the commencement of the action; or (2) if a foreclosure sale or a trustee's sale is completed before the date on which judgment is entered, the amount of the indebtedness minus the amount for which the foreclosed property actually sold.

Section 6 of this bill provides that the amendatory provisions of: (1) sections 1-3 apply only prospectively to obligations secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this bill; (2) sections 3.3 and 5.7 apply only to an action commenced after a foreclosure sale or sale in lieu of a foreclosure sale that occurs on or after July 1, 2011; and (3) section 5.5 apply only to an action against a guarantor, surety or other obligor commenced on or after the effective date of this bill. Under section 7 of this bill, the amendatory provisions of section 5 become effective upon passage and approval and thus apply to a deficiency judgment awarded on or after that effective date.

Section 6 of Assembly Bill No. 284 of this session requires the trustee under a deed of trust to be: (1) an attorney licensed in this State; (2) a title insurer or title agent authorized to do business in this State; or (3) a person licensed as a trust company or exempt from the requirement to be licensed as a trust company. Section 5.8 of this bill amends section 6 of Assembly Bill No. 284 of this session: (1) to authorize any foreign or domestic entity which holds a current state business license to be the trustee under a deed of trust; and (2) to specifically describe certain persons who are exempt from the requirement to obtain a license as a trust



company and who are authorized to be the trustee under a deed of trust. Sections 5.9 and 5.95 of this bill change the effective date of Assembly Bill No. 284 of this session from July 1, 2011, to October 1, 2011.

EXPLANATION -- Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.2 to 3.3, inclusive, of this act.

Sec. 1.2. *As used in sections 1.2 to 3.3, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 1.4, 1.6 and 1.8 of this act have the meanings ascribed to them in those sections.*

Sec. 1.4. *"Foreclosure sale" has the meaning ascribed to it in NRS 40.462.*

Sec. 1.6. *"Mortgage or other lien" has the meaning ascribed to it in NRS 40.433.*

Sec. 1.8. *"Sale in lieu of a foreclosure sale" means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of a foreclosure sale.*

Sec. 2. 1. *If a person to whom an obligation secured by a junior mortgage or lien on real property is owed:*

(a) *Files a civil action to obtain a money judgment against the debtor under that obligation after a foreclosure sale or a sale in lieu of a foreclosure sale; and*

(b) *Such action is not barred by NRS 40.430.*

In determining the amount owed by the debtor, the court shall not include the amount of any proceeds received by, or payable to, the person pursuant to an insurance policy to compensate the person for losses incurred with respect to the property or the default on the obligation.

2. *If:*

(a) *A person acquired the right to enforce an obligation secured by a junior mortgage or lien on real property from a person who previously held that right;*



(b) The person files a civil action to obtain a money judgment against the debtor after a foreclosure sale or a sale in lieu of a foreclosure sale; and

(c) Such action is not barred by NRS 40.430, and the court shall not render judgment for more than the amount of the consideration paid for that right, plus interest from the date on which the person acquired the right and reasonable costs.

3. As used in this section, "obligation secured by a junior mortgage or lien on real property" includes, without limitation, an obligation which is not currently secured by a mortgage or lien on real property if the obligation:

(a) Is incurred by the debtor under an obligation which was secured by a mortgage or lien on real property; and

(b) Has the effect of reaffirming the obligation which was secured by a mortgage or lien on real property.

Sec. 3. 1. A person to whom an obligation secured by a junior mortgage or lien on real property is owed may not bring any action to enforce that obligation after a foreclosure sale of the real property which secured that obligation or a sale in lieu of a foreclosure sale if:

(a) The person is a financial institution;

(b) The real property which secured the obligation is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or sale in lieu of a foreclosure sale;

(c) The debtor or grantor used the amount of the obligation to purchase the real property;

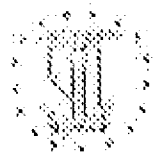
(d) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the obligation; and

(e) The debtor or grantor did not refinance the obligation after securing it.

2. As used in this section, "financial institution" has the meaning ascribed to it in NRS 363A.050.

Sec. 3.3. A civil action not barred by NRS 40.430 or section 3 of this act by a person to whom an obligation secured by a junior mortgage or lien on real property is owed to obtain a money judgment against the debtor after a foreclosure sale of the real property or a sale in lieu of a foreclosure sale may only be commenced within 6 months after the date of the foreclosure sale or sale in lieu of a foreclosure.

Sec. 4. (Deleted by amendment.)



Sec. 5. NRS 40.459 is hereby amended to read as follows:

40.459 1. After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than:

~~1.~~ (a) The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale; ~~for~~

~~2.~~ (b) The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale ~~for~~ or

(c) *If the person seeking the judgment acquired the right to obtain the judgment from a person who previously held that right, the amount by which the amount of the consideration paid for that right exceeds the fair market value of the property sold at the time of sale or the amount for which the property was actually sold, whichever is greater, with interest from the date of sale and reasonable costs,*

whichever is the lesser amount.

2. *For the purposes of this section, the "amount of the indebtedness" does not include any amount received by, or payable to, the judgment creditor or beneficiary of the deed of trust pursuant to an insurance policy to compensate the judgment creditor or beneficiary for any losses incurred with respect to the property or the default on the debt.*

Sec. 5.5. NRS 40.495 is hereby amended to read as follows:

40.495 1. The provisions of NRS 40.475 and 40.485 may be waived by the guarantor, surety or other obligor only after default.

2. Except as otherwise provided in subsection 1, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of NRS 40.430. If a guarantor, surety or other obligor waives the provisions of NRS 40.430, an action for the enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:

(a) An action on the debt;

(b) The exercise of any power of sale;

(c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and



(d) Any other proceeding against a mortgagor or grantor of a deed of trust.

3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of NRS 40.451 to 40.463, inclusive.

4. *If, before a foreclosure sale of real property, the obligee commences an action against a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, to enforce an obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon the real property:*

(a) The court must hold a hearing and take evidence presented by either party concerning the fair market value of the property as of the date of the commencement of the action. Notice of such hearing must be served upon all defendants who have appeared in the action and against whom a judgment is sought, or upon their attorneys of record, at least 15 days before the date set for the hearing.

(b) After the hearing, if the court awards a money judgment against the debtor, guarantor or surety who is personally liable for the debt, the court must not render judgment for more than:

(1) The amount by which the amount of the indebtedness exceeds the fair market value of the property as of the date of the commencement of the action; or

*(2) If a foreclosure sale is concluded before a judgment is entered, the amount that is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured,
whichever is the lesser amount.*

5. The provisions of NRS 40.430 may not be waived by a guarantor, surety or other obligor if the mortgage or lien:

(a) Secures an indebtedness for which the principal balance of the obligation was never greater than \$500,000;

(b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;

(c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or

(d) Is secured by real property upon which:

(1) The owner maintains the owner's principal residence;



- (2) There is not more than one residential structure; and
- (3) Not more than four families reside.

6. As used in this section, "foreclosure sale" has the meaning ascribed to it in NRS 40.462.

Sec. 5.7. NRS 11.190 is hereby amended to read as follows:

11.190 Except as otherwise provided in NRS 125B.050 and 237.007, and section 3.3 of this act, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

(d) An action against a person alleged to have committed a deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, but the cause of action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without the owner's fault, the statute does not begin to run against an action for the recovery of the animal until the owner has



actual knowledge of such facts as would put a reasonable person upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230 and 166.170, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.750 for damages sustained by a financial institution or other lender because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the financial institution or other lender of the facts constituting the concealment or false statement.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon liability incurred by acting in his or her official capacity and in virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

(f) An action to recover damages under NRS 41.740.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his or her official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his or her



official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Sec. 5.8. Section 6 of Assembly Bill No. 284 of this session is hereby amended to read as follows:

Sec. 6. Chapter 107 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *The trustee under a deed of trust must be:*

(a) *An attorney licensed to practice law in this State;*

(b) *A title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS;*

(c) *A person licensed pursuant to chapter 669 of NRS;*

(d) *A domestic or foreign entity which holds a current state business license issued by the Secretary of State pursuant to chapter 76 of NRS;*

(e) *A person who does business under the laws of this State, the United States or another state relating to banks, savings banks, savings and loan associations or thrift companies;*

(f) *A person who is appointed as a fiduciary pursuant to NRS 662.245;*

(g) *A person who acts as a registered agent for a domestic or foreign corporation, limited-liability company, limited partnership or limited-liability partnership;*

(h) *A person who acts as a trustee of a trust holding real property for the primary purpose of facilitating any transaction with respect to real estate if he or she is not regularly engaged in the business of acting as a trustee for such trusts;*

(i) *A person who engages in the business of a collection agency pursuant to chapter 649 of NRS; or*

(j) *A person who engages in the business of an escrow agency, escrow agent or escrow officer pursuant to the provisions of chapter 643A or 692A of NRS.*

2. *A trustee under a deed of trust must not be the beneficiary of the deed of trust for the purposes of exercising the power of sale pursuant to NRS 107.080.*

3. *A trustee under a deed of trust must not:*

(a) *Lend its name or its corporate capacity to any person who is not qualified to be the trustee under a deed of trust pursuant to subsection 1.*

(b) *Act individually or in concert with any other person to circumvent the requirements of subsection 1.*



4. A beneficiary of record may replace its trustee with another trustee. The appointment of a new trustee is not effective until the substitution of trustee is recorded in the office of the recorder of the county in which the real property is located.

5. The trustee does not have a fiduciary obligation to the grantor or any other person having an interest in the property which is subject to the deed of trust. The trustee shall act impartially and in good faith with respect to the deed of trust and shall act in accordance with the laws of this State. A rebuttable presumption that a trustee has acted impartially and in good faith exists if the trustee acts in compliance with the provisions of NRS 107.080. In performing acts required by NRS 107.080, the trustee incurs no liability for any good faith error resulting from reliance on information provided by the beneficiary regarding the nature and the amount of the default under the obligation secured by the deed of trust if the trustee corrects the good faith error not later than 20 days after discovering the error.

6. If, in an action brought by a grantor, a person who holds title of record or a beneficiary in the district court in and for the county in which the real property is located, the court finds that the trustee did not comply with this section, any other provision of this chapter or any applicable provision of chapter 106 or 205 of NRS, the court must award to the grantor, the person who holds title of record or the beneficiary:

(a) Damages of \$5,000 or treble the amount of actual damages, whichever is greater;

(b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor in interest of the beneficiary or the trustee complies with the requirements of subsections 2, 3 and 4; and

(c) Reasonable attorney's fees and costs,

unless the court finds good cause for a different award.

Sec. 5.9. Section 14.5 of Assembly Bill No. 284 of this session is hereby amended to read as follows:

Sec. 14.5. The amendatory provisions of:

1. Section 1 of this act apply only to an assignment of a mortgage of real property, or of a mortgage of personal property or crops recorded before March 27, 1935, and any assignment of the beneficial interest under a deed of trust, which is made on or after ~~July~~ October 1, 2011.



2. Section 2 of this act apply only to an instrument by which any mortgage or deed of trust of, lien upon or interest in real property is subordinated or waived as to priority which is made on or after ~~July~~ *October* 1, 2011.

3. Section 5 of this act apply only to an instrument encumbering a borrower's real property to secure future advances from a lender within a mutually agreed maximum amount of principal, or an amendment to such an instrument, which is made on or after ~~July~~ *October* 1, 2011.

4. Section 9 of this act apply only to a notice of default and election to sell which is recorded pursuant to NRS 107.080, as amended by section 9 of this act, on or after ~~July~~ *October* 1, 2011.

~~Sec. 5.95.~~ Section 15 of Assembly Bill No. 284 of this session is hereby amended to read as follows:

Sec. 15. This act becomes effective on ~~July~~ *October* 1, 2011.

Sec. 6. The amendatory provisions of:

1. Sections 1 to 3, inclusive, of this act apply only to an obligation secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this act.

2. Sections 3.3 and 5.7 of this act apply only to an action commenced after a foreclosure sale or sale in lieu of a foreclosure sale that occurs on or after July 1, 2011.

3. Section 5.5 of this act apply only to an action against a guarantor, surety or other obligor commenced on or after the effective date of this act.

Sec. 7. 1. This section and sections 1 to 3, inclusive, 5, 5.5 and 5.8 to 6, inclusive, of this act become effective upon passage and approval.

2. Sections 3.3 and 5.7 of this act become effective on July 1, 2011.



Exhibit F


CLERK OF THE COURT

1 Richard McKnight, Esq.
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3 THE MCKNIGHT LAW FIRM, PLLC
4 528 S. Casino Center Blvd., #335
5 Las Vegas, Nevada 89101
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7 Fax: 702-589-9882

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DISTRICT COURT
CLARK COUNTY, NEVADA

BANK OF NEVADA, a Nevada banking
corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case No A-13-680012-C

Dept. No I

Date: September 9, 2014


Time: 10:00 a.m.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Order Denying Plaintiff's Rule 59(e) Motion To
Alter Or Amend Judgment was entered by the Clerk of Court on the 17th day of September
2014, a copy of which is attached.

DATED this 18th day of September 2014.

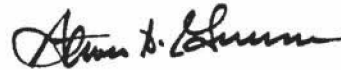
THE MCKNIGHT LAW FIRM, PLLC

By:  /s/ Richard McKnight
Richard McKnight, Esq.
State Bar No. 1313
528 S. Casino Center Blvd., #335
Las Vegas, NV 89101
Attorneys for Murray Petersen

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Michael D. Stein, Esq.
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CLERK OF THE COURT

1 ORDR
Richard McKnight, Esq.
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5 *Attorneys for Defendant Murray Petersen*

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 BANK OF NEVADA, a Nevada banking
9 corporation,

10 Plaintiff,

11 vs.

12 MURRAY PETERSEN, an individual,
13 Defendant.

Case No A-13-680012-C

Dept. No I

Date: September 9, 2014
Time: 10:00 a.m.

14
15 **ORDER DENYING PLAINTIFF'S RULE 59(e) MOTION TO ALTER OR**
16 **AMEND JUDGMENT**

17 Plaintiff, Bank of Nevada's Rule 59(e) Motion To Alter Or Amend Judgment having
18 been filed with this Court on May 23, 2014; Defendant Murray Petersen's Opposition To
19 Motion To Alter Or Amend having been filed on June 6, 2014; Plaintiff's Reply in Support Of
20 Rule 59(e) Motion To Alter Or Amend Judgment having been filed on June 16, 2014 ;
21 Supplemental Points And Authorities In Support Of Defendant's Motion For Summary
22 Judgment And In Opposition To Plaintiff's Motion For Summary Judgment having been filed
23 on July 3, 2014; and Plaintiff's Supplemental Brief Regarding Lavi v. Eighth Judicial District
24 Court then being filed on July 28, 2014, and Richard McKnight, Esq. of The McKnight Law
25 Firm, PLLC appearing for Defendant Murray Petersen, and Michael D. Stein, Esq. of Snell &
26 Wilmer, LLP, appearing for Plaintiff Bank of Nevada, and this matter having come before the
27 Honorable Kenneth Cory, and the Court having heard the arguments of the parties, and the

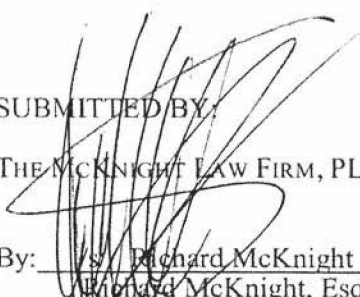
1 Court having reviewed the pertinent pleadings and the relevant papers, and good cause
2 appearing:

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Rule
4 59(e) Motion To Alter Or Amend Judgment be, and the same hereby is, denied in all respects.

5 DATED this 16 day of September 2014.


6 
7 District Court Judge

8 SUBMITTED BY:
9 THE MCKNIGHT LAW FIRM, PLLC

10 By: 
11 Richard McKnight, Esq.
12 Nevada State Bar No. 1313
13 528 S. Casino Center Blvd. #335
Las Vegas, Nevada 89101
Attorneys for Defendant Murray Petersen

14 APPROVED AS EMBODYING THE ORDER OF THE COURT:

15 SNELL & WILMER, LLP

16 By: 
17 Michael D. Stein, Esq.
18 Nevada State Bar No. 4760
19 3883 Howard Hughes Pkwy., #1100
20 Las Vegas, Nevada 89169
Attorneys for Plaintiff Bank of Nevada

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Exhibit E

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DISTRICT COURT
CLARK COUNTY, NEVADA

BANK OF NEVADA, a Nevada banking
corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case No A-13-680012-C

Dept. No I

Date:

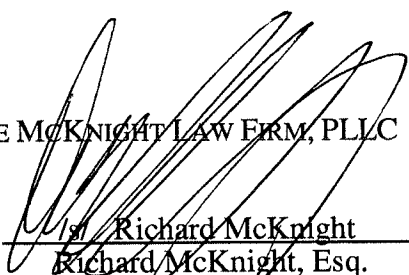
Time:

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Findings Of Fact, Conclusions Of Law And
Judgment was entered by the Clerk of Court on the 8th day of May 2014, a copy of which is
attached.

DATED this 9th day of May 2014.

THE MCKNIGHT LAW FIRM, PLLC

By: 
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Attorneys for Murray Petersen

Snell & Wilmer
L.L.P.

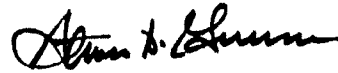
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CLERK OF THE COURT

1 FFCL
Richard McKnight, Esq.
2 Nevada Bar No. 001313
THE MCKNIGHT LAW FIRM, PLLC
3 528 S. Casino Center Blvd., #335
Las Vegas, Nevada 89101
4 Phone: 702-388-7185
Fax: 702-589-9882

5
6 **DISTRICT COURT**
7
8 **CLARK COUNTY, NEVADA**

9 BANK OF NEVADA, a Nevada banking
corporation,

10 Plaintiff,

11 vs.

MURRAY PETERSEN, an individual,

12 Defendant.

Case No A-13-680012-C

Dept. No I

Date: 4/15/2014

Time: 9:00 a.m.

13
14
15 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

16 Plaintiff's motion for summary judgment and Defendant's counter motion for
17 summary judgment having come on regularly for hearing this 15th day of April 2014; Richard
18 McKnight, Esq. appearing on behalf of Defendant Petersen and Michael Stein, Esq. and Brian
19 Reeve, Esq. appearing on behalf of Plaintiff Bank of Nevada the court sets forth the following
20 undisputed material facts, Conclusions of Law and Judgment:

21 1. Red Card, LLC ("Red Card") executed a Promissory Note (Note A) dated
22 March 30, 2011 in favor of Bank of Nevada, pursuant to which it promised to pay Bank of
23 Nevada the principal amount of \$1,444,898 with interest on the unpaid principal balance from
24 the date of the Note until paid ("Note A").

25 2. Red Card executed a Promissory Note (Note B) dated March 30, 2011 in favor
26 of Bank of Nevada, pursuant to which it promised to pay Bank of Nevada the principal
27 amount of \$1,092,591 with interest on the unpaid principal balance from the date of the Note
28

1 until paid ("Note B").

2 3. Red Card, as Grantor, executed a First Deed of Trust dated March 30, 2011 for
3 the benefit of Bank of Nevada.

4 4. The First Deed of Trust was recorded in Clark County, Nevada, on March 31,
5 2011 as Instrument No. 201103310004688, Official Records, Clark County, Nevada.

6 5. The First Deed of Trust encumbered the land described in Exhibit A attached
7 to the First Deed of Trust and commonly known as 8490 Westcliff Dr., Las Vegas, Nevada
8 89145 bearing Assessor Parcel No. 138-28-401-009 (the "Property").

9 6. Red Card, as Grantor, executed a Second Deed of Trust dated March 30, 2011
10 for the benefit of Bank of Nevada.

11 7. The Second Deed of Trust was recorded in Clark County, Nevada, on April 1,
12 2011 as Instrument No. 2011004010000103, Official Records, Clark County, Nevada and also
13 encumbered the Property.

14 8. Under the Loan Documents, an Event of Default has occurred if Red Card fails
15 to make any payment when due under the Loan.

16 9. Petersen executed a Commercial Guaranty dated March 30, 2011 in favor of
17 Bank of Nevada.

18 10. Under the terms of the Commercial Guaranty, Petersen absolutely and
19 unconditionally guaranteed full and punctual payment and satisfaction of the Indebtedness, as
20 defined therein, of Red Card to Bank of Nevada, and the performance and discharge of all Red
21 Card's obligations under the note and the related documents, as defined therein.

22 11. Pursuant to NRS 40.495 and the terms set forth in the "GUARANTOR'S
23 WAIVERS" section of the Commercial Guaranty, Petersen waived the provisions of NRS
24 40.430.

25 12. Red Card failed to make the monthly payments due on September 30, 2011,
26 and all subsequent payments ("Payment Default"). Petersen, as Guarantor, did not make the
27 required payments under the Loan as agreed in the Commercial Guaranty.

28

1 13. Plaintiff caused its legal counsel to provide Red Card and Petersen written
2 Notice of Defaults and Acceleration and Demand for Payment and Cure (the "Letter of
3 Default").

4 14. In the Letter of Default, Plaintiff's counsel reminded Red Card and Petersen
5 that the entire unpaid principal balance under the Note with all accrued and unpaid interest
6 was immediately due and that the breaches not related to the "Indebtedness" had to be cured.

7 15. On December 22, 2011, Plaintiff recorded a "Notice of Breach and Election to
8 Sell Under Deed of Trust" in Clark County, Nevada as Instrument No. 201112220000692
9 pursuant to the First Deed of Trust and Second Deed of Trust.

10 16. Plaintiff filed its Complaint in this action on April 12, 2013. The amount of
11 indebtedness due as of that date was \$3,099,798.29.

12 17. On June 18, 2013, the Property was sold via trustee's sale with Plaintiff
13 purchasing the Property for the sum of \$1,400,000. The Plaintiff took ownership through a
14 credit bid at the trustee's sale.

15 18. On December 13, 2013, this Court entered a Stipulation and Order pursuant to
16 which Plaintiff and Petersen agreed that the fair market value of the Property, as of the
17 commencement of this action, was \$1,990,000.

18 19. NRCP 7(b)(1) provides that "[a]n application to the court for an order shall be
19 by motion which, unless made during a hearing or trial, shall be made in writing, shall state
20 with particularity the grounds therefor, and shall set forth the relief or order sought."

21 20. On January 16, 2014 Plaintiff filed its motion for summary judgment.

22 21. Petersen filed his Opposition to Plaintiff's Motion for Summary Judgment and
23 Defendant's Counter Motion for Summary Judgment on March 20, 2014 and mailed it on the
24 same day. Although filed, the court clerk rejected the filing for fees and the motion had to be
25 refiled, the opposition was timely mailed.

26 CONCLUSIONS OF LAW

27 1. The Court concludes that NRS 40.455(1) applies in guarantor deficiency

1 actions.

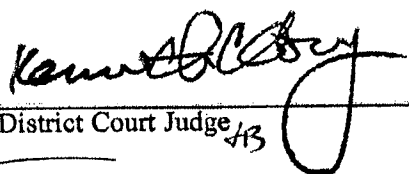
2 2. Plaintiff did not file an application within six months of the trustee's sale under
3 NRS 40.455(1).

4 3. The court did not understand the citation of *Lavi v. Eighth Judicial Dist. Court*
5 of *State ex rel. County of Clark*, 2013 WL 3278563, to be cited as precedent but rather as a
6 means for dispute settling.

7 4. Petersen's opposition to the Bank's Motion for Summary Judgment was
8 timely.

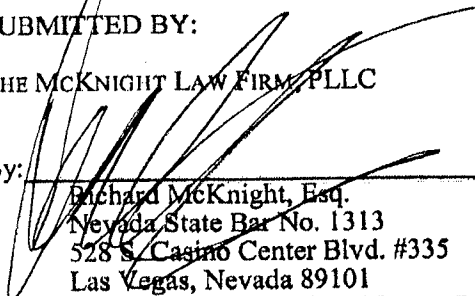
9 5. Defendant, Murray Petersen, is entitled to judgment in his favor on his motion
10 for summary judgment.

11 DATED this 7 day of May 2014.

12 
13 District Court Judge HB

14 SUBMITTED BY:

15 THE MCKNIGHT LAW FIRM PLLC

16 By: 
17 Richard McKnight, Esq.
18 Nevada State Bar No. 1313
19 528 S. Casino Center Blvd. #335
20 Las Vegas, Nevada 89101
21 Attorneys for Defendant Murray Petersen

22 APPROVED AS EMBODYING THE ORDER OF THE COURT:

23 SNELL & WILMER, LLP.


24 By: 
25 Michael D. Stein, Esq.
26 Nevada State Bar No. 4760
27 Brian R. Reeve, Esq.
28 Nevada State Bar No. 10197
3883 Howard Hughes Pkwy., #1100
Las Vegas, Nevada 89169
Attorneys for Plaintiff Bank of Nevada

Exhibit D

1 Richard McKnight, Esq.
2 Nevada Bar No. 001313
3 THE MCKNIGHT LAW FIRM, PLLC
4 528 S. Casino Center Blvd., #335
5 Las Vegas, Nevada 89101
6 Phone: 702-388-7185
7 Fax: 702-589-9882

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 BANK OF NEVADA, a Nevada banking
11 corporation,

12 Plaintiff,

13 vs.

14 MURRAY PETERSEN, an individual,

15 Defendant.

Case No A-13-680012-C

Dept. No I

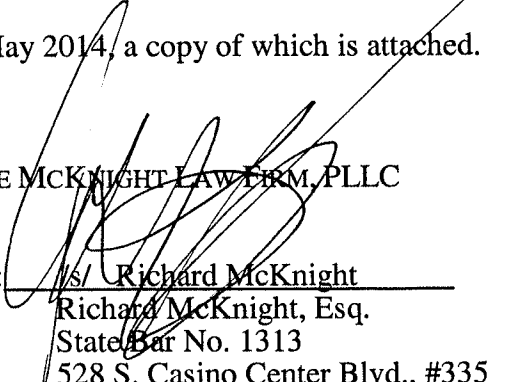
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16 **NOTICE OF ENTRY OF ORDER**

17 PLEASE TAKE NOTICE that the Order Denying Plaintiff's Motion For Summary
18 Judgment and Order Granting Defendant's Countermotion For Summary Judgment was
19 entered by the Clerk of Court on the 8th day of May 2014, a copy of which is attached.

20 DATED this 9th day of May 2014.

21 THE MCKNIGHT LAW FIRM, PLLC

22 By:  /s/ Richard McKnight
23 Richard McKnight, Esq.
24 State Bar No. 1313
25 528 S. Casino Center Blvd., #335
26 Las Vegas, NV 89101
27 Attorneys for Murray Petersen

28 Snell & Wilmer
LLP

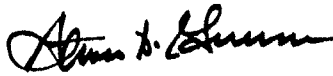
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Michael D. Stein, Esq.
Brian R. Reeve, Esq.
SNELL & WILMER, LLP
3883 Howard Hughes Pkwy., #1100
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Attorneys for Bank of Nevada

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CLERK OF THE COURT

1 ORDER
2 Richard McKnight, Esq.
3 Nevada Bar No. 001313
4 THE MCKNIGHT LAW FIRM, PLLC
5 528 S. Casino Center Blvd., #335
6 Las Vegas, Nevada 89101
7 Phone: 702-388-7185
8 Fax: 702-589-9882
9 Attorneys for Defendant Murray Petersen

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 BANK OF NEVADA, a Nevada banking
9 corporation,

10 Plaintiff,

11 vs.

12 MURRAY PETERSEN, an individual,
13 Defendant.

Case No A-13-680012-C

Dept. No I

Date: 4/15/2014
Time: 9:00 a.m.

FINAL DISPOSITIONS	
<input type="checkbox"/> Sum Judgment	<input type="checkbox"/> Dismissed (with or without prejudice)
<input type="checkbox"/> Non-Jury Trial	<input type="checkbox"/> Judgment Satisfied/Paid in full
<input type="checkbox"/> Jury Trial	
<input type="checkbox"/> Slip Dis	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Slip Judgment	<input type="checkbox"/> Transferred
<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Judgment on Arb Award
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Min to Dis (by debt)

15 ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and
16 ORDER GRANTING DEFENDANT'S COUNTERMOTION
17 FOR SUMMARY JUDGMENT

18 Plaintiff, Bank of Nevada's Motion For Summary Judgment having been filed with
19 this Court on January 16, 2014; Defendant Murray Petersen's Opposition To Motion For
20 Summary Judgment, Countermotion For Summary Judgment having been filed on March 20,
21 2014; Plaintiff's Reply in Support Of Motion For Summary Judgment And Opposition To
22 Counter motion For Summary Judgment having been filed on April 3, 2014; and a Reply To
23 Opposition To Defendant's Motion For Summary Judgment then being filed on April 9, 2014,
24 and Richard McKnight, Esq. of The McKnight Law Firm, PLLC appearing for Defendant
25 Murray Petersen, and Michael D. Stein, Esq. and Brian R. Reeve, Esq. of Snell & Wilmer,
26 LLP, appearing for Plaintiff Bank of Nevada, and this matter having come before the
27 Honorable Kenneth Cory, and the Court having heard the arguments of the parties, and the

1 Court having reviewed the pertinent pleadings and the relevant papers, and good cause
2 appearing:

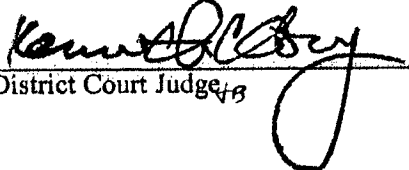
3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant
4 Murray Petersen's Counter Motion For Summary Judgment be and the same hereby is
5 granted.

6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff's
7 Motion For Summary Judgment be and the same hereby is denied in all respects.

8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff take
9 nothing by virtue of its complaint herein.

10 **IT IS SO ORDERED.**

11 DATED this 7 day of May 2014.

12 
13 District Court Judge

14 SUBMITTED BY:

15 THE MCKNIGHT LAW FIRM, PLLC

16 By: 

17 Richard McKnight, Esq.
18 Nevada State Bar No. 1313
528 S. Casino Center Blvd. #335
19 Las Vegas, Nevada 89101
Attorneys for Defendant Murray Petersen

20 APPROVED AS EMBODYING THE ORDER OF THE COURT:

21 SNELL & WILMER, LLP

22 
23 By:

24 Michael D. Stein, Esq.
Nevada State Bar No. 4760
25 Brian R. Reeve, Esq.
Nevada State Bar No. 10197
3883 Howard Hughes Pkwy., #1100
26 Las Vegas, Nevada 89169
Attorneys for Plaintiff Bank of Nevada
27
28

*The McKnight Law Firm, PLLC
528 S. Casino Center Blvd., #335
Las Vegas, NV 89101
Address Correction Requested*

Michael D. Stein, Esq.

Brian R. Reeve, Esq.

SNELL & WILMER, LLP

3883 Howard Hughes Pkwy., #1100

Las Vegas, NV 89169

\$0.69⁰

US POSTAGE
FIRST-CLASS

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Exhibit C



CLERK OF THE COURT

1 ORDR
Richard McKnight, Esq.
2 Nevada Bar No. 001313
THE MCKNIGHT LAW FIRM, PLLC
3 528 S. Casino Center Blvd., #335
Las Vegas, Nevada 89101
4 Phone: 702-388-7185
Fax: 702-589-9882
5 *Attorneys for Defendant Murray Petersen*

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 BANK OF NEVADA, a Nevada banking
9 corporation,

10 Plaintiff,

11 vs.

12 MURRAY PETERSEN, an individual,

13 Defendant.

Case No A-13-680012-C

Dept. No I

Date: September 9, 2014

Time: 10:00 a.m.

14
15 **ORDER DENYING PLAINTIFF'S RULE 59(e) MOTION TO ALTER OR**
16 **AMEND JUDGMENT**

17 Plaintiff, Bank of Nevada's Rule 59(e) Motion To Alter Or Amend Judgment having
18 been filed with this Court on May 23, 2014; Defendant Murray Petersen's Opposition To
19 Motion To Alter Or Amend having been filed on June 6, 2014; Plaintiff's Reply in Support Of
20 Rule 59(e) Motion To Alter Or Amend Judgment having been filed on June 16, 2014 ;
21 Supplemental Points And Authorities In Support Of Defendant's Motion For Summary
22 Judgment And In Opposition To Plaintiff's Motion For Summary Judgment having been filed
23 on July 3, 2014; and Plaintiff's Supplemental Brief Regarding Lavi v. Eighth Judicial District
24 Court then being filed on July 28, 2014, and Richard McKnight, Esq. of The McKnight Law
25 Firm, PLLC appearing for Defendant Murray Petersen, and Michael D. Stein, Esq. of Snell &
26 Wilmer, LLP, appearing for Plaintiff Bank of Nevada, and this matter having come before the
27 Honorable Kenneth Cory, and the Court having heard the arguments of the parties, and the

1 Court having reviewed the pertinent pleadings and the relevant papers, and good cause
2 appearing:

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Rule
4 59(e) Motion To Alter Or Amend Judgment be, and the same hereby is, denied in all respects.

5 DATED this 16 day of September 2014.

6
7 
District Court Judge

8 SUBMITTED BY:

9 THE MCKNIGHT LAW FIRM, PLLC

10 By: 
11 Richard McKnight, Esq.
12 Nevada State Bar No. 1313
13 528 S. Casino Center Blvd. #335
Las Vegas, Nevada 89101
Attorneys for Defendant Murray Petersen

14 APPROVED AS EMBODYING THE ORDER OF THE COURT:

15 SNELL & WILMER, LLP

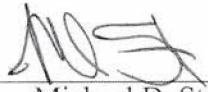
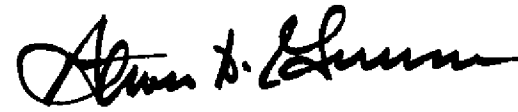
16
17 By: 
18 Michael D. Stein, Esq.
19 Nevada State Bar No. 4760
3883 Howard Hughes Pkwy., #1100
20 Las Vegas, Nevada 89169
Attorneys for Plaintiff Bank of Nevada

Exhibit B



CLERK OF THE COURT

1 FFCL
2 Richard McKnight, Esq.
3 Nevada Bar No. 001313
4 THE MCKNIGHT LAW FIRM, PLLC
5 528 S. Casino Center Blvd., #335
6 Las Vegas, Nevada 89101
7 Phone: 702-388-7185
8 Fax: 702-589-9882

DISTRICT COURT

CLARK COUNTY, NEVADA

9 BANK OF NEVADA, a Nevada banking
10 corporation,

Plaintiff,

vs.

11 MURRAY PETERSEN, an individual,

12 Defendant.

Case No A-13-680012-C

Dept. No I

Date: 4/15/2014

Time: 9:00 a.m.

13
14
15 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

16 Plaintiff's motion for summary judgment and Defendant's counter motion for
17 summary judgment having come on regularly for hearing this 15th day of April 2014; Richard
18 McKnight, Esq. appearing on behalf of Defendant Petersen and Michael Stein, Esq. and Brian
19 Reeve, Esq. appearing on behalf of Plaintiff Bank of Nevada the court sets forth the following
20 undisputed material facts, Conclusions of Law and Judgment:

21 1. Red Card, LLC ("Red Card") executed a Promissory Note (Note A) dated
22 March 30, 2011 in favor of Bank of Nevada, pursuant to which it promised to pay Bank of
23 Nevada the principal amount of \$1,444,898 with interest on the unpaid principal balance from
24 the date of the Note until paid ("Note A").

25 2. Red Card executed a Promissory Note (Note B) dated March 30, 2011 in favor
26 of Bank of Nevada, pursuant to which it promised to pay Bank of Nevada the principal
27 amount of \$1,092,591 with interest on the unpaid principal balance from the date of the Note

1 until paid ("Note B").

2 3. Red Card, as Grantor, executed a First Deed of Trust dated March 30, 2011 for
3 the benefit of Bank of Nevada.

4 4. The First Deed of Trust was recorded in Clark County, Nevada, on March 31,
5 2011 as Instrument No. 201103310004688, Official Records, Clark County, Nevada.

6 5. The First Deed of Trust encumbered the land described in Exhibit A attached
7 to the First Deed of Trust and commonly known as 8490 Westcliff Dr., Las Vegas, Nevada
8 89145 bearing Assessor Parcel No. 138-28-401-009 (the "Property").

9 6. Red Card, as Grantor, executed a Second Deed of Trust dated March 30, 2011
10 for the benefit of Bank of Nevada.

11 7. The Second Deed of Trust was recorded in Clark County, Nevada, on April 1,
12 2011 as Instrument No. 2011004010000103, Official Records, Clark County, Nevada and also
13 encumbered the Property.

14 8. Under the Loan Documents, an Event of Default has occurred if Red Card fails
15 to make any payment when due under the Loan.

16 9. Petersen executed a Commercial Guaranty dated March 30, 2011 in favor of
17 Bank of Nevada.

18 10. Under the terms of the Commercial Guaranty, Petersen absolutely and
19 unconditionally guaranteed full and punctual payment and satisfaction of the Indebtedness, as
20 defined therein, of Red Card to Bank of Nevada, and the performance and discharge of all Red
21 Card's obligations under the note and the related documents, as defined therein.

22 11. Pursuant to NRS 40.495 and the terms set forth in the "GUARANTOR'S
23 WAIVERS" section of the Commercial Guaranty, Petersen waived the provisions of NRS
24 40.430.

25 12. Red Card failed to make the monthly payments due on September 30, 2011,
26 and all subsequent payments ("Payment Default"). Petersen, as Guarantor, did not make the
27 required payments under the Loan as agreed in the Commercial Guaranty.

28

1 actions.

2 2. Plaintiff did not file an application within six months of the trustee's sale under
3 NRS 40.455(1).

4 3. The court did not understand the citation of *Lavi v. Eighth Judicial Dist. Court*
5 *of State ex rel. County of Clark*, 2013 WL 3278563, to be cited as precedent but rather as a
6 means for dispute settling.

7 4. Petersen's opposition to the Bank's Motion for Summary Judgment was
8 timely.

9 5. Defendant, Murray Petersen, is entitled to judgment in his favor on his motion
10 for summary judgment.


11 DATED this 7 day of May 2014.

12
13 
District Court Judge *HB*

14 SUBMITTED BY:

15 THE MCKNIGHT LAW FIRM, PLLC

16 By:

17 
Richard McKnight, Esq.
Nevada State Bar No. 1313
528 S. Casino Center Blvd. #335
Las Vegas, Nevada 89101
Attorneys for Defendant Murray Petersen

20 APPROVED AS EMBODYING THE ORDER OF THE COURT:

21 SNELL & WILMER, LLP.

22
23 By:

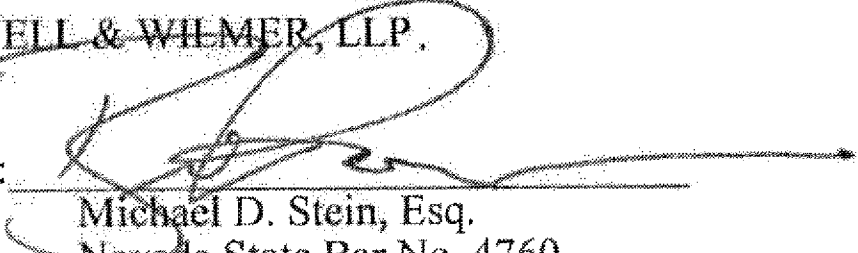
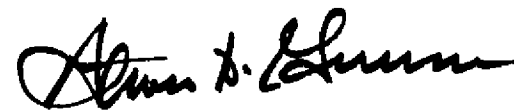
24 
Michael D. Stein, Esq.
Nevada State Bar No. 4760
Brian R. Reeve, Esq.
Nevada State Bar No. 10197
3883 Howard Hughes Pkwy., #1100
Las Vegas, Nevada 89169
Attorneys for Plaintiff Bank of Nevada

Exhibit A



CLERK OF THE COURT

1 ORDR
2 Richard McKnight, Esq.
3 Nevada Bar No. 001313
4 THE MCKNIGHT LAW FIRM, PLLC
5 528 S. Casino Center Blvd., #335
6 Las Vegas, Nevada 89101
7 Phone: 702-388-7185
8 Fax: 702-589-9882
9 *Attorneys for Defendant Murray Petersen*

DISTRICT COURT

CLARK COUNTY, NEVADA

8 BANK OF NEVADA, a Nevada banking
9 corporation,

Plaintiff,

11 vs.

12 MURRAY PETERSEN, an individual,

13 Defendant.

Case No A-13-680012-C

Dept. No I

Date: 4/15/2014
Time: 9:00 a.m.

<input type="checkbox"/> Voluntary Dis <input type="checkbox"/> Involuntary (stat) Dis <input type="checkbox"/> Judgment on Award <input type="checkbox"/> Min to Dis (by debt)	<input type="checkbox"/> Slip Dis <input type="checkbox"/> Slip Judgment <input type="checkbox"/> Default Judgment <input type="checkbox"/> Transferred	<input checked="" type="checkbox"/> Summary Judgment <input type="checkbox"/> Non-Jury Trial <input type="checkbox"/> Jury Trial	FINAL DISPOSITIONS
			<input type="checkbox"/> Time Limit Expired <input type="checkbox"/> Dismissed (with or without prejudice) <input type="checkbox"/> Judgment Satisfied/Paid in full

15 **ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and**
16 **ORDER GRANTING DEFENDANT'S COUNTERMOTION**
17 **FOR SUMMARY JUDGMENT**

18 Plaintiff, Bank of Nevada's Motion For Summary Judgment having been filed with
19 this Court on January 16, 2014; Defendant Murray Petersen's Opposition To Motion For
20 Summary Judgment, Countermotion For Summary Judgment having been filed on March 20,
21 2014; Plaintiff's Reply in Support Of Motion For Summary Judgment And Opposition To
22 Counter motion For Summary Judgment having been filed on April 3, 2014; and a Reply To
23 Opposition To Defendant's Motion For Summary Judgment then being filed on April 9, 2014,
24 and Richard McKnight, Esq. of The McKnight Law Firm, PLLC appearing for Defendant
25 Murray Petersen, and Michael D. Stein, Esq. and Brian R. Reeve, Esq. of Snell & Wilmer,
26 LLP, appearing for Plaintiff Bank of Nevada, and this matter having come before the
27 Honorable Kenneth Cory, and the Court having heard the arguments of the parties, and the

1 Court having reviewed the pertinent pleadings and the relevant papers, and good cause
2 appearing:

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant
4 Murray Petersen's Counter Motion For Summary Judgment be and the same hereby is
5 granted.

6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff's
7 Motion For Summary Judgment be and the same hereby is denied in all respects.

8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff take
9 nothing by virtue of its complaint herein.

10 **IT IS SO ORDERED.**

11 DATED this 7 day of May 2014.

12 
13 District Court Judge ^{AB}

14 SUBMITTED BY:

15 THE MCKNIGHT LAW FIRM, PLLC

16 By: 

17 Richard McKnight, Esq.
18 Nevada State Bar No. 1313
19 528 S. Casino Center Blvd. #335
20 Las Vegas, Nevada 89101
21 Attorneys for Defendant Murray Petersen

22 APPROVED AS EMBODYING THE ORDER OF THE COURT:

23 SNELL & WILMER, LLP

24 By: 

25 Michael D. Stein, Esq.
26 Nevada State Bar No. 4760
27 Brian R. Reeve, Esq.
28 Nevada State Bar No. 10197
3883 Howard Hughes Pkwy., #1100
Las Vegas, Nevada 89169
Attorneys for Plaintiff Bank of Nevada

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF NEVADA, a
Nevada Banking corporation,

Appellant,

vs.

MURRAY PETERSEN, an
individual,

Respondent.

SUPREME COURT CASE NO. 66568

District Court Case No. A-13-880012-C

Electronically Filed
Oct 15 2014 11:21 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPEAL

**From the Eighth Judicial District Court
The Honorable Kenneth Cory, District Judge**

AMENDED DOCKETING STATEMENT

MICHAEL STEIN

Nevada Bar No. 4760

BRADLEY T. AUSTIN

Nevada Bar No. 13064

SNELL & WILMER L.L.P.

3883 Howard Hughes Pkwy., Suite 1100

Las Vegas, NV 89169

Attorneys for Appellant Bank of Nevada

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See K17I Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. **Judicial District:** Eighth; **Department:** 1; **County:** Clark;

Judge: The Honorable Ken Cory **District Ct. Docket No.:** A-13-680012-C

2. **Attorneys filing this docket statement.**

Attorneys: Michael Stein and Bradley Austin

Firm: Snell & Wilmer, L.L.P.

Address: 3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169

Client(s): Bank of Nevada

Telephone: (702) 784-5200

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement. (N/A)

3. **Attorney(s) representing Respondent(s).**

Attorney: Richard McKnight, Esq.

Firm: The McKnight Law Firm, PLLC

Address: 528 S. Casino center Blvd., #335
Las Vegas, NV 89101

Client(s): Murray Petersen

Telephone: (702) 388-7185

4. **Nature of disposition below (check all that apply).**

☐ Judgment after bench trial

☐ Grant/Denial of NRCP 60(h)

☐ Judgment after jury verdict

relief

☒ Summary judgment

☐ Grant/Denial of injunction

☐ Default judgment

☐ Grant/Denial of declaratory relief

☐ Dismissal

☐ Review of agency determination

☐ Lack of jurisdiction

☐ Divorce decree:

☐ Failure to state a claim

☐ Original ☐ Modification

☐ Failure to prosecute

☒ Other disposition (specify):

☐ Other (specify) _____

Rule 59(e) Motion to Alter or Amend
Judgment

5. **Does this appeal raise issues concerning any of the following.**

☐ Child custody

☐ Termination of parental rights

☒ Venue

☐ Grant/denial of injunction or TRO

☐ Adoption

☐ Juvenile matters

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

a. Nature of Action:

This is a breach of guaranty action in which Appellant Bank of Nevada sought a judgment against Respondent Petersen under NRS 40.495. Bank of Nevada loaned Red Card, LLC (“Red Card”) over \$2.5 million dollars to repay a loan previously made by Bank of Nevada to Red Card.

Mr. Petersen personally guaranteed Red Card’s repayment of the debt. Red Card defaulted on the loan, which was secured by certain real property. The fair market value of the property was less than the amount of Red Card’s indebtedness to Plaintiff. Accordingly, Plaintiff now seeks a judgment against Petersen. The loan was evidenced by two separate promissory notes - Note A in the principal amount of \$1,444,898 and Note B in the principal amount of \$1,092,591. Red Card executed two Deeds of Trust, which were recorded in the Clark County Recorder’s office. Both deeds of trust encumbered the land commonly known as 8490 Westcliff Dr., Las Vegas, Nevada 89145 (the “*Property*”).

Red Card and Petersen, as Guarantor, failed to make the monthly payments due under Note A and Note B constituting an Event of Default. The Property was sold via trustee’s sale with Bank of Nevada purchasing the Property. Bank of Nevada and Petersen subsequently stipulated that for the purposes of a deficiency

calculation, the fair market value of the Property, as of the commencement date of the action, was \$1,900,000.

b. List of Causes of Action:

(1) Breach of guaranty; (2) Breach of implied covenant of good faith and fair dealing.

c. Result Below:

In ruling on Bank of Nevada's Motion for Summary Judgment and Mr. Petersen's Countermotion for Summary Judgment, the District Court found that NRS 40.455(1) applies in guarantor deficiency actions and that Bank of Nevada did not file an application within six months of the trustee's sale under NRS 40.455(1). Based on these findings, the District Court granted Mr. Petersen's Countermotion for Summary Judgment.

Bank of Nevada filed a Rule 59(e) Motion to Alter or Amend Judgment, arguing that (1) because there were two promissory notes, NRS 40.455 did not apply to Bank of Nevada in its capacity as a junior lienholder; (2) by waiving the one action rule, Mr. Petersen waived the right to invoke NRS 40.455; and (3) the District Court misinterpreted the word "application" in its ruling. At the invitation of the Court, Bank of Nevada filed a Supplemental Brief Regarding *Lavi v. Eighth Judicial District Court*, arguing that *Lavi* does not control the outcome of the instant case because *Lavi* dealt solely with the application of NRS 40.455 to first

deed of trust holders suing guarantors in deficiency actions, whereas Bank of Nevada was also suing in its capacity as a junior lienholder. Thus, NRS 40.4639 is the governing statute. The District Court ultimately denied Bank of Nevada's Rule 59(e) Motion to Alter or Amend Judgment.

9. **Issue on appeal.** State concisely the principal issue(s) in this appeal:

(a) Whether NRS 40.455 applies where a lawsuit is commenced pursuant to NRS 40.495 and in conformity with NRS 40.4639 by a junior lienholder against a guarantor.

(b) Whether *Lavi v. Eighth Judicial Dist. Ct.*, 130 Nev. Adv. Op. 38, 325 P.3d 1265 (2014) applies to junior lienholders, given that NRS 40.4639 provides a different limitation period than under 40.455—the statute addressed by the Court in *Lavi*.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

None.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute and the state, any state agency, or any officer or employee thereof is

not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A X Yes ____ No ____

If not, explain _____

12. **Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first-impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

13. **Trial.** If this action proceeded to trial, how many days did the trial last?
(N/A)

Was it a bench or jury trial? (N/A)

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from: May 8, 2014, September 17, 2014** Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken. Orders attached hereto as Exhibit A, B and C.

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

(N/A)

16. **Date written notice of entry of judgment or order served: May 9, 2014, September 18, 2014**. Attach a copy, including proof of service, for each order or judgment appealed from. Attached hereto as Exhibits D, E and F.

(a) Was service by delivery ___ or by mail X (specify).

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(h), 52(h), or 59),**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

NRCP 50(b) ___ Date served ___ By delivery ___ or by mail ___ Date of filing ___

NRCP 50(b) ___ Date served ___ By delivery ___ or by mail ___ Date of filing ___

NRCP 59 X Date served May 23, 2014 By delivery ____ or by mail X Date of filing May 23, 2014

Attached as Exhibit G.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion: September 17, 2014.

(c) Date written notice of entry of order resolving motion served: September 18, 2014.

(i) Was service by delivery _ or by mail X (specify).

18. Date Notice of Cross-Appeal was filed: (N/A)

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal: (N/A)

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other:

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

20. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

NRAP 3A(b)(1) X NRS 155.190 ____ (specify subsection) _____

NRAP 3A(b)(2) ____ NRS 38.205 ____ (specify subsection) _____

NRAP 3A(b)(3) ____ NRS 703.376 ____

Other (specify) _____

Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal from a final judgment (summary judgment and subsequent Rule 59 Motion to Alter and/or Amend).

COMPLETE THE FOLLOWING SECTION ONLY IF MORE THAN ONE CLAIM FOR RELIEF WAS PRESENTED IN THE ACTION (WHETHER AS A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM) OR IF MULTIPLE PARTIES WERE INVOLVED IN THE ACTION. Attach separate sheets as necessary.

21. (a) **List all parties involved in the action in the district court:**

Bank of Nevada and Murray Petersen.

- (b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other.

(N/A)

22. **Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.**

Claims asserted by Bank of Nevada against Murray Petersen: Breach of guaranty and breach of implied covenant of good faith and fair dealing. The district court resolved both claims via countermotion for summary judgment, as is reflected in the judgment, attached hereto as Exhibits A, B and C.

Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.

See Exhibit H.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:

Yes X No _____

24. If you answered "No" to the immediately previous question, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

Yes _____ No _____

(d) Did the district court make an express determination, pursuant to NRCP 54(h) that there is no just reason for delay and an express direction for the entry of judgment:

Yes _____ No _____

25. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

(N/A)

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims.

See Exhibit H.

- Any tolling motion(s) and order(s) resolving tolling motion(s)

See Exhibits C and G.

- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal.

- Any other order challenged on appeal.

See Exhibits A and B.

- Notices of entry for each attached order

See Exhibits D, E and F.

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

October 14, 2014

State of Nevada – Clark County
State and county where signed

/s/ Bradley Austin
Name of counsel of record
Signature of counsel of record

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I electronically filed the foregoing DOCKETING STATEMENT with the Clerk of Court for the Supreme Court of Nevada by using the appellate CM/ECF system on October 15, 2014.

I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Gaylene Kim
An employee of Snell & Wilmer L.L.P.