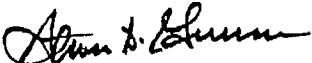


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CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK AS
TRUSTEE FOR THE HOLDERS OF THE
CERTIFICATES, FIRST HORIZON
MORTGAGE PASS-
THROUGH CERTIFICATES SERIES
FHAMS 2005-AA5, BY FIRST HORIZON
HOME LOANS, A DIVISION OF FIRST
TENNESSEE BANK NATIONAL MASTER
SERVICER, IN ITS CAPACITY AS AGENT
FOR THE TRUSTEE UNDER THE
POOLING AND SERVICING AGREEMENT,

Plaintiff,

v.

CATHERINE RODRIGUEZ; DOES I-X; and
ROES 1 -10 inclusive,

Defendants.

Case No. A-12-661179-C

Dept. No. XXXI

MOTION FOR SUMMARY JUDGMENT

COMES NOW Plaintiff, THE BANK OF NEW YORK MELLON F/K/A THE BANK OF
NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST
HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY
FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
POOLING AND SERVICING AGREEMENT, by and through its attorneys, McCarthy & Holthus,
LLP, and moves the Court for summary judgment in favor of Plaintiff. This Motion is brought
pursuant to NRCPC 56(b) based upon the assertion that there is no genuine issue of material fact.

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NV-11-478461-JUD

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1 This Motion is based upon this Notice, the attached Memorandum of Points and
2 Authorities, and upon all pleadings and documents herein, as well as any argument that may be
3 presented at the hearing of this, or any other motions/matters; the Court is requested to take
4 judicial notice as appropriate.

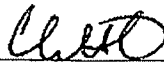
5 Dated: April 29, 2013

6 
Christopher M. Hunter (NSB# 8127)

7 **NOTICE OF HEARING ON MOTION**

8
9 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion for
10 Summary Judgment on for Hearing in Department XXXI on the 4 day of
11 June, 2013 at the hour of 9 am, or as soon thereafter as may be heard.

12
13 Dated: April 29, 2013

14 
Christopher M. Hunter (NSB# 8127)

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. FACTUAL BACKGROUND**

17 Accompanying the filing of this Motion is an Affidavit signed by Lacy Reasons, Assistant
18 Secretary of Nationstar Mortgage LLC, servicer for the Plaintiff, ("Affidavit"). As set forth in the
19 Complaint and in the Plaintiff's Affidavit, Plaintiff asserts that the following facts are not in
20 dispute:

21 1. On or about April 21, 2005 Defendant, Catherine Rodriguez, executed a Note secured by a
22 Deed of Trust on the real property commonly known as 6845 Sweet Pecan Street, Las Vegas, NV
23 89149 ("Subject Property") for a loan currently in favor of Plaintiff. The Deed of Trust was
24 recorded on April 27, 2005 in the official records of Clark County as document number
25 20050427-0003843. A true and correct copy of the Note and Deed of Trust as attached as
26 exhibits to the Plaintiff's Affidavit.

27 2. Plaintiff is now, and at all times relevant to this action was the beneficial interest holder
28 under the Deed of Trust. Plaintiff is entitled to enforce the Note and Deed of Trust.

1 3. Plaintiff has defaulted under the terms of the Note and Deed of Trust. The default began
2 with the failure to make the monthly payments of \$1,436.28 commencing on December 1, 2009
3 and has continued to the present.

4 4. The Deed of Trust provides, that, if the Trustor defaults in paying any indebtedness
5 secured by the Deed of Trust, or in the performance of term of the subject agreement or Deed of
6 Trust, the entire principal and interest with all advances and fees and costs secured by the Deed of
7 Trust, will upon notice to the Borrower, become immediately due and payable.

8 5. Plaintiff sent an acceleration letter on March 20, 2012 declaring all sums immediately due
9 and payable and accelerated the loan.

10 6. Plaintiff filed this action on May 3, 2012. Defendant has not raised any material facts
11 which would preclude entry of summary judgment in favor of Plaintiff.

12 7. All exhibits referenced herein are attached to this Motion or the Affidavit. Plaintiff
13 respectfully requests judicial notice of the deed of trust, as well as the other exhibits. NRS
14 47.130; NRS 47.150; *Jory v. Bennight*, 91 Nev. 763, 766, 542 P.2d 1400, 1403 (1975). All
15 recorded exhibits hereto should be judicially noticed because they are a public record in the Clark
16 County Recorder's office.

17 II. PLEADING STANDARD

18 Summary Judgment is appropriate and is authorized by NRCP 56 when no genuine issue
19 remains for trial.¹ Summary Judgment is available to resolve issue of law where the facts are not
20 in dispute.²

21 Nevada Rule of Civil Procedure 56 (a) allows a claimant party to move the Court for
22 Summary Judgment at any time.³ Summary Judgment is appropriate when the moving Party is
23 entitled to judgment as a matter of law, and there are no genuine issues remaining for trial.
24 *Shepard v. Harrison*, 100 Nev. 178 (1984). The purpose of Summary Judgment is to avoid
25 unnecessary trials when they would serve no useful purpose, because there is no real dispute
26

27 ¹ *Shepard v. Harrison* 100 Nev. 178, 678 P.2d 670 (1984); *Pacific Pool Constr. Co. v. McClain's Concrete, Inc.* 101
Nev. 557, 706 P.2d. 849 (1985).

28 ² *Molino v. Asher* 96 Nev. 814, 618 P.2d 878 (1980).

³ *Cummings v. City of Las Vegas Mun. Corp.* 88 Nev. 479, 499 P.2d. 650 (1972).

1 about the facts of the case. *Short v. Hotel Riviera, Inc.*, 79 Nev. 94 (1963). The Summary
2 Judgment procedure is not to decide any issue of fact which may be presented, but to discover if
3 any real issue of fact exists. *Dougherty v. Wabash Life Ins. Co.*, 87 Nev. 32 (1971). The function
4 of the Summary Judgment proceeding is not to test the legal sufficiency of the complaint to state a
5 claim. *Force v. Peccole*, 74 Nev. 64, (1958). Rather, it is to pierce the pleadings and to test
6 whether, under the uncontroverted facts, one party is entitled to judgment as a matter of law.
7 Nev.R.Civ.P. 56(c). The moving party bears the initial burden of establishing the nonexistence of
8 any genuine issue of material fact. *Pacific Pools Constr. Co. v. McClain's Concrete, Inc.* 101
9 Nev. 557 (1985).

10 Once the moving party has met its burden, an adverse party may not rest upon the mere
11 allegations or denials of the adverse party's pleadings, but the adverse party's response, by
12 affidavits or as otherwise provided in this rule, must set forth specific facts demonstrating the
13 existence of a genuine issue for trial. Nev.R.Civ.P.56(e). When this rule speaks of a "genuine"
14 issue of material fact, it does so with the adversary system in mind. The word "genuine" has moral
15 overtones; it does not mean a fabricated issue. *Aldabe v. Adams*, 81 Nev. 280, 402 P.2d 34
16 (1965). In addition, the adverse party must come forward with documentation admissible in
17 evidence in the form of specific facts to show the existence of a genuine issue of material fact;
18 otherwise the court is required to enter judgment according to the law. Nev.R.Civ.P.56(e);
19 *Posadas v. City of Reno*, 109 Nev. 448, 452 (1991). Conclusory statements along with general
20 allegations do not create an issue of material fact. *Michaels v. Sudeck*, 107 Nev.332 (1991). Not
21 only must the party opposing the motion set forth specific evidence, that evidence must be
22 admissible as well. *Posadas v. City of Reno*, 109 Nev. 448, 452 (1991). The opposing party is not
23 entitled to build a case on the gossamer threads of whimsy, speculation and conjecture. *Collins v.*
24 *Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 662 P.2d 610 (1983).

25 III. LEGAL ARGUMENT

26 Plaintiff is the holder of the first mortgage on the property commonly known as 6845
27 Sweet Pecan Street, Las Vegas, NV 89149. As alleged in the Complaint, and admitted in the
28 answer filed by Defendant, Defendant signed a Note in the principal amount of \$269,000.00,

1 which was secured by a Deed of Trust recorded on April 27, 2005. The Note and Deed of Trust
2 were subsequently assigned to Plaintiff, the party entitled to enforce the Note and Deed of Trust.

3 Defendant paid the installments of principal and interest which became due under the Note
4 and Deed of Trust through December 1, 2009. Defendant has not made payments that have come
5 due on or after December 1, 2009.

6 The attached payment history is provided to support the assertion that Defendant is in
7 default under the terms of the Note and Deed of Trust. The payment history shows that no
8 payments have been made on the property since December 1, 2009. According to the payment
9 history, Defendant is currently due for all payments commencing December 1, 2009 to the
10 present. As such, Plaintiff declared all sums under the Note and Deed of Trust immediately due
11 and payable and accelerated all sums due in December 1, 2009.

12 Under the terms of the Note, admittedly signed by Defendant, if the default is not cured on
13 or before the date specified in the note of acceleration, Lender at its option, may invoke the power
14 of sale, including the right to accelerate full payment of the Note, and any other remedies
15 permitted by Applicable Law. Plaintiff therefore seeks a judicial declaration that it is entitled to
16 foreclose on its interest in the property.

17 The material issue of fact in a foreclosure claim is whether the trustor is in default at the
18 time of foreclosure. There cannot be a wrongful foreclosure when the borrower is in default and
19 the foreclosing party is entitled to enforce the Note and Deed of Trust as is Plaintiff herein. An
20 action for the tort of wrongful foreclosure will only lie if the trustor or mortgagor can establish
21 that at the time the power of sale was exercised or the foreclosure occurred, no breach of
22 condition or failure of performance existed on the mortgagor's or trustor's part which would have
23 authorized the foreclosure or exercise of the power of sale. *Collins v. Union Federal Savings and*
24 *Loan Ass'n*, 662 P.2d 610, 99 Nev. 284 (Nev. 1983). As Defendant is in default at the current
25 time, Plaintiff is entitled to a judgment allowing it to exercise the power of sale under the terms of
26 the Deed of Trust.

27 CONCLUSION

28 There are no genuine issues of fact in dispute. As such Plaintiff respectfully requests:

1. Plaintiff shall receive an Order and Judgment against Defendant Catherine Rodriguez, for the minimum sum of \$269,000.00, plus all post-filing costs and attorney's fees, and interest from December 1, 2009, until paid in full, plus post-judgment interest on costs and attorney's fees from the date each was due until paid in full, for its costs incurred herein, including post-judgment costs, for its attorney's fees, including post-judgment attorney's fees, pursuant to the terms of the Note and Deed of Trust.
2. Plaintiff shall receive an Order and Judgment that the Deed of Trust be foreclosed and directing a sale of the encumbered property and application of the proceeds of sale as provided in NRS 40.462 in satisfaction of the judgment herein;
3. For immediate possession of the property following the sale;
4. That the sums prayed for and alleged to be secured by the Property are secured and that the Deed of Trust is a valid lien on the Property described in the Complaint and on the whole thereof, and on the rents, issues, and profits of the Property, and all buildings and improvement thereon and fixtures attached thereto as used in connection with the Property;
5. That the Deed of Trust be declared superior to any right, title, interest, lien, equity or estate of the Defendants;
6. That the Defendants, and all persons claiming by, through or under them, or any of them, be foreclosed of and forever barred from any and all right, title, claim, interest, or lien in or to the Property or with respect thereto except such rights of redemption as they may have by law;
7. That Plaintiff is granted any further relief in satisfaction of the judgment as may be permitted under Nevada law;
8. That Plaintiff is entitled at its discretion to the appointment of a receiver to protect the Property from neglect and waste during the pendency of this action and to collect any rents to which any Defendants would be entitled;

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1 9. That if the proceeds of the sale do not satisfy Plaintiffs' judgment in full, the Plaintiff
2 may amend its complaint to include a deficiency judgment against Defendant,
3 Catherine Rodriguez for the remaining sums due and;

4 10. For such other and further relief as the court deems just and appropriate in the
5 circumstances.

6 Dated: April 29, 2013

McCarthy & Holthus, LLP

7 By: 
8 Christopher M. Hunter (NSB# 8127)

9 **CERTIFICATE OF SERVICE**

10 On April 30, 2013 I served the foregoing documents described as **MOTION FOR**
11 **SUMMARY JUDGMENT**, on the following individuals by depositing true copies thereof in the
12 United States mail at Las Vegas, Nevada, enclosed in a sealed envelope, with postage paid,
13 addressed as follows:

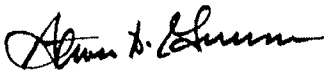
14 Via US Mail

15 Tara Newberry Esq.
16 7854 W. Sahara Ave
17 Las Vegas, NV 89117
Attorney for defendant Catherine Rodriguez

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

20 /s/Christina Reeves

21 An Employee of McCarthy &
22 Holthus, LLP
23
24
25
26
27
28



CLERK OF THE COURT

1 OMSJ

2 Venicia Considine, Esq.

3 Nevada Bar No: 11544

4 **LEGAL AID CENTER OF**
5 **SOUTHERN NEVADA, INC.**

6 800 S. Eighth Street

7 Las Vegas, NV 89101

8 Telephone: (702) 386-1070 x 159

9 Facsimile: (702) 388-1642

10 vconsidine@lacsns.org

11 Tara D. Newberry

12 Nevada Bar No.: 10696

13 **CONNAGHAN NEWBERRY LAW FIRM**

14 7854 West Sahara Avenue

15 Las Vegas, NV 89117

16 Telephone: (702) 608-4232

17 Facsimile: (702) 946-1380

18 tnewberry@cnlawlv.com

19 Attorneys for Defendant Catherine Rodriguez

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 THE BANK OF NEW YORK MELLON
23 F/K/A THE BANK OF NEW YORK AS
24 TRUSTEE FOR THE HOLDERS OF THE
25 CERTIFICATES, FIRST HORIZON
26 MORTGAGE PASS-THROUGH
27 CERTIFICATES SERIES FHAMS 2005-AA5,
28 BY FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK
NATIONAL MASTER SERVICER, IN ITS
CAPACITY AS AGENT FOR THE
TRUSTEE UNDER THE POOLING AND
SERVICING AGREEMENT,

Plaintiff,

vs.

CATHERINE RODRIGUEZ, REPUBLIC
SERVICES; CITY OF LAS VEGAS; DOES I-
X, and ROES I-X, inclusive.

Defendants.

Case No.: A-12-661179-C

Dept No.: XXXI

DEFENDANT'S OPPOSITION
TO PLAINTIFF'S
MOTION FOR
SUMMARY JUDGMENT

Hearing Date: June 4, 2013

Hearing Time: 9:00 am

2

1 **DEFENDANT’S OPPOSITION TO PLAINTIFF’S**
2 **MOTION FOR SUMMARY JUDGMENT**

3 COMES NOW Defendant, CATHERINE RODRIGUEZ, (hereinafter “the Defendant”),
4 by and through her undersigned counsel Venicia G. Considine, Esq., of the LEGAL AID
5 CENTER OF SOUTHERN NEVADA, INC., and Tara D. Newberry of CONNAGHAN
6 NEWBERRY LAW FIRM, and submits this Opposition to Defendant’s Motion for Summary
7 Judgment (hereinafter, the “Opposition”). Plaintiff’s Opposition is made pursuant to NRCP 56,
8 NRCP 11, the Memorandum of Points and Authorities outlined below, as well as the Exhibits
9 attached hereto.
10

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13
14 Plaintiff, THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK
15 AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON
16 MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST
17 HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
18 MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
19 POOLING AND SERVICING AGREEMENT (hereinafter, “Plaintiff”), has filed a Motion for
20 Summary Judgment (hereinafter, the “Motion”) alleging that “there is no genuine issue of
21 material fact.”^[1] In her Opposition, Defendant will demonstrate that there are genuine issues of
22 material fact as to (1) whether Plaintiff is entitled to enforce the Note and Deed of Trust and (2)
23 whether Plaintiff has a valid security interest.
24
25

26 **II. DEFENDANT’S STATEMENT OF UNDISPUTED AND DISPUTED FACTS**

27 Defendant provides the following response to Plaintiff’s “I. Factual Background”

28

^[1] See Plaintiff’s Motion, Pg. 1, line 27, filed herein on April 29, 2013.

commencing on page 2 of Plaintiff's Motion:

1. Partially admitted in that Defendant executed a Note and Deed of Trust for the 6845 Sweet Pecan Street, Las Vegas, NV 89149 property (hereinafter, "Subject Property") and partially controverted by Defendant's Statement of Facts ¶ 1 (No true and correct copies of the Note).
2. Controverted by the Defendant's Statement of Facts ¶¶ 2-4. (Plaintiff was not beneficial interest holder at the time of the bankruptcy)
3. It is not possible for this to be an undisputed fact, as Plaintiff appears to misstate its argument. However, if Plaintiff intended to claim Defendant defaulted, this is controverted by the Defendant's Statement of Facts ¶¶ 2-4. (Plaintiff did not default as unsecured debt was discharged in bankruptcy)
4. Partially admitted in that those were the terms of the Deed of Trust and controverted in Defendant's Statement of Facts ¶¶ 2-4. (Debt was discharged in bankruptcy)
5. Admitted.
6. Partially admitted in that Plaintiff filed original Complaint in May 2012 and controverted in Defendant's Statement of Facts ¶¶ 12. (Defendant raised material facts at issue.)
7. Controverted by the Defendant's Statement of Facts ¶¶ 1-12. (Endorsements are not recorded, etc...)

III. STATEMENT OF FACTS

1. Defendant, Catherine Rodriguez, obtained a mortgage from First Horizon Home Loan Corporation on April 22, 2005 to purchase her home at 6845 Sweet Pecan Street, Las Vegas, Nevada 89149. Defendant signed an Adjustable Rate Note, Interest Only Addendum to Adjustable Rate Note, and Deed of Trust to lender First Horizon Home Loan Corporation. See Plaintiff's Amended Complaint, Exhibit 1.

2. Defendant filed a Chapter 7 bankruptcy in the District of Nevada (Las Vegas) on May 20, 2008. See Exhibit A.

3. Defendant listed First Horizon Home Loan Corporation as a Creditor Holding Secured Claim and noticed First Horizon of the bankruptcy. See Exhibit B. Defendant also indicated in

her Statement of Intention that the property was claimed as exempt and the lien was to be avoided. See Exhibit C.

4. Defendant was discharged from the bankruptcy on December 1, 2008. See Exhibit D.

5. A Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust was recorded with the Clark County Recorder's Office on March 18, 2010. See Exhibit E. The Notice lists Mortgage Electronic Registration Systems, Inc (hereinafter, "MERS") as Nominee for First Horizon Home Loan Corporation as holder of the obligation. Id.

6. Defendant elected to participate in the Nevada Foreclosure Mediation Program in on April 13, 2010. See Exhibit F.

7. On June 16, 2010, MERS recorded an Assignment of the Deed of Trust with the Clark County Recorder's Office. See Exhibit G. The Assignment was dated and notarized May 24, 2010. Id. The document assigns "[a]ll beneficial interest under that certain Deed of Trust" to The Bank of New York Mellon from MERS. Id.

8. The mediation took place on July 17, 2010, and at the time the servicer of my loan was MetLife. The mediator determined that MetLife did not provide the required documents according to the rules, and issued a mediator's statement reflecting the deficiencies. See Exhibit H¹

9. On August 3, 2010, Defendant was sent a letter from First Horizon Home Loans indicating that they could offer a trial modification, but offered a payment that was higher than what Defendant had previously paid. See Exhibit I. The document only gave Defendant until August 15, 2010 to accept the trial modification. Id. The correspondence confused Defendant because at mediation Met Life Home Loans claimed to own the loan. See Exhibit J.

¹ Mediator's Statement was attached as Exhibit 4 to Petition for Judicial Review filed by MetLife in Case No. A-10-622878-J in the Eighth Judicial District Court County of Clark State of Nevada.

10. On August 11, 2010, before the deadline to accept the trial modification had expired, MetLife Home Loans filed a Petition for Judicial Review Case No. A-10-622878-J, requesting a certificate of completion to foreclose on Defendant's property. See Exhibit K.

11. Judge Moseley denied MetLife's request and found in Defendant's favor at a hearing on September 16, 2010. See Exhibit L. Defendant was present at the hearing when the Honorable Judge Donald Mosley determined that MetLife had acted in bad faith and ordered that the Letter of Certification would not issue. See Exhibit J and Exhibit L.

12. Sometime after March 21, 2011 another Breach and Election to sell was posted on Defendant's property and she again elected to participate in the Foreclosure Mediation Program. Another Nevada Foreclosure Mediation was held on October 6, 2011. See Exhibit J.

13. A copy of the Note with a copy of an undated endorsement was supplied at this mediation. See Exhibit M. The endorsement states, "Pay to the Order of Nationstar Mortgage LLC. Id.

14. The Amended Complaint in this filing includes a copy of the Note with a copy of an undated endorsement. See Plaintiff's Amended Complaint, Exhibit 1.

15. This version of the endorsement is exactly the same except the endorsement is now in blank; "Nationstar Mortgage LLC" is missing. Id.

16. Defendant filed her Answer to Plaintiff's Amended Complaint on February 15, 2013, asserting various denials and defenses, raising material issues of fact to be determined by the trier of fact in this case, a Nevada jury.

IV. STANDARD OF REVIEW

Regarding a Motion for Summary Judgment, NRCP 56(c) states in relevant part, "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to

1 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
2 genuine issue as to any material fact and that the moving party is entitled to a judgment as a
3 matter of law.” (Emphasis added). “Summary judgment is only appropriate if the pleadings and
4 other evidence on file, viewed in a light most favorable to the nonmoving party, demonstrate that
5 no genuine issue of material fact remains in dispute and the moving party is entitled to judgment
6 as a matter of law.” Schmidt v. Washoe County, 123 Nev. Adv. Rep. 16, 159 P.3d 1099, 1103
7 (2007) (citing Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); overruled
8 on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. Adv. Rep. 21, 181 P.3d
9 670, 672 (2008)).

11 “Summary judgment is appropriate if, after viewing the record before the [court] in the light
12 most favorable to the nonmoving party, ‘no genuine issue of material fact exists, and the moving
13 party is entitled to judgment as a matter of law.’ Whether an issue of fact is material is
14 controlled by the substantive law at issue in the case, and a factual dispute is genuine if ‘the
15 evidence is such that a rational trier of fact could return a verdict for the nonmoving
16 party.’” Adaven Management v. Mt. Falls Acquisition Corp. 124 Nev. Adv. Rep. 67, 191 P.3d
17 1189, 1192 (2008) (citing Wood v. Safeway, Inc. 121 Nev. 724, 729, 121 P.3d 1026, 1029
18 (2005)). “A party is entitled to a trial when there is the slightest doubt as to any material facts.”
19 Dennison v. Allen Group Leasing Corp., 110 Nev. 181, 184, 871 P.2d 288, 290 (1994) (citing
20 Walker v. American Bankers Ins., 108 Nev. 533, 536, 836 P.2d 59, 61 (1992)).

21 To prevail on its Motion for Summary Judgment, Plaintiff must demonstrate that there is no
22 genuine issue of material fact, even if all the pleadings and evidence on file are viewed in the
23 light most favorable to Defendant. Plaintiff has failed to meet this burden, and the court should
24 deny the instant motion or in the alternative stay this court’s ruling until the Nevada Supreme
25 Court has ruled on the matter.

1 Court issues a ruling in the question certified by the Honorable Bruce A. Markell In re Bryce L.
2 Montierth and Maile L. Montierth, BK-S-11-27788-BAM, and until Defendant has had an
3 opportunity to conduct discovery, as set forth below.

4 **V. ARGUMENT**

5 Due to the severe inconsistencies between Plaintiff's list of "Undisputed Facts" and
6 Defendant's evidence attached hereto, there are genuine issues of material fact in this case.

7
8 Defendant filed bankruptcy in 2008. At that point, MERS was the beneficiary of the Deed of
9 Trust. Due to the inconsistent and undated endorsement stamps, it is unclear who held the Note.
10 MERS did not assign the Deed of Trust until May 2010, nearly two years after the bankruptcy
11 discharge.

12
13 The Nevada Supreme Court has held that when "MERS is the named beneficiary and a
14 different entity holds the promissory note, the note and the deed of trust are split." Edelstein v.
15 Bank of New York Mellon, 286 P.3d 249, 252 (Nev. 2012). Defendant argues the Note and Deed
16 of Trust were split at the time of the bankruptcy filing because MERS was the named beneficiary
17 to the Deed of Trust and a separate entity held the promissory note. The attempt to reunify the
18 Note with the Deed of Trust occurred after the discharge of the bankruptcy. Bank of New York
19 Mellon did not hold a security interest at the time of the bankruptcy. The holder of Note at the
20 time of the bankruptcy held an unsecured obligation, which was then discharged.

21
22 The Bank of New York Mellon cannot foreclose because the obligation under the note was
23 unsecured at the time of the bankruptcy filing. The deed of trust was held by a separate entity.
24 The note was discharged and the deed of trust was satisfied.

25
26 The Court further concluded, "such separation is not irreparable or fatal to either the
27 promissory note or the deed of trust, but it does prevent enforcement of the deed of trust through
28

1 foreclosure unless the two documents are ultimately held by the same party.” Id at 260, quoting
2 *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039 (9th Cir. 2011). In this
3 situation, the note and deed of trust cannot be reunified because note was discharged with other
4 unsecured debt and the deed of trust was satisfied. The documents cannot be held by the same
5 party and therefore foreclosure is not an option.
6

7 Further, this question was certified to the Supreme Court by Bankruptcy Court Judge Bruce
8 Markell on March 1, 2013. In re Bryce L. Montierth and Maile L. Montierth, BK-S-11-27788-
9 BAM. See Exhibit N. Judge Markell requested the Nevada Supreme Court to answer what
10 happens when the note and deed of trust remains split at the time of foreclosure. Id at 1. In re
11 Montierth, the debtors signed a promissory note and deed of trust in 2005. Id at 1.2 The deed
12 of trust names MERS as the beneficiary. Id at 2. The Note was later negotiated to Deutsche
13 Bank National Trust Company as Trustee for a mortgage pool trust. Id. The Montierths elected
14 to participate in the Nevada Foreclosure Mediation Program after Deutsche Bank initiated
15 foreclosure. Two mediations followed with no resolution² and the Montierths filed a Chapter 13
16 bankruptcy. Id. When the bankruptcy was filed, Deutsche Bank held the note and MERS was
17 the beneficiary of the deed of trust. Id. An assignment from MERS to Deutsche Bank occurred
18 after the filing of the bankruptcy. Id. The Nevada Supreme Court then published its Edelstein
19 decision. Judge Markell points out the issue of whether and how a creditor can reunify a deed of
20 trust and a promissory note. Id at 7. In re Montierth speaks to an issue during the pendency of
21 the bankruptcy. Defendant’s situation is slightly different.
22
23
24

25 Defendant signed a note and deed of trust which were then split, the note going to an
26 unknown entity and the MERS becoming the beneficiary of the deed of trust. In 2008,

27 _____
28 ² At a subsequent Petition for Judicial Review, the court found that Deutsche Bank has not acted in good faith at the mediation. Id at 2.

1 Defendant filed bankruptcy, listing the mortgage debt. Defendant was discharged. Defendant
2 elected to participate in the Nevada Foreclosure Mediation program. After foreclosure was
3 initiated and after Defendant elected mediation, MERS assigned the Deed of Trust to Bank of
4 New York Mellon. Multiple non-judicial foreclosure attempts initiated by different servicers and
5 resulting mediations deemed unsuccessful with regard to Defendant's loan pre-date this matter³.
6
7 Now, Bank of New York Mellon is attempting to judicially foreclose on Defendant because it
8 has been unable to receive a certificate of completion from the Foreclosure Mediation Program
9 as a direct result of an inability to show a proper chain of title, and an enforceable security
10 interest. Plaintiff is attempting to circumvent the pivotal foundation of litigation: standing.

11
12 Currently, there is no answer from the Supreme Court on the question of reunification of the
13 note and deed of trust post bankruptcy filing. Until the Nevada Supreme Court responds to
14 Judge Markell's certified question, this court must stay any ruling on this matter, as the outcome
15 of the case may have a direct impact Defendant's property rights.

16
17 Furthermore, Defendant has presented sufficient evidence to demonstrate that there is a
18 genuine issue of material fact as to who is actually entitled to enforce the alleged note and
19 security interest, despite the outcome of In re Montierth. In repeated non-judicial foreclosure
20 attempts, various entities have claimed to be the holder of the note and the true party in interest.
21 The Petition for Judicial review referenced herein named "MetLife Home Loans" as the true
22 party in interest, the Note produced at the October 2011 mediation alleges that Nationstar is the
23 true party in interest and Plaintiff in this case claims it is the true party in interest attaching yet
24 another variation of the note to an Amended Complaint and this motion. The various "copies" of
25 the original note are inconsistent and unreliable.
26

27
28 ³ There were document deficiencies at each of the mediations.

1 Should the Court be inclined to grant Plaintiff's Motion for Summary Judgment, Defendant
2 would request a stay on ruling until discovery is conducted in this matter pursuant to NRC
3 56(f). While Defendant believes the foregoing sufficiently warrants a denial of Plaintiff's
4 motion for summary judgment, in the alternative, would ask the court to continue its ruling on the
5 motion until discovery has been conducted. Specifically, Defendant would need the opportunity
6 to depose the person most knowledgeable for Plaintiff, as well as individuals identified in
7 Plaintiff's exhibits, including Lacy Reasons who provided an Affidavit in Support of Plaintiff's
8 Motion. Defendant should also be permitted to receive responses to requests for production of
9 documents and answers to interrogatories regarding the issue of standing and ownership of the
10 note.
11

12
13 As stated by Plaintiff in her Affidavit attached hereto as Exhibit J, without conducting
14 discovery in this case, Plaintiff cannot present by affidavit or produce evidence as to certain facts
15 essential to justify, at least in part, an opposition to summary judgment regarding Plaintiff's
16 alleged right to enforce the security instrument. Those facts, among others, are:

- 17 (a) Who owned the note at the time the Bankruptcy Case was filed
18 (b) Why there appears to be variations of endorsement on the note produced to date
19 (c) Among other facts that may arise in the course of discovery to shed light on the legal
20 questions in this matter.
21

22 See (Plaintiff's Affidavit: Exhibit J)
23

24 "Where a party had not been dilatory in pursuing discovery and has demonstrated its
25 diligence by requesting additional time to obtain depositions, it was an abuse of discretion to
26 deny their request at such an early stage in the proceedings." *Ameritrade, Inc. v. First Interstate*
27 *Bank*, 105 Nev. 696, 782 P.2d 1318 (1989). Discovery has not even begun in this matter, in fact,
28

1 Plaintiff has yet to file a notice of 16.1 conference pursuant to NRC 16.1(b)(1) or participate in
2 discovery. Defense counsel has contacted Plaintiff's counsel regarding this issue and received a
3 response "consider this {email} our 16.1" on May 3, 2013 Exhibit O. No JCCR has been filed
4 and Plaintiff has not provided Initial 16.1 disclosures.

5 Thus, there have been no opportunities for Defendant to depose witnesses or parties, or to
6 propound discovery and even if the court is inclined to grant Plaintiff's motion, any ruling on the
7 motion should be stayed until Defendant has the opportunity to conduct basic discovery that
8 would further support Defendant's opposition to this motion and would be likely to lead to
9 discoverable evidence for Defendant's use at trial. Most of the documents at issue in this matter
10 are in the exclusive control of Plaintiff, and without discovery, Defendant is substantially
11 prejudiced in presenting an adequate defense to Plaintiff's Complaint.
12
13

14 **VI. CONCLUSION**

15 Defendant has shown genuine issues of material facts through the use of Plaintiff's own
16 conflicting documents. This is true in that:

- 17 1. Defendant has brought to light numerous facts demonstrating that Plaintiff did not take
18 timely steps to reunify the mortgage documents prior to or during the Defendant's
19 bankruptcy;
20
- 21 2. Defendant has brought to light the issue presented to the Nevada Supreme Court; when a
22 note and deed of trust are split at the time of the bankruptcy filing, the note is then
23 unsecured and in accordance with bankruptcy code, thereby discharged.
24
- 25 3. If the bankruptcy is discharged, does the discharge bar reunification of the note and deed
26 of trust?
27
- 28 4. Even if a secure interest survived the bankruptcy matter, who is actually the true party in

1 interest and demonstrable right to foreclose?

2 Based on the above, Defendant has met her burden to set forth specific facts that demonstrate
3 the existence of a genuine factual issue. At a minimum, Defendant requests this case to be
4 stayed pending the decision of the Nevada Supreme Court on the question presented by the
5 Honorable Bruce Markell and until Defendant has had an opportunity to conduct discovery.
6 Further, Defendant is asking for leave to file an amended Answer in order to include all relevant
7 facts and new counter claims based upon the evidence brought to light through Plaintiff's Motion
8 for Summary Judgment.
9

10 DATED this __16th__ day of May 2013.
11

12
13 Respectfully Submitted:

14 CONNAGHAN NEWBERRY

15
16 /s/Tara D. Newberry _____
17 TARA D. NEWBERRY, ESQ.
18 Nevada Bar No. 10696
19 7854 W. Sahara Ave.
20 Las Vegas, Nevada 89117
21 Attorney for Defendants
22
23
24
25
26
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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that on the 17th day of May, 2013, I served a true and correct copy of the foregoing DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, pursuant to NRCP 5(b), by depositing for mailing in the United States Mail, with postage fully prepaid, an envelope containing the above-identified document at Las Vegas, Nevada, addressed to the following:

McCARTHY & HOLTHUS, LLP
Kristin A. Schuler-Hintz, Esq.
9510 W. Sahara Ave., Suite 110
Las Vegas, NV 89117


An Employee of
CONNAGHAN NEWBERRY LAW FIRM

Exhibit A

Exhibit A

B9A (Official Form 9A) (Chapter 7 Individual or Joint Debtor No Asset Case) (12/07)

Case Number 08-15209-lbr

UNITED STATES BANKRUPTCY COURT District of Nevada**Notice of
Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines**

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 5/20/08.

You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your Rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice. Case documents may be viewed at www.nvb.uscourts.gov.

Important Notice to Individual Debtors: Debtors who are individuals must provide government-issued photo identification and proof of social security number at the meeting of creditors. Failure to do so may result in dismissal of their case.

See Additional Pages Reverse Side For Important Explanations and Notices

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

CATHERINE ANN RODRIGUEZ
6845 SWEET PECAN STREET
LAS VEGAS, NV 89149

Case Number:
08-15209-lbr
Judge: LINDA B. RIEGLE

Social Security/Taxpayer ID/Employer ID/Other Nos.:
xxx-xx-9204

Attorney for Debtor(s) (name and address):
DONALD B. RANGLES
8610 S.EASTERN AVE. SUITE 19
LAS VEGAS, NV 89123
Telephone number: (702) 382-3335

Bankruptcy Trustee (name and address):
YVETTE WEINSTEIN
6450 SPRING MTN RD #14
LAS VEGAS, NV 89146
Telephone number: (702) 364-8919

Meeting of Creditors

Date: June 23, 2008

Time: 01:00 PM

Location: 300 Las Vegas Blvd., South, Room 1500, Las Vegas, NV 89101

Presumption of Abuse under 11 U.S.C. § 707(b)*See "Presumption of Abuse" on reverse side.*

The presumption of abuse does not arise.

Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts: 8/22/08**Deadline to Object to Exemptions:**

Thirty (30) days after the conclusion of the meeting of creditors.

Creditors May Not Take Certain Actions:

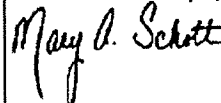
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.**Creditor with a Foreign Address:**

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office:
300 Las Vegas Blvd., South
Las Vegas, NV 89101
Telephone number: (702) 388-6257

For the Court:
Clerk of the Bankruptcy Court:



Mary A. Schott

Hours Open: Monday – Friday 9:00 AM – 4:00 PM

Date: 5/21/08

EXPLANATIONS

B9A (Official Form 9A) (12/07)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code §362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code §727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code §523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office or at www.nvb.uscourts.gov .
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

**EXPLANATIONS
(CONTINUED)**

B9A (Official Form 9A) (12/07)

Trustee Information	<p>The United States Trustee has appointed the herein named person as interim trustee effective the date of filing as shown on page 1 of this form. The case is covered by a trustee's blanket bond, the original of which is on file with the court.</p> <p>The trustee may abandon property of the estate that is burdensome or is of inconsequential value and benefit to the estate without further notice of abandonment, pursuant to 11 U.S.C. Section 554(a). Further notice will be provided upon request only. Any non-exempt property scheduled, but not administered at the time of closing of a case will be deemed abandoned pursuant to 11 U.S.C. Section 554(c).</p> <p>Please note that the trustee may use, sell or lease all non-exempt property of the estate which has an aggregate value of less than \$2,500 WITHOUT FURTHER NOTICE TO CREDITORS. Pursuant to Federal Bankruptcy Rule 6004(d) any objection to the sale of estate property may be filed and served by a party in interest within 25 days of the mailing of this Notice of Commencement of Case.</p>
Refer to Other Side for Important Deadlines and Notices	

Exhibit B

Exhibit B

B6D (Official Form 6D) (12/07)

In re Catherine Ann Rodriguez

Case No. _____

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R H W J C	Husband, Wife, Joint, or Community		C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
		DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN						
Account No. xxxxxxxxx4520		HOME MORTGAGE						
FIRST HORIZON PO BOX 630148 Irving, TX 75063		REAL ESTATE						
		Value \$ Unknown					269,000.00	Unknown
Account No.								
		Value \$						
Account No.								
		Value \$						
Account No.								
		Value \$						
Subtotal (Total of this page)							269,000.00	0.00
Total (Report on Summary of Schedules)							269,000.00	0.00

0 continuation sheets attached

Exhibit C

Exhibit C

Form 8
(10/05)**United States Bankruptcy Court
District of Nevada**In re Catherine Ann Rodriguez

Debtor(s)

Case No. _____

Chapter 7**CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION**

- ☒ I have filed a schedule of assets and liabilities which includes debts secured by property of the estate.
- ☐ I have filed a schedule of executory contracts and unexpired leases which includes personal property subject to an unexpired lease.
- ☒ I intend to do the following with respect to property of the estate which secures those debts or is subject to a lease:

Description of Secured Property	Creditor's Name	Property will be Surrendered	Property is claimed as exempt	Property will be redeemed pursuant to 11 U.S.C. § 722	Debt will be reaffirmed pursuant to 11 U.S.C. § 524(c)
REAL ESTATE	FIRST HORIZON		X (avoid lien)		

Description of Leased Property	Lessor's Name	Lease will be assumed pursuant to 11 U.S.C. § 362(h)(1)(A)
-NONE-		

Date May 20, 2008Signature /s/ Catherine Ann Rodriguez
Catherine Ann Rodriguez
Debtor

Exhibit D

Exhibit D

B18 (Official Form 18) (12/07)

United States Bankruptcy Court

District of Nevada

Case No. ~~08-15209-lbr~~

Chapter 7

In re: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):
CATHERINE ANN RODRIGUEZ
6845 SWEET PECAN STREET
LAS VEGAS, NV 89149

Social Security No.:

xxx-xx-9204

Employer's Tax I.D. No.:

DISCHARGE OF DEBTOR

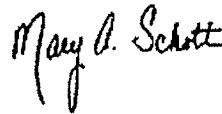
It appearing that the debtor is entitled to a discharge,

IT IS ORDERED:

The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: 12/1/08

BY THE COURT



Mary A. Schott
Clerk of the Bankruptcy Court

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

B18 (Official Form 18) (12/07) – Cont.

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:* There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts That are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts; and
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

Exhibit E

Exhibit E

Exhibit F

Exhibit F

Exhibit G

Exhibit G

Exhibit H

Exhibit H

Exhibit I

Exhibit I



First Horizon
Home Loan Corporation
4000 Horizon Way
Irving, Texas 75063
www.fhhl.com

August 03, 2010

Catherine Rodriguez
6845 Sweet Pecan St
Las Vegas, NV 89149-3040

Dear Catherine Rodriguez :

We have good news about providing you a more affordable mortgage.
You are eligible for the Trial Period Modification.

Please carefully read the enclosed Trial Period Agreement. The monthly trial period payments are based on the income information that you previously provided. These payments are an estimate of what your payment(s) will be IF we are able to modify your loan under the terms of the program. Defaulting on this Trial Period Modification eliminates the opportunity for a modification of your loan terms. Please read all enclosed documents provided and make sure you understand the statements set forth in the plan.

Step 1 - Accept the Trial Period Plan Offer

To accept this offer and enter into the Trial Period Modification, all borrowers must sign both copies of the enclosed Trial Period Plan. You must then return BOTH signed copies to us - along with your first trial period payment in the amount of \$ 1,460.00 - no later than 08/15/10.

Step 2 - Make Your Trial Period Payments On Time

Your remaining trial period payments in the amount of \$ 1,460.00 will be due on or before 09/15/10. Your trial period payments should be sent instead of - NOT IN ADDITION TO - your normal monthly mortgage payments.

By no later than 08/15/10, please mail two signed copies of the Trial Period Plan and your first trial period payment to:

First Horizon Home Loans
cc 6207
4000 Horizon Way Ste. 100
Irving, TX 75063

EXHIBIT "4"



First Horizon
Home Loan Corporation
4000 Horizon Way
Irving, Texas 75063
www.fhhlc.com

Page 2

Step 3 - Contact Us

Once your final payment has been submitted, contact us for a re-review of your modification.

If you have any questions, please contact us at (800) 364 - 7662

Respectfully,

Loss Mitigation Specialist

LM181-003 TWX



First Horizon
Home Loan Corporation
4000 Horizon Way
Irving, Texas 75063
www.fhhlc.com

Page 3

TRIAL PERIOD PLAN/MODIFICATION AGREEMENT. The Trial Period Plan is the first step. If/Once we are able to finalize your modified loan terms; we will send you a loan modification agreement ("Modification Agreement"), which will reflect the terms of your modified loan. In addition to successfully completing the trial period, you will need to sign and promptly return to us both copies of the Modification Agreement or your loan will not be modified.

NEW PRINCIPAL BALANCE. Any past due amounts as of the end of the trial period, including unpaid interest, real estate taxes, insurance premiums and certain assessments paid on your behalf to a third party, will be added to your mortgage loan balance (the "Past Due Arrearage Amount").

FEES AND COSTS. Should a modification of your loan be approved; outstanding fees and costs will be assessed. The total outstanding amount of these costs will be required to be included upfront in order to complete the modification process.

ESTIMATED MONTHLY PAYMENT. At this time, we are not able to calculate precisely the Past Due Arrearage Amount or the amount of the modified loan payment that will be due after successful completion of the trial period. However, based on information we currently have, your trial period payment may be close to your modified loan payment. As we near the end of the trial period, we will calculate any past due amount to determine your new permanent monthly payment and other modified loan terms.

ESCROW ACCOUNT. The terms of your Trial Period Plan and your Modification Agreement may require the servicer to set aside a portion of your new monthly payment in an escrow account for payment of your property taxes, insurance premiums and other required fees. Your current loan may also require escrows. If it does not, the previous waiver of escrows is cancelled under your Trial Period Plan. First Horizon Home Loans will draw on this account to pay your real estate taxes and insurance premiums as they come due. Please note that your escrow payment amount will adjust if your taxes, insurance premiums and/or assessment amounts change, so the amount of your monthly payment that the servicer must place in escrow will also adjust as permitted by law. This means that your monthly payment may change. Your monthly escrow payment of \$ 246.68 is included in your trial payment amount.

CREDIT COUNSELING. If you have very high levels of debt, you will be required to obtain credit counseling and provide the HUD completed certification letter prior to the completion of your trial period agreement.



First Horizon
Home Loan Corporation
4000 Horizon Way
Irving, Texas 75063
www.fhhl.com

Page 4

CREDIT REPORTING. During the trial period, we will report your loan as delinquent to the credit reporting agencies even if you make your trial period payments on time. However, after your loan is modified, we will only report the loan as delinquent if the modified payment is not received in a timely manner.

LM182-005 TWX

LM006 900

Catherine Rodriguez
Loan Number 0053334520
August 03, 2010
Page Three

FORBEARANCE AGREEMENT:

PLAN	DATE	AMT	PLAN	DATE	AMT
01	08/15/10	1,460.00	02	09/15/10	1,460.00
03	10/15/10	1,460.00	04	11/15/10	13,938.03

I understand and acknowledge the terms of this agreement executed
by my/our hand(s) this _____ day of _____, 20____.

Return to:
First Horizon Home Loans
Attention: COLLECTIONS
4000 Horizon Way, Suite 100
Irving, TX 75063

Catherine Rodriguez

Accepted by First Horizon Home Loans

Loan Counselor's Signature

Date

LM006-005 TWX



First Horizon
Home Loan Corporation
4000 Horizon Way
Irving, Texas 75063
www.fhhlc.com

Frequently Asked Questions:

Q. What if my trial period payment is less than the payment I currently owe on my loan?

We will add the difference between the monthly payment that you currently owe on your loan and the trial period payment to your loan balance and allow you to pay it over the remainder of the modified loan term.

Q. Will a foreclosure occur if I participate in the Trial Period Modification?

As long as you comply with the terms of the Trial Period Plan, we will not start foreclosure proceedings or conduct a foreclosure sale if foreclosure proceedings have started. If you fail to comply with the terms of the Trial Period Plan, your loan will be enforced according to its original terms, which could include foreclosure.

Q. What happens to my trial period payments if I do not comply with the terms of the Trial Period Plan?

Your trial period payments will be applied to your existing loan according to the terms of your loan documents.

Q. If I get a Trial Period Modification, can my modified loan terms ever revert to the original terms?

No. This is one of the advantages of the Trial Period Modification. Once your loan is modified, the new terms stay in place for the remainder of your loan.

Q. Do all borrowers have to sign the Trial Period Plan and other documents?

Unless a borrower or co-borrower is deceased, all borrowers who signed the original loan documents or their duly authorized representative(s) must sign the Trial Period Plan, the Modification Agreement and all other required modification documents. Contact your servicer if it would be difficult or impossible for you to comply with this requirement.

Q. Could my trial period payment be more than my current payment?

Yes. For example, if your current payment does not include an escrow payment and you are now required to make monthly escrow payments, your trial period payment could be higher than your current payment. Note, however, that the increase in your payment under these circumstances would be offset by other tax and insurance bills you would no longer have to pay directly as we will pay those for you out of your escrow account.

LM007

Addendum to Special Forbearance Plan

You have agreed to enter into a Loss Mitigation Special Forbearance Type II Plan. Compliance with this plan will give you the opportunity to save your home.

As per our discussion as of the date of this agreement, you will comply with all terms set forth in the Forbearance Type II agreement. Should you comply with the scheduled payments, First Horizon will re-consider you for further options prior to the last Balloon payment scheduled. We will convert the Special Forbearance Type II Plan to one of the following options:

1. Mortgage Modification: If you can make the payments on your loan, but you do not have enough money to bring your account current, First Horizon may be able to change one or more terms of your original loan to make the payments more affordable.
2. Partial Claim Advance: If your mortgage is HUD insured, you may qualify for an interest-free loan to bring your account current. The repayment of this loan may be delayed for several years.

While complying with the Loss Mitigation Special Forbearance Type II Plan, late fees will not be assessed. Should you be offered one of the above options, please be advised that any foreclosure cost and fees will be collected as part of the agreement. The options available to you will be reviewed in the ordered mentioned above.

Should you fail to comply: As we discussed, should you not be able to meet the requirements of the Special Forbearance Type II Plan, the following options are available to avoid foreclosure:

1. Sale: If you can no longer afford your home, First Horizon will work with you allow time to find a purchaser and pay off the total amount owed. You will be expected to obtain the services of a real estate professional who can aggressively market the property. This is subject to foreclosure timeframes and action.
2. Pre-Foreclosure Sale or Short Payoff: If the property's sales value is not enough to pay the loan in full, First Horizon may be able to accept less than the full amount owed. This option can also include a period of time to allow your real estate agent to market the property and find a qualified buyer. Monetary help may also be available to pay other lien holders and/or help toward paying your moving costs.
3. Deed-in-lieu: First Horizon may agree to allow you to voluntarily "give back" your property and forgive the debt. Although this option sounds like the easiest way out for you, generally, you must attempt to sell the home for its fair market value for at least 90 days before First Horizon will consider this option. Also, this option may not be available if you have liens such as judgments of other creditors, second mortgages, and IRS or State Tax liens.

MY/OUR SIGNATURE (S) BELOW ACKNOWLEDGES THAT I/WE HAVE READ AND AGREE WITH THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. I/WE HAVE RECEIVED HOMEOWNERSHIP COUNSELING FROM FIRST HORIZON HOME LOANS OR FROM A HOUSING AGENCY OF OUR CHOICE. I/WE FURTHER UNDERSTAND THAT WE MUST RE-QUALIFY FOR THE OPTIONS LISTED ABOVE UPON OUR COMPLIANCE WITH THE HUD SPECIAL FORBEARANCE TYPE II PLAN.

I/WE AGREE TO ABIDE BY THE AGREEMENT SET FORTH.

Mortgagor

Date

Co-Mortgagor

Date

Co-Mortgagor

Date

Co-Mortgagor

Date

Please sign, date and return the original agreement. Retain a copy for your records. The original agreement must be returned to the address below. It is recommended that you fax a copy first to 214-441-7390.

First Horizon Home Loans
Attn: Loss Mitigation Dept - CC 6207
4000 Horizon Way, Suite 100
Irving, Texas 75063

Accepted by First Horizon Home Loans

Loss Mitigation Specialist's Signature

Date

LM007-008 TWX

Exhibit J

Exhibit J

AFFIDAVIT OF CATHERINE RODRIGUEZ

STATE OF NEVADA)
) ss.
 COUNTY OF CLARK)

CATHERINE RODRIGUEZ, being first duly sworn, deposes and says:

1. I have personal knowledge of and am competent to testify as to the facts stated herein.

2. I obtained a mortgage from First Horizon Home Loan Corporation on April 22, 2005 to purchase my home at 6845 Sweet Pecan Street, Las Vegas, Nevada 89149.

3. I filed a Chapter 7 bankruptcy in the District of Nevada (Las Vegas) on May 20, 2008.

4. I listed First Horizon Home Loan Corporation as a Creditor Holding Secured Claim and noticed First Horizon of the bankruptcy.

5. I was discharged from the bankruptcy on December 1, 2008.

6. Due to the economy, my income was significantly reduced and I was struggling to make ends meet. I contacted First Horizon Home Loans in 2009 on several occasions to see if I qualified for a loan modification, I sent in worksheets, bank statements, paystubs and tax returns on several occasions to try and get a loan modification, but the bank refused to work with me and never responded to my requests.

7. I received a Notice of Breach and Default and of Election to Cause Sale of Real Property sometime after March 18, 2010. The Notice listed Mortgage Electronic Registration Systems, Inc (hereinafter, "MERS") as Nominee for First Horizon Home Loan Corporation as owner of the loan.

8. I elected to participate in the Nevada Foreclosure Mediation Program on April 13, 2010.

1 9. I reviewed an Assignment of the Deed of Trust pertaining to my property that was
2 recorded with the Clark County Recorder's Office on June 16, 2010, by MERS and was provided
3 to me during the mediation process. The Assignment was dated and notarized May 24, 2010. The
4 document assigned "[a]ll beneficial interest under that certain Deed of Trust" to The Bank of New
5 York Mellon from MERS.

6
7 10. The mediation took place on July 17, 2010, and at the time the servicer of my loan
8 was Metlife. The mediator determined that Metlife did not provide the required documents
9 according to the rules, and issued a mediator's statement reflecting the deficiencies.

10 11. On August 3, 2010, I was sent a letter from First Horizon Home Loans indicating
11 that they could offer a trial modification, but offered a payment that was higher than what I had
12 previously paid, and confuse me because at mediation Met Life Home Loans claimed to own the
13 loan. The document only gave me until August 15, 2010 to accept the trial modification.

14 12. On August 11, 2010, before the deadline to accept the trial modification had
15 expired, Metlife Home Loans filed a Petition for Judicial Review Case No. A-10-622878-J
16 requesting a certificate of completion to foreclose on my property.

17 13. Judge Moseley denied Metlife's request and found in my favor at a hearing on
18 September 16, 2010. I was present at the hearing and heard the judge say that Metlife had acted in
19 bad faith and ordered that the Letter of Certification would not issue.

20 14. Sometime after March 21, 2011 another Breach and Election to sell was posted on
21 my property and I again elected to participate in the Foreclosure Mediation Program.

22 15. Another Nevada Foreclosure Mediation was held on October 6, 2011.

23 16. At mediation, an attorney representing Nationstar appeared and said the loan had
24 been sold from Met Life to Nationstar. The attorney gave me a copy of the Note at this mediation.
25 Exhibit XX is the Note that was provided at mediation, and the endorsement states, "Pay to the
26 Order of Nationstar Mortgage LLC.
27
28

CONNAGHAN NEWBERRY LAW FIRM

7854 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone (702) 608-4232

17. I have no idea who owned my loan at the time I filed for Bankruptcy, but had been making payments to First Horizon, and I have never been provided with an explanation of who owns or who has owned my loan since that time.

18. I have not been able to conduct discovery in this matter, and investigate through my attorneys who owned my note at the time of the bankruptcy case, and whether it was sold or transferred thereafter.

19. In order to properly respond to Plaintiff's Motion for Summary Judgment, I believe I should be afforded the opportunity to take depositions, have answers to interrogatories and responses to requests for production of documents to fully develop a defense in this action.

20. I do not believe I owe any money to Bank of New York Mellon, nor do I believe they have standing to foreclose, but I need to conduct discovery to obtain documents in their possession, First Horizon's possession, Met Life's possession and Nationstar's possession in order to have evidence to present to the court.

21. Based on recent case law, I believe the note was discharged in bankruptcy and the deed of trust therefore satisfied, it is my understanding that there is a case pending in bankruptcy court certifying this issue to the Supreme Court of the State of Nevada, and the outcome of this case could have an impact on this matter.

Further, your Affiant sayeth naught.

CATHERINE RODRIGUEZ

SUBSCRIBED and SWORN to before me
this 16 day of May, 2013.

NOTARY PUBLIC
for said County and State

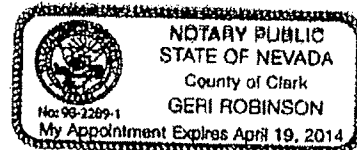


Exhibit K

Exhibit K

Exhibit L

Exhibit L

Exhibit M

Exhibit M

Exhibit N

Exhibit N

Bruce A. Markell

Honorable Bruce A. Markell
United States Bankruptcy Judge



Entered on Docket
March 01, 2013

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

BRYCE L. MONTIERTH and MAILE L.
MONTIERTH,

Debtors.

Case No.: BK-S-11-27788-BAM

Chapter 13

Hearing Date: January 15, 2013
Hearing Time: 3:00 p.m.

ORDER CERTIFYING QUESTION OF LAW TO THE NEVADA SUPREME COURT

I. Question of Law Certified – NEV. R. APP. P. 5(c)(1)

In *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 262 n.14 (Nev. 2012), the Nevada Supreme Court left open the question of “what occurs when the promissory note and deed of trust remain split at the time of foreclosure.” As shown below, this court requires an answer to that question to resolve the particular dispute in this case, and in many similar cases currently pending in this court. Depending on the response to this question, this court may also require guidance as to the legal effect of the recordation of an assignment of a beneficial interest in a deed of trust. As answers to these questions are necessary to resolve these cases, this court believes that the standard for Rule 5 certifications set forth in *Volvo Cars of North America, Inc. v. Ricci*, 122 Nev. 746, 137 P.3d 1161 (2006), has been met.

II. Statement of Facts – NEV. R. APP. P. 5(c)(2)

In June 2005, Bryce and Maile Montierth (the “Debtors”) signed a promissory note (the

1 "Note") with 1st National Lending Services in the amount of \$170,400. The Note was secured by
2 a deed of trust (the "Deed of Trust") on property located in Logandale, Nevada (the "Property").
3 The Deed of Trust named Mortgage Electronic Registration System ("MERS") as the beneficiary.

4 At some point after the loan was made but before June 2009, the Note appears to have
5 been negotiated to Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX
6 Mortgage Loan Trust 2005-AR31, Mortgage Pass-Through Certificates, Series 2005-AR31 under
7 the Pooling and Servicing Agreement dated November 1, 2005 ("Deutsche Bank").¹ OneWest
8 Bank, FSB, along with its subsidiary IndyMac Mortgage Services, serviced the Note as Deutsche
9 Bank's agents, and were Deutsche Bank's points of contact with the Debtors.

10 Debtors last made a payment on the Note in June 2009. In October 2009, Deutsche Bank
11 initiated foreclosure by recording a notice of default. Debtors then elected to enter the
12 Foreclosure Mediation Program per Nevada Revised Statutes, Section 107.

13 After two unsuccessful attempts at mediation, Debtors petitioned for judicial review and a
14 Nevada district court found that Deutsche Bank had not acted in good faith during the mediation.
15 *Montierth v. One West Bank*, No. A-09-609899-J (Nev. Dist. Ct., March 19, 2012). Deutsche
16 Bank then filed another notice of default. Debtors again elected to mediate, and a mediation date
17 was set for November 29, 2011. Debtors, however, filed for Chapter 13 bankruptcy on November
18 15, 2011, and thus the mediation never occurred. The Debtors confirmed their Chapter 13 plan on
19 September 21, 2012.

20 As set forth in note 1, no one disputes that, when the Debtors filed their bankruptcy case,
21 Deutsche Bank was the Note's holder and MERS was the beneficiary under the Deed of Trust.
22 MERS, however, purported to assign its interest in the Deed of Trust on November 25, 2011,
23

24 ¹The parties have not disputed that Deutsche Bank possesses the original Note, properly
25 endorsed to it, and thus is the Note's holder. NEV. REV. STAT. §§ 104.3201, 104.3204 (2011).
26 References in this certification to Deutsche Bank are intended to be references to its agents,
OneWest Bank and IndyMac Mortgage Services, as appropriate.

1 some ten days after the Debtors filed their Chapter 13 bankruptcy (the "Assignment"). The
 2 Assignment was not recorded until December 23, 2011, when it was filed in the office of the
 3 Clark County Recorder. This was more than a month after the Debtors filed their bankruptcy
 4 case. Before the Assignment was recorded, Deutsche Bank had filed its proof of claim in the
 5 Debtors' bankruptcy case under 11 U.S.C. § 501, stating that it was a secured creditor of Debtors'
 6 bankruptcy estate.

7 On September 5, 2012, alleging that Debtors had not made sufficient payments
 8 postpetition, Deutsche Bank moved for relief from the automatic stay under 11 U.S.C. § 362 to
 9 enable it to foreclose on the Property. Later that month, the Nevada Supreme Court published
 10 *Edelstein*. The Debtors then promptly objected to Deutsche Bank's standing to bring a motion for
 11 relief from stay as a secured creditor, and objected to Deutsche Bank's proof of claim to the
 12 extent that the claim was asserted as secured. In both pleadings, the Debtors contended that the
 13 Note and Deed of Trust were split as of the date of their bankruptcy filing, and that the automatic
 14 stay rendered void any attempts to reunify them, including the purported postpetition assignment
 15 of the Deed of Trust to Deutsche Bank. In their view, Deutsche Bank held, at most, an unsecured
 16 claim against the Debtors.

17 This court consolidated the claim objection with the request for relief from stay and held
 18 hearings on January 15, 2013. For the reasons stated below, this court cannot decide either matter
 19 without a definitive ruling from the Nevada Supreme Court on the question left open in footnote
 20 14 of *Edelstein*.

21 **III. Nature of Controversy and Need for Decision – NEV. R. APP. P. 5(c)(3)**

22 Under the Bankruptcy Code, once an objection to a claim is made,
 23 the court, after notice and a hearing, shall determine the amount of such claim in
 24 lawful currency of the United States *as of the date of the filing of the petition*, and
 shall allow such claim in such amount, except to the extent that:
 25 (1) such claim is unenforceable against the debtor and
 property of the debtor, under . . . applicable law

26 11 U.S.C. § 502(b) (2011) (emphasis supplied).

1 The italicized language is the root of the issue. Section 502(b) requires determination of
 2 the claim as of the date of the petition, here November 15, 2011. But the beneficial interest in the
 3 Deed of Trust was not formally assigned to Deutsche Bank until over a month later, on December
 4 23, 2011.

5 Under *Edelstein*, the use of MERS as the initial beneficiary of the Deed of Trust splits the
 6 note and deed of trust, subject to a later reunification. 286 P.3d at 252. In *Edelstein*, the
 7 reunification had occurred before the initiation of foreclosure, so the Nevada Supreme Court did
 8 not have to address the issue of what would have happened if reunification had not occurred. As
 9 it said in footnote 14:

10 Because it is not at issue in this case, we need not address what occurs when the
 11 promissory note and the deed of trust remain split at the time of the foreclosure.
 12 See, e.g., *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 652, 941 N.E. 2d 40,
 53-54 (2011) (discussing what occurs in instances "where a note has been
 [transferred] but there is no written assignment of the [deed] underlying the note").

13 *Edelstein*, 286 P.3d at 262 n.14.

14 Under Section 502(b), as set forth above, the status of the claim as secured or unsecured is
 15 viewed as of the time of the filing. If there are infirmities in the legal claim of the creditor as of
 16 the date of the filing, the creditor may *not* correct them.² 11 U.S.C. § 362(a)(3)-(6) (2011).

17 If footnote 14 is read to require unification of the note and deed of trust as a condition of
 18 secured status, and correlatively as a condition of being able to foreclose, then Debtors' objections
 19 to Deutsche Bank's standing and its secured status are valid. See *Edelstein*, 286 P.3d at 262 n.14;
 20 see also *Leyva v. Nat'l Default Servicing Corp.*, 255 P.3d 1275, 1279-80 (Nev. 2011)
 21 (recognizing that the note and the deed of trust must be held by the same person to foreclose
 22 under NRS Chapter 107).

24 ²Although there are some exceptions, none cover the activities in this case. See, e.g., 11
 25 U.S.C. § 362(b)(3) (2011) (allowing mechanics' liens claimants to file postpetition notices as
 26 contemplated by 11 U.S.C. § 546(b) and allowing postpetition perfection of purchase money liens
 as contemplated by 11 U.S.C. § 547(e)(2)(A)).

1 Another possible reading of footnote 14, however, is that the Nevada Supreme Court
 2 could rule that a foreclosure commenced with split documents should be dismissed without
 3 prejudice, thus giving the creditor a chance to reunify the instruments and restart the foreclosure
 4 process. This would be consistent with the thread of *Edelstein* holding that splitting the note and
 5 deed of trust is not irrevocable.

6 This option, however, would not satisfactorily resolve the issues before the bankruptcy
 7 court. The Bankruptcy Code's automatic stay provision, found in 11 U.S.C. § 362(a), actively
 8 prevents creditors, once a petition is filed, from improving their legal position against debtors and
 9 their estates. Among other things, the automatic stay prevents creditors from performing:

10 (3) any act to obtain possession of property of the estate or of property from
 the estate or to exercise control over property of the estate;

11 (4) any act to create, perfect, or enforce any lien against property of the
 estate;

12 (5) any act to create, perfect, or enforce against property of the debtor any
 lien to the extent that such lien secures a claim that arose before the
 13 commencement of the case under this title; [and]

14 (6) any act to collect, assess, or recover a claim against the debtor that arose
 before the commencement of the case under this title[.]

15 11 U.S.C. § 362(a) (2011).

16 As a result, any transfer of a property interest that betters the creditor's position, such as
 17 by perfecting its interest, is prohibited. *Id.* § 362(a)(4). Moreover, at least in the Ninth Circuit,
 18 actions taken in violation of the stay are void. *Schwartz v. U.S. (In re Schwartz)*, 954 F.2d 569,
 19 571 (9th Cir. 1992) (citing *Williams v. United Inv. Corp. (In re Williams)*, 124 B.R. 311, 316
 20 (Bankr. C.D. Cal. 1991) ("The Ninth Circuit adheres to the general rule that actions taken in
 21 violation of the automatic stay are void and without effect.")). Thus, if the stay applied to the
 22 December 23 Assignment, and if that Assignment or its recordation fell within the prohibition of
 23 Section 362(a), Deutsche Bank cannot rely on the Assignment to reunify the Note and Deed of
 24 Trust.

25 The automatic stay does not, however, preclude creditors from performing certain
 26 "ministerial" acts. *McCarthy, Johnson & Miller v. N. Bay Plumbing, Inc. (In re Pettit)*, 217 F.3d

1 1072, 1080 (9th Cir. 2000); *Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 974
 2 (1st Cir. 1997). “A ministerial act is one that is essentially clerical in nature . . . when an
 3 official’s duty is delineated by . . . a law or a judicial decree with such crystalline clarity that
 4 nothing is left to the exercise of the official’s discretion or judgment[.]” *In re Soares*, 107 F.3d at
 5 973–74 (citing *U.S. ex rel. McLennan v. Wilbur*, 283 U.S. 414, 420 (1931); BLACK’S LAW
 6 DICTIONARY 996 (Brian A. Garner ed., 6th ed. 1990)). The current version of *Black’s Law*
 7 *Dictionary* similarly defines a ministerial act as “[a]n act performed without the independent
 8 exercise of discretion or judgment.” BLACK’S LAW DICTIONARY 28 (Brian A. Garner ed., 9th ed.
 9 2009). Therefore, if recording the Assignment was a ministerial act, then Deutsche Bank did not
 10 violate the automatic stay and could have continued with the foreclosure notwithstanding the
 11 nonunification of the Note and Deed of Trust on the date the Debtors filed bankruptcy.

12 The characterization of the effect of the Assignment is, at heart, a determination of Nevada
 13 state property law. To the extent that the Nevada Supreme Court confirms that recording an
 14 assignment of a deed of trust is the transfer of a property interest — a conclusion foreshadowed in
 15 large part by the change in Nevada law in 2011 to require that “any assignment of the beneficial
 16 interest under a deed of trust must be recorded,” NEV. REV. STAT. §106.210 (2011) (amended by
 17 2011 Nev. Stat., ch. 81, § 1, at 327³) — then the Assignment is void as against the Debtors under
 18 bankruptcy law.⁴

19 There are thus potentially two issues that must be answered. The first is whether and how
 20 a creditor can reunify a deed of trust and a promissory note. If initiating foreclosure with split

21
 22 ³The date of the Assignment is after the effective date of §106.210.

23 ⁴The contractual assignment between MERS and Deutsche Bank would appear to involve
 24 a transaction between two non-debtors, and thus not subject to the automatic stay. This
 25 certification thus focuses on the recordation of the Assignment as the transfer of some interest in
 26 the Property that might violate the automatic stay in the sense that recordation gives a creditor
 better rights against the Debtors than it held before the recordation. Even if this court’s
 interpretation is incorrect about the contractual assignment on November 25, that date is still after
 the date of the commencement of Debtors’ bankruptcy case.

1 instruments creates an irrevocable split, then under federal bankruptcy law there would be no
2 "cause" to lift the automatic stay to allow foreclosure because reunification would not be possible
3 and the creditor could never have standing to foreclose. 11 U.S.C. § 362(d)(1) (2011).

4 If the foreclosure would simply be dismissed without prejudice, or there would be some
5 other nonfinal consequence of premature initiation, and reunification is possible, the second issue
6 is the nature of the assignment of a deed of trust that effectuates the reunification. If recording
7 such an assignment is a purely ministerial act, then it would not violate the automatic stay.
8 Alternatively, if such assignments alter the substantive rights of the debtor or the bankruptcy
9 estate, then they could only validly occur if the bankruptcy court granted relief from the automatic
10 stay.

11 If the Nevada Supreme Court determines that the recordation of the Assignment is
12 ministerial in nature, Deutsche Bank's postpetition actions may have sufficed to reunify the Note
13 and Deed of Trust and Deutsche Bank would thus have "cause" for relief from the automatic stay.
14 Any other result would leave the Note unsecured and thus dischargeable on the completion of
15 Debtors' plan payments.

16 **IV. Names of the Parties – Nev. R. App. P. 5(c)(3)**

17 The parties are Bryce and Maile Montierth, the Chapter 13 Debtors, and Deutsche Bank,
18 the creditor.

19 **V. Names and Addresses of Counsel – Nev. R. App. P. 5(c)(5)**

20 Counsel for Deutsche Bank:
21 Gregory L. Wilde, Esq.
22 Matthew K. Schriever, Esq.
23 Tiffany and Bosco, P.A.
24 212 S. Jones Blvd.
25 Las Vegas, NV 89107

26 Counsel for Debtors:
David Crosby, Esq.
Troy Fox, Esq.
Crosby and Fox, LLC
711 S. Eighth St.
Las Vegas, NV 89101

1 **VI. Costs of Certification**

2 Because the bankruptcy estate is insolvent and given the importance of this issue, this
3 court respectfully asks the Supreme Court to waive the costs of certification.

4 **VII. Order Regarding Certification**

5 Having complied with the provisions of Nev. R. App. P. 5(c),

6 **IT IS ORDERED** that upon entry, the Clerk of Court shall forward this Order to the
7 Supreme Court of the State of Nevada, Capital Complex, 201 South Carson St., Carson City,
8 Nevada 89701, under seal of the Clerk of this court; and

9 **IT IS FURTHER ORDERED** that upon receipt of the opinion of the Nevada Supreme
10 Court, this matter shall be transferred to the Bankruptcy Court for further proceedings consistent
11 with the opinion of the Nevada Supreme Court.

12 ###

Exhibit O

Exhibit O

T Newberry

From: Christopher Hunter <chunter@McCarthyHolthus.com>
Sent: Friday, May 03, 2013 8:54 AM
To: T Newberry
Cc: IDSMH
Subject: Nationstar v Rodriguez/NV-11-478461-JUD

Ms. Newberry: I received your phone call regarding my summary judgment motion. There is nothing to be puzzled about. Under the rules I can move for summary judgment at any time. I have a complete, comprehensive package to present to the court and your client hasn't made a payment in three and one half years. Your client already had one chance to step up in mediation and wasn't interested.

Regarding discovery, consider this our 16.1 meeting if you like. If you want discovery you can prepare a JCCR, standard 180 days to discovery bar date, plug in the other dates, disclosures within 10 days and send to me to sign. Thanks.

Regards,

Chris Hunter

9510 West Sahara, Suite 110
Las Vegas, Nevada 89117
Phone: (702) 685-0329 Ext. 3748
Fax: (866) 339-5691
chunter@mccarthyholthus.com
www.mccarthy-holthus.com

Service second to none

CONFIDENTIALITY NOTICE: This e-mail message is a confidential communication and the information contained herein may be privileged and protected by the attorney/client and/or other privilege. It is confidential in nature and intended for use by the intended addressee only. If you are not the intended recipient, you are hereby expressly prohibited from dissemination distribution, copy or any use whatsoever of this transmission and its contents. . If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at 702-685-0329 and delete this e-mail message and any attachments from your workstation or network mail system. If necessary arrangements will be made to retrieve the originals from you at no charge.

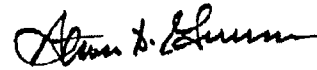
Federal law requires us to advise you that communication with our office could be interpreted as an attempt to collect a debt and that any information obtained will be used for that purpose.

Exhibit 16

Exhibit 16

RECEIVED MAY 29 2013

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CLERK OF THE COURT

Kristin A. Schuler-Hintz, Esq., Nevada SBN 7171
Christopher M. Hunter, Esq., Nevada SBN 8127
McCarthy & Holthus, LLP
9510 W. Sahara, Suite 110
Las Vegas, NV 89117
Phone (702) 685-0329
Fax (866) 339-5691
nvjud@mccarthyholthus.com
Attorney for Plaintiff.

DISTRICT COURT
CLARK COUNTY NEVADA

THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK AS
TRUSTEE FOR THE HOLDERS OF THE
CERTIFICATES, FIRST HORIZON
MORTGAGE PASS-
THROUGH CERTIFICATES SERIES
FHAMS 2005-AA5, BY FIRST HORIZON
HOME LOANS, A DIVISION OF FIRST
TENNESSEE BANK NATIONAL MASTER
SERVICER, IN ITS CAPACITY AS AGENT
FOR THE TRUSTEE UNDER THE
POOLING AND SERVICING AGREEMENT,

Plaintiff,

v.

CATHERINE RODRIGUEZ; DOES I-X; and
ROES 1 -10 inclusive,

Defendants

Case No.: A-12-661179-C

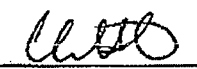
Dept. : XXXI

PLAINTIFF'S REPLY TO
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT

COMES NOW Plaintiff, by and through its counsel of record, Christopher M. Hunter, Esq., of McCarthy & Holthus, LLP, and files this Reply to the Opposition to the Motion for Summary Judgment filed by Defendant, Catherine Rodriguez ("Defendant").

This Reply is based upon this Notice, the attached Memorandum of Points and Authorities, and upon all pleadings and documents herein, as well as any argument that may be presented at the hearing of this, or any other motions/matters; the Court is requested to take judicial notice as appropriate.

Dated: May 23, 2013


Christopher M. Hunter, Esq.

SCANNED & SAVED
TO CLIENT FILE

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MEMORANDUM OF POINTS AND AUTHORITIES

A. Plaintiff's motion is procedurally proper and supported by ample evidence

Defendant alleges that Plaintiff has not provided any evidence to support the Motion. Accompanying the Motion for Summary Judgment is an Affidavit signed by an officer of the servicer of the loan on behalf of Plaintiff. Paragraphs 1 and 4 of the Affidavit allege that affiant is authorized to make the Affidavit and that Plaintiff is the owner and holder of the note and the beneficiary of the deed of trust. A pay history is included, a summary of the accounting on the loan is included and the acceleration letter is included. None of this is disputed by Defendant who is now three and one half years in default on the loan.

The chain of title on the loan is also included. The promissory note is endorsed by the original lender in blank. Plaintiff now has possession of the note and may enforce the note. An endorsement in blank becomes payable to bearer and may be negotiated by transfer of possession alone. NRS 104.3205. The holder of an instrument is the person entitled to enforce the instrument. NRS 104.3301.

The chain of title also includes an assignment of record of the deed of trust showing transfer of the deed of trust to Plaintiff. This is sufficient to satisfy the requirements of *Leyva v. National Default Svcs. Corp.*, 127 Nev. Advance Opinion 40 (July 7, 2011) and *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 128 Nev. Adv. Rep. 48 (Nev. 2012). This presentation is more than sufficient evidence under NRCP 56 to support the granting of summary judgment, particularly given that Defendants have provided absolutely no evidence to the contrary.

B. Defendant's reference to a mediation is improper

One of the two bases Defendant raises in her Opposition is a variety of documentation and information relating to her prior mediations. Nevada Mediation Rule 19 provides as follows:

1. All documents and discussions presented during the mediation shall be deemed confidential and inadmissible in any subsequent actions or

1 proceedings, except in an action for judicial review according to these rules.
2 In that case, non-privileged evidence submitted for mediation is discoverable
3 to the extent that it is relevant to a determination of bad faith, enforceability of
4 agreements made between parties within the Program, including temporary
agreements, and appropriate sanctions pursuant to NRS Chapter 107, as
amended. . .

5 All of this documentation and discussion is confidential and inadmissible because this is not
6 an action for judicial review. As a result, under no circumstances can Defendant statements
7 or arguments concerning mediation be considered here.
8

9 Further, the suggestion that Plaintiff is usurping the Nevada Mediation Program has
10 no merit whatsoever. The Nevada Supreme Court has ruled that if a non-judicial foreclosure
11 and resulting mediation result in the non-issuance of a mediation certificate the lender is
12 always free to initiate a new foreclosure. *Holt v. Reg'l Tr. Serv. Corp.*, 266 P.3d 602, 127
13 Nev. Adv. Rep. 80 (2011). Secondly, a lender is free to use its absolute discretion in
14 initiating either a judicial or non-judicial foreclosure. *See Edelstein v. Bank of New York*
15 *Mellon*, 286 P.3d 249, 128 Nev. Adv. Rep. 48 (Nev. 2012). Thus, Plaintiff is acting entirely
16 within its rights in prosecuting this judicial foreclosure.
17

18 **C. Defendant cites no support for her bankruptcy issues**
19

20 Defendant asks this Court to allow Defendant, who already has lived rent free for
21 three and one half years, to continue doing so for an unlimited and undeterminable period of
22 time until the Nevada Supreme Court makes a ruling on a certified question from Judge
23 Markell. This is merely a question raised by the bankruptcy court and is not authority which
24 this Court can use to make a determination that Plaintiff has no standing to foreclose.
25 Further, the question of the security interest held by Plaintiff is something that should have
26 been raised four years ago when Defendant filed her bankruptcy not now.
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CONCLUSION

Plaintiff has proper standing to foreclose and has provided ample evidence of same. Defendant has offered nothing to counter the fact that she has been in default for three and one half years. All references to mediation are inadmissible. For the reasons set forth in this memorandum, Plaintiff respectfully requests that the Court grant the Motion for Summary Judgment.

DATED: May 23, 2013

McCarthy & Holthus, LLP

By:


Christopher M. Hunter, Esq.
Attorneys for Defendant

CERTIFICATE OF MAILING

I hereby certify that on the 23d day of May, 2013, a true and correct copy of the foregoing Reply to Opposition to Motion for Summary Judgment was forwarded by United States-Mail postage prepaid to the addresses listed below.

*Tara Newberry Esq.
7854 W. Sahara Ave
Las Vegas, NV 89117
Attorney for defendant Catherine Rodriguez*

/s/Christina Reeves
An employee of McCarthy & Holthus, LLP

17


CLERK OF THE COURT

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20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

22 CATHERINE RODRIGUEZ,
23
24 Petitioner,
25
26 vs.

CASE NO.: A-13-685616-J
DEPT. NO.: XXV

27 NATIONSTAR MORTGAGE LLC.; THE
28 BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK AS TRUSTEE
FOR THE HOLDERS OF THE
CERTIFICATES, FIRST HORIZON
MORTGAGE PASS-THROUGH
CERTIFICATES SERIES FHAMS 2005-
AA5, BY FIRST HORIZON HOME LOANS,
A DIVISION OF FIRST TENNESSEE
BANK NATIONAL MASTER SERVICER,
IN ITS CAPACITY AS AGENT FOR THE
TRUSTEE UNDER THE POOLING AND
SERVICING AGREEMENT
Respondents.

NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND ORDER

CONNAGHAN NEWBERRY LAW FIRM
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NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Please take notice that the attached **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** was entered on October 3, 2014.

DATED this 6th day of October 2014.

CONNAGHAN|NEWBERRY LAW FIRM

/s/ Tara D. Newberry
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of October 2014, I mailed via United States Mail, postage fully prepaid thereto, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** addressed as follows:

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/s/ Kathleen Seckinger
Kathleen Seckinger, An Employee of
Connaghan|Newberry

1 **FFCO**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 CATHERINE RODRIGUEZ,

6 Petitioner,

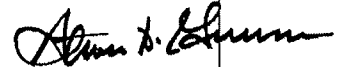
7 vs.

Case No.: A-13-685616-J Electronically Filed
10/03/2014 01:27:13 PM

Dept No.: XXV

8 THE BANK OF NEW YORK MELLON F/K/A
9 THE BANK OF NEW YORK AS TRUSTEE
10 FOR THE HOLDERS OF THE
11 CERTIFICATES, FIRST HORIZON
12 MORTGAGE PASS-THROUGH
13 CERTIFICATES SERIES FHAMS 2005-AA5,
14 BY FIRST HORIZON HOME LOANS, A
15 DIVISION OF FIRST TENNESSEE BANK
16 NATIONAL MASTER SERVICER, IN ITS
17 CAPACITY AS AGENT FOR THE TRUSTEE
18 UNDER THE POOLING AND SERVICING
19 AGREEMENT,

20 Respondents.



CLERK OF THE COURT

17
18 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

19 THIS COURT, having conducted a hearing on September 5, 2013, and evidentiary
20 hearings on November 1, 2013 and December 13, 2013, as provided by NRS Chapter 107
21 and the Foreclosure Mediation Rules ("FMR") adopted by the Nevada Supreme Court for
22 the Nevada Foreclosure Mediation Program (the "Program"), for the limited purposes of
23 determining the compliance by the owner of the loan and beneficiary of the deed of trust,
24 in attending the mediation, having authority or access to a person with authority, bringing
25 to mediation each document required, and participating in the mediation in good faith,
26 compliance with the rules of the Program, enforcing agreements made between parties
27 within the Program, including temporary agreements, and determining appropriate
28 sanctions, pursuant to FMR and the Court's Order to Show Cause dated July 23, 2013, and
good cause appearing; the Court hereby finds, concludes and orders as follows:

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 **FINDINGS OF FACT**

2 1. On or about October 21, 2013, the parties stipulated that Nationstar
3 Mortgage LLC, as servicer, was acting as the agent of The Bank of New York Mellon at
4 the October 6, 2011, foreclosure mediation and that this court has jurisdiction over both
5 Nationstar Mortgage LLC and The Bank of New York Mellon, pursuant to NRS
6 107.086(5).

7 2. Respondent Nationstar Mortgage LLC attended Mediation on October 6,
8 2011, overseen by Mediator, Steve E. Wenzel, and that this was the third mediation
9 attended by Petitioner, Petitioner's attorney Tara D. Newberry, Esq. and McCarthy
10 Holthus, LLP as attorney for entities claiming authority over Petitioner's mortgage.

11 3. Petitioner filed a Chapter 7 Bankruptcy on May 20, 2008 and was
12 discharged on December 1, 2008. Case #08-15209-lbr.

13 4. An Assignment of Deed of Trust was recorded with the Clark County
14 Recorder's office on June, 16, 2010, assigning Petitioner's mortgage to The Bank of New
15 York Mellon f/k/a The Bank of New York as Trustee.

16 5. Respondent MetLife Home Loans appeared at mediation on July 19, 2010,
17 as an agent on behalf of The Bank of New York Mellon.

18 6. Respondent The Bank of New York Mellon, by and through its servicing
19 agent, Respondent MetLife Home Loans, filed a Petition for Judicial Review on
20 August 11, 2010, after the first mediation, which resulted in a finding by the Honorable
21 Donald M. Moseley that the beneficiary failed to bring all required documents and lacked
22 authority, thereby ordering a letter of certification to not be issued by the Foreclosure
23 Mediation Program.

24 7. Respondent MetLife Home Loans appeared at the December 10, 2010,
25 mediation which resulted in a finding by the mediator that the beneficiary failed to provide
26 proper documentation according to the Foreclosure Mediation Rules.

27 8. Respondent The Bank of New York Mellon, by and through its servicing
28 agent, Respondent MetLife Home Loans, provided certifications for the Promissory Note

1 and Deed of Trust on or about November 16, 2010, indicating that MetLife was in actual
2 possession of the original note, and that the copy of the note attached to the certification
3 was a true and correct copy of the original.

4 9. Respondent Nationstar Mortgage, LLC, appeared at the October 6, 2011
5 mediation and presented a Promissory Note, consisting of a copy of the Note with an
6 endorsement to Nationstar Mortgage, LLC. (*Dec. 13th hearing, page 74, lines 23-25.*)

7 10. Respondent Nationstar Mortgage, LLC held themselves out as the new
8 owner of Petitioner's loan at the mediation by presenting the Promissory Note, and by
9 stating during mediation that Nationstar Mortgage, LLC was both the servicer and owner
10 of the loan. (*Nov 1st hearing, page 31, line 23 through page 35, line 2; Dec. 13th hearing,*
11 *page 165, lines 5-10.*)

12 11. The October 6, 2011, mediation resulted in a finding by the mediator that
13 Respondents failed to provide all required documents required by the Foreclosure
14 Mediation Rules.

15 12. Respondent The Bank of New York Mellon filed a Verified Complaint for
16 Judicial Foreclosure and Deficiency Judgment of Deed of Trust against Petitioner on May
17 3, 2012, which included a copy of Petitioner's Promissory Note payable to First Horizon
18 Home Loan Corporation with no endorsements.

19 13. Petitioner filed a Motion to Cancel Lis Pendens and Dismiss Complaint on
20 December 7, 2012.

21 14. Respondent The Bank of New York Mellon filed a Verified Amended
22 Complaint for Judicial Foreclosure and Deficiency Judgment of Deed of Trust against
23 Petitioner on December 14, 2012, with a copy of Petitioner's Promissory Note payable to
24 First Horizon Home Loan Corporation, but included a blank endorsement with a
25 rectangular block to the right of the blank space.

26 15. Respondent The Bank of New York Mellon filed a Motion for Summary
27 Judgment against Petitioner on April 29, 2013.

1 16. A hearing was held on the Motion for Summary Judgment on June 18,
2 2013, resulting in a denial of summary judgment without prejudice.

3 17. The mediations held previous to the October 6, 2011 mediation, and the
4 subsequent judicial foreclosure, along with all of the documents provided by Respondents
5 in those cases, are relevant as they illustrate a pattern of practice by Respondents and give
6 a full picture of this loan and the circumstances surrounding the loan as it relates to the
7 foreclosure mediation on October 6, 2011. (*Dec. 13th hearing, page 138, lines 15 – 19.*)

8 18. The original Promissory Note includes an endorsement in blank surrounded
9 by a clear and distinct red circle, and there are no hole punches in the original note. (*Nov.*
10 *1st hearing, page 70, lines 4 – 7.*)

11 19. Upon inspection of the Original Note, the Collateral File, testimony
12 provided by Faye Janati, and statements made by Respondents' counsel, the Certification
13 executed on November 16, 2010 by Respondent The Bank of New York Mellon, by and
14 through its agent, MetLife Home Loans, was made falsely, as the copy attached to the
15 certification was not a true and correct copy of the original, and the affiant was not in
16 possession of the original note. (*Dec 13th hearing, page 9 line 18-2, page 10 lines 12-1,*
17 *page 12 lines 2-8, page 54 line 8-11, page 137 line 18 through page 138 line 5, page 140*
18 *line 25 though page 177 line 16, page 195 lines 5-10.*)

19 20. The endorsement provided in the Amended Complaint overlays the
20 endorsement provided in the October 6, 2011, mediation exactly, except the visible
21 rectangular white text box block in the Amended Complaint endorsement exactly blocks
22 out the "Nationstar Mortgage, LLC" wording on the endorsement provided at the 2011
23 mediation.

24 21. Respondent Nationstar Mortgage, LLC was aware of the altered
25 endorsements between the documents, as referenced above, as were its attorneys,
26 McCarthy & Holthus LLP, who concurrently represented Respondent The Bank of New
27 York Mellon prior to the mediation on October 6, 2011. (*Dec. 13th hearing page 162 line*
28 *18 through page 163 line 2.*)

1 22. Respondents, by and through Nationstar Mortgage, LLC, did not
2 investigate how the altered endorsement was created. (*Dec. 13th hearing, page 39 lines 6-*
3 *21, pages 66-67 lines 5-25 & 1-19, page 68 lines 3-9.*)

4 23. Respondents, by and through Nationstar Mortgage, LLC, disregarded
5 issues of bad faith in the handling of Petitioner's loan, evidenced by the altered
6 Promissory Note's creation and use, and failed to correct the misrepresentation near the
7 time of the October 6, 2011, mediation.

8 24. Since the October 6, 2011, mediation, Respondents have continued to fail
9 to investigate how the altered Promissory Note was created, who created it, and to create a
10 process to ensure that such bad faith would not be repeated. (*Dec. 13th hearing, page 39*
11 *lines 6-21, page 58 lines 12-16, pages 66-67 lines 5-25 & 1-19, page 68 lines 3-9.*)

12 25. The only evidence of movement of the Collateral File from the Custodian
13 after August 29, 2005 is the Bailee Letter dated June 5, 2013, showing that the Collateral
14 File was transferred to McCarthy & Holthus LLP. (*Dec. 13th hearing, pages 149 – 150,*
15 *page 152, lines 6-13.*)

16 26. Respondents attorney did not have the Collateral File prior to or during the
17 October 6, 2011 mediation. (*Dec. 13th hearing, page 171.*)

18 27. The pattern and practice of Respondents is to have their attorneys obtain
19 copies of notes from an imaging file when preparing documents for mediation and exhibits
20 for filing in court, rather than making actual copies of the original for such use. (*Nov. 1st*
21 *hearing, page 64, lines 20-22; Dec 13th hearing, page 9, line 18-22, page 10 lines 12-17,*
22 *page 12 lines 2-8, page 54, line 8-11, page 137, line 18, through page 138, line 5, page*
23 *140, line 25, though page 177, line 16, page 195 lines 5-10.*)

24 28. The Collateral File holding the original Promissory Note with endorsement
25 and Deed of Trust was not used to create any of the copies Respondents sent to
26 Respondent's counsel in preparation for any of Petitioner's mediations or the filing of the
27 Judicial Foreclosure. (*Nov. 1st hearing, page 64, lines 20 – 22; Dec 13th hearing, page 9*
28

1 line 18-2, page 10 lines 12-1, page 12 lines 2-8, page 54 line 8-11, page 137 line 18
2 through page 138 line 5, page 140 line 25 though page 177 line 16, page 195 lines 5-10.)

3 29. The documents presented by Respondents in Petitioner's multiple
4 mediations and judicial foreclosure were various versions of copies taken from an imaging
5 system and were never verified against the original documents in the Collateral File.
6 (Nov. 1 hearing, page 64 lines 9 – 12, 15 – 17, page 65 lines 3-10, pages 66-67 lines 21 –
7 25 & 1, Dec. 13th hearing, page 159, lines 3 – 14, Dec. 13th hearing, page 161, lines 20-
8 24, page 162, lines 15 – 17.)

9 30. Respondents failed to provide a qualified witness to testify as to
10 Petitioner's specific account history. (Dec. 13th hearing, page 20-23, pages 42-43,
11 lines 11-25 & 1- 18, page 47 lines 23-25, page 50 lines 8-14, page 51 lines 6-7.)

12 31. Respondents failed to produce Daniel Marks as a witness at any of the
13 evidentiary hearing dates in this matter. Daniel Marks, who appeared at the October 6,
14 2011, mediation as representative of Respondents, is still currently employed by
15 Respondent Nationstar Mortgage LLC. (Dec. 13th hearing pg. 58 line 1-5.)

16 32. Respondent The Bank of New York Mellon is the owner of the Note, as
17 Fay Janati testified on two different occasions. (Nov. 1st hearing, page 62 lines 21- 23;
18 Dec. 13th hearing, page 13, lines 7- 11.)

19 33. Respondent Nationstar Mortgage, LLC has a Document Execution
20 department whose purpose is to provide documents to foreclosure attorneys. (Dec. 13th
21 hearing, page 23, lines 18- 25.)

22 34. Respondents, by and through Nationstar Mortgage, LLC, admitted to
23 creating the altered endorsement. (Dec. 13th hearing, page 40 lines 6-7.)

24 35. The certifications presented at Petitioner's Mediation on December 10,
25 2010, were printed off an imaging system and did not contain the endorsement in blank
26 from First Horizon, yet the original Promissory Note, with an endorsement in blank, had
27 been received by the Custodian in possession of the Collateral File on August 29, 2005,
28 according to the First Horizon Document Header contained in the Collateral File and as

1 supported by testimony during the evidentiary hearing. (*Dec. 13th hearing, page 145,*
2 *lines 6-7.*)

3 36. Respondents admit Petitioner's loan was not treated any differently than
4 other loans serviced by Nationstar Mortgage, LLC (*Nov. 1 hearing, page 64, lines 1-2.*)

5 37. Respondent Nationstar Mortgage, LLC does not pay additional fees to the
6 law firms processing the foreclosure even in cases where additional documents or work is
7 necessary. (*Dec. 13th hearing, page 52 lines 8-18.*)

8 38. Respondents knew original documents were not going to be provided for
9 the October 6, 2011 mediation and, instead, created their own set of documents and
10 certifications to lead Petitioner and the Foreclosure Mediation Program to believe that the
11 documents were compliant with the Foreclosure Mediation Program Rules. (*Dec. 13th*
12 *hearing, pages 76, lines 16-25, page 77, lines 1-8, page 79, lines 24-25, page 80, lines 1-*
13 *6, page 83, lines 2-4 & 22-25, page 84, line 1, page 91 lines 8-16, page 94, lines 17-25,*
14 *page 95, lines 1-2, page 121 lines 19-25, page 122, lines 1-16.*)

15 39. Respondents were prepared to execute certifications stating possession of
16 original documents when in fact, neither Nationstar Mortgage, LLC nor their attorneys
17 were in possession of the originals and had already stated they would not be in possession
18 of the originals by the October 6, 2011 mediation. (*Dec. 13th hearing, page 100 lines 11-*
19 *24, pages 101-102 lines 20-25 & 1-25.*)

20 40. The law firm for Respondents prepared and generated the documents and
21 certifications for the purposes of foreclosure mediation. (*Dec. 13th hearing, page 139,*
22 *lines 13 – 25, page 140, lines 1-4.*)

23 41. Respondents practice is to alter certifications to state "the attached is a
24 copy of the original, a certified copy of which is in the possession of the undersigned"
25 when they are unable to meet the requirements of the Foreclosure Mediation Program
26 Rules, and unable to aver they are in possession of the original as required by the rules, in
27 order to obtain a foreclosure certificate. (*Dec. 13th hearing, page 102, lines 17-25, page*
28 *104, lines 23-25, page 105, lines 1-8, page 122, line 25, page 123, lines 1-6.*)

1 42. Respondents presented documents at the October 6, 2011 mediation which
2 Respondents knew were inconsistent with prior versions. (*Dec. 13th hearing, page 107-*
3 *109 lines 24-25, 1-25, & 1-4, page 111-113 lines 25, 1-25 & 1-2*)

4 43. Respondent The Bank of New York Mellon knew that Respondent
5 Nationstar Mortgage LLC was acting on its behalf, as evidenced by the Pooling and
6 Servicing Agreement, Master Servicing Agreement and Sub-Servicing Agreement it
7 contractually entered and thereby delegated authority to Nationstar Mortgage LLC, as
8 agent of The Bank of New York Mellon.

9 44. There is a significant difference between the original Promissory Note and
10 the alleged certified copies in this case; since the Custodian was in possession of the
11 original Promissory Note with an endorsement on August 29, 2005 according to the First
12 Horizon Document Header contained in the Collateral File, and as supported by testimony
13 during the evidentiary hearing, all other versions of the note that were produced thereafter
14 should have contained the endorsement in blank. (*Dec. 13th hearing, page 39, lines 19-21,*
15 *page 145, lines 6-7, page 151 lines 4-11, page 94 lines 10-13.*)

16 45. As of June 18, 2013, the original Promissory Note had an endorsement in
17 blank with a distinct red circle around it, and, while there is no evidence of when the red
18 circle was drawn around the endorsement, the Promissory Note was presented at the
19 Motion for Summary Judgment Hearing on that date and contained the red circle and all
20 copies of the original Promissory Note after June 18, 2013, should reflect the distinct red
21 circle around the endorsement.

22 46. Respondent The Bank of New York Mellon, in its response to the Petition
23 in this case, included altered documents regarding the Promissory Note in this matter.
24 McCarthy & Holthus LLP filed a response on behalf of The Bank of New York Mellon on
25 August 13, 2013, with an exhibit containing a copy of the Promissory Note with the stamp
26 from Old Republic Title on the first page and with an endorsement in blank that did not
27 contain the red circle, nor did it have the "Nationstar Mortgage LLC" stamp. As testified
28 to by attorney Kristin Schuler-Hintz, the Old Republic stamp indicates that it was a copy

1 made at the time of closing in April of 2005, and is the version obtained from an imaging
2 file. Despite being in possession of the original Promissory Note at some point before
3 June 18, 2013, at which time the Promissory Note had a distinct red circle around the
4 endorsement in blank, Respondent The Bank of New York Mellon's response to the
5 Petition did not contain a copy of the Promissory Note as it existed on August 13, 2013.
6 The version of the Note presented at the October 6, 2011, mediation was in fact Exhibit 1
7 in this matter, which contains the Nationstar Mortgage LLC stamp as Petitioner, and
8 counsel for Respondents, Lindsey Bennett-Morales, testified, and therefore Respondents
9 failed to include in their response the actual document it presented at mediation. (*Dec*
10 *13th hearing, page 9 line 18-2, page 10 lines 12-1, page 12 lines 2-8, page 54 line 8-11,*
11 *page 137 line 18 through page 138 line 5, page 140 line 25 through page 177 line 16, page*
12 *195 lines 5-10.))*

13 47. The exhibit attached to Respondent The Bank of New York Mellon's
14 response in this matter, as well as Respondent The Bank of New York Mellon's Motion to
15 Amend the Complaint filed in the Judicial Foreclosure case on September 5, 2013,
16 containing the same inaccurate copy of the Promissory Note demonstrates a pattern and
17 practice by Respondent and its counsel to utilize inaccurate and untrustworthy copies of
18 documents.

19 48. Respondents had a financial interest and financial incentive throughout
20 Petitioner's foreclosure process to complete the foreclosure sale. Respondents were
21 contractually required to make advances for the payment of principal and interest, taxes
22 and insurance and legal fees, as well as ancillary costs of foreclosure, but earned interest
23 on these advances as amounts deposited in collection accounts referred to as float money.
24 Respondents were in first priority for reimbursement from liquidation proceeds, also
25 known as foreclose sale proceeds, as stated in the Prospectus dated February 25, 2005, the
26 Pooling and Servicing Agreement dated May 1, 2005, Nationstar Mortgage LLC's
27 Registration Statement filed with the SEC on August 11, 2011, and the Subservicing
28 Agreement effective June 21, 2011, filed by Nationstar Mortgage LLC with the SEC.

49. Respondents had a financial interest and financial incentive throughout Petitioner's foreclosure process to complete the foreclosure sale, as it was contractually permitted to impose late payment charges and servicing fees for each month the loan remained past due, and Respondents were in first priority for recovery of those fees from liquidation proceeds, also known as foreclose sale proceeds, as stated in The Pooling and Servicing Agreement dated May 1, 2005; Nationstar Mortgage LLC's Registration Statement filed with the SEC on August 11, 2011, and such charges were assessed against Petitioner's loan as evidenced by Nationstar Mortgage LLC's Servicing records.

50. Respondents would have collected all of the monies advanced by Respondents with interest, in addition to late payment fees and servicing fees, once a foreclosure was completed and the liquidation proceeds realized.

51. Respondents' intentional use of altered documents to avoid good faith participation in the Foreclosure Mediation Program is egregious conduct.

52. Agents of Respondent The Bank New York of Mellon attended Petitioner's Mediations without proof of authority.

53. Respondents failed to provide the required documents at each of Petitioner's Mediations and refused to offer a loan modification depriving Petitioner of an opportunity to keep her home.

54. Respondents repeated violations of FMR were intentional and repetitive and caused harm to the Petitioner and to the integrity of the Foreclosure Mediation Program.

CONCLUSIONS OF LAW

1. NRS 107.086(8)(d) requires the Supreme Court to adopt rules to establish procedures to protect the mediation process from abuse and to ensure that each party to the mediation acts in good faith.

2. NRS 107.086(4) and the Foreclosure Mediation Rules (“FMR”) require the original or certified copy of the Promissory Note to be produced at mediation. At the time of the mediation on October 6, 2011, FMR 11(4) requirement that a certified copy of the

1 original note, and each endorsement of the note, could only be satisfied when the mediator
2 received a statement under oath signed before a notary public that specifically states that
3 the person making the certification is in actual possession of the original mortgage note,
4 that the attached copy of the mortgage note is a true and correct copy of the original
5 mortgage note, which is in the possession of the person making the certification.
6 Respondents failed to comply with FMR 11.

7 3. A compliant certified copy is a copy made of the original document at the
8 time it is being certified by an affiant. As indicated throughout the Court's finding of
9 facts, the Respondents in this case never made an actual copy of the original for use as an
10 exhibit in any court filing or for the purposes of certification in accordance with the FMR
11 11. In its response to the Petition, Respondent used a copy from its imaging file rather
12 than making a copy of the original Promissory Note and, furthermore, failed to include the
13 version of the Promissory Note that it presented at mediation. A copy of a copy of the
14 Promissory Note, Deed of Trust and/or any Assignments is prima facie noncompliance
15 with NRS 107.086(4) and FMR 11.

16 4. Respondents were required to mediate in good faith, provide required
17 documents, and provide a person with authority to modify the loan or have "access at all
18 times during the mediation to a person with such authority." NRS 107.086(4), (5); FMR
19 5(7)(a). Respondents failed to mediate in good faith, failed to provide all required
20 documents, and failed to present a person with authority.

21 5. The Court may issue an order imposing sanctions against the beneficiary of
22 the Deed of Trust or the representative as the Court determines appropriate. See FMR
23 5(7)(f).⁸ See NRS 107.086(2)(c)(2), (3), (6), (7). *Pasillas v. Hsbc Bank U.S.*, 2011 WL
24 2671894, 255 P.3d 1281, 127 Nev. Adv. Op. 39 (Nev., 2011) If the Court finds
25 noncompliance with the requirements, the bare minimum sanction is that an FMP
26 certificate must not issue. *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. ___, 266 P.3d 602, 607
27 (2011).

1 6. The nature of the sanctions imposed on the beneficiary or its representative
2 is within the discretion of the Court. *Pasillas v. HSBC Bank USA*, 127 Nev. __, __, 255
3 P.3d 1281, 1287 (2011). The Nevada Supreme Court previously listed factors to aid
4 district courts when considering sanctions as punishment for litigation abuses, violations
5 of Foreclosure Mediation Rules or NRS 107.080 et al, including but not limited to, the
6 degree of willfulness of the offending party, the severity of the sanction relative to the
7 severity of the abuse, the financial condition of the party being sanctioned and the need to
8 deter both the parties and future litigants from similar abuses. See *Young v. Johnny*
9 *Ribeiro Building*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990); see also *Bahena v.*
10 *Goodyear Tire & Rubber Co.*, 126 Nev. __, __, 235 P.3d 592, 598–99 (2010);
11 *Arnold*, 123 Nev. at 415–16, 168 P.3d at 1053 *Pasillas v. Hsbc Bank U.S.*, 2011 WL
12 2671894, 255 P.3d 1281, 127 Nev. Adv. Op. 39 (Nev., 2011).

13 7. In *Pasillas*, the Nevada Supreme Court set forth a nonexhaustive list of
14 factors for the district court to consider in weighing the appropriate sanctions to impose
15 when a party has violated the FMP requirements. 127 Nev. at __, 255 P.3d at 1287. In
16 light of Respondents violations of the FMR, repeated use of inaccurate copies of required
17 documents including in its responses filed in this matter, sanctions are necessary to
18 demonstrate to Respondents that they are not free to act with wayward disregard of
19 Nevada law, the FMR, or the judicial system. See *Foster v. Dingwall*, 227 P.3d 1042
20 (Nev., 2010).

21 8. The conduct exhibited in relation to Petitioner's loan and the mediation at
22 issue was egregious and in the consideration of imposition of sanctions, this Court finds
23 that under NRS 107.080, FMR, and the case law of this state, that substantial sanctions are
24 appropriate.

25 9. The Court concludes that since Petitioner received a discharge of liability
26 for the Promissory Note at issue in this matter by decree of the United States Bankruptcy
27 Court District of Nevada issued on December 1, 2008 in case #08-15209 by the Honorable
28

1 Linda B. Riegle, there can be no offset with regard to sanctions imposed by this Court as
2 this would be in violation of the discharge injunction.

3 **ORDER**

4 **NOW THEREFORE:**

5 THE COURT ORDERS a sanction of \$50,000.00 dollars to be imposed against
6 Respondent The Bank of New York Mellon, payable to Petitioner within 30 days of entry
7 of this order. Respondents shall be sanctioned an additional \$5,000 per day for failure to
8 do so within 30 days of the entry of this order.

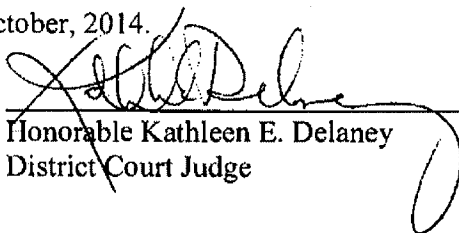
9 THE COURT FURTHER ORDERS a sanction of \$50,000.00 dollars against
10 Respondent Nationstar Mortgage LLC payable to Petitioner within 30 days of entry of this
11 order. Respondent shall be sanctioned an additional \$5,000 per day for failure to do so
12 within 30 days of the entry of this order.

13 THE COURT FURTHER ORDERS that Respondents are jointly and severally
14 liable for Petitioner's reasonable attorney fees and costs as an additional sanction in this
15 matter.

16 THE COURT FURTHER ORDERS Petitioner's counsel to file a Memorandum of
17 Costs and Fees including all costs and fees accrued from the election of mediation in 2011
18 to the date of this order, such memorandum must be filed with the Court within 14 days of
19 entry of this order. The Court shall issue a separate order regarding the total amount of
20 fees and costs to be awarded.

21 THE COURT FURTHER ORDERS that a Certificate shall not issue regarding the
22 October, 2011 mediation.

23 DATED this 3rd day of October, 2014.

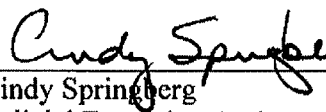
24 
25 Honorable Kathleen E. Delaney
26 District Court Judge
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about the date filed, the foregoing **FINDINGS**
OF FACT, CONCLUSIONS OF LAW AND ORDER was e-served, mailed or placed
in the attorney's folder in the Clerk's Office as follows:

Kristin A. Schuler-Hintz, Esq. – McCarthy & Holthus
Allison R. Schmidt, Esq. – Akerman LLP
Venicia Considine, Esq. – Legal Aid Center of Southern Nevada
Tara D. Newberry, Esq. – Connaghan Newberry Law Firm


Cindy Springberg
Judicial Executive Assistant

8

DISTRICT COURT
CLARK COUNTY, NEVADA

Alvin J. Robinson
CLERK OF THE COURT

Metlife Home Loans,
Petitioner(s)
vs.
Catherine A Rodriguez,
Respondent(s)

A-10-622878-J
Department 14

FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

On September 16, 2010, THIS COURT, having conducted a hearing(s) as provided by NRS Chapter 107, and the Foreclosure Mediation Rules adopted by the Nevada Supreme Court to determine the existence of possible "bad faith" in the participation of mediation as provided by law, FINDS:

That mediation was held on July 19, 2010, overseen by Mediator Sarah Bean.

That present for the Petitioner Metlife Home Loans was Kali Miller, and representing the Respondent/Homeowner was Tara Newberry.

That the mediator found that the Beneficiary failed to bring an appraisal or Broker's Price Opinion to the mediation.

Additionally, that there was a lack of authority to offer any terms of loan modification beyond the scope of the servicing agreement.

That the Respondent/Homeowner has met their burden of showing a lack of bad faith. Accordingly, absent a timely appeal, Letter of Certification will not issue.

Dated this 28th day of September, 2010.

Donald L. Mosley
DISTRICT COURT JUDGE

cc: Metlife Home Loans
Catherine A. Rodriguez
Kristin Schuler-Hinz, Esq.
Tara Newberry, Esq.
Kali Fox Miller, Esq.
Nevada Foreclosure Mediation Program

RECEIVED

OCT 01 2010

CLERK OF THE COURT

DONALD MOSLEY
DISTRICT JUDGE

DEPARTMENT FOURTEEN
LAS VEGAS, NV 89103

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATION SCHEDULING REMINDER

ASSESSOR PARCEL NUMBER (APN) 125-20-212-037

Property Owner (s) Catherine Rodriguez

PROPERTY ADDRESS:

6345 Sweet Pecan Street

Las Vegas, NV 89149

BENEFICIARY: MetLife Home Loans

TRUSTEE: Quality Loan Service Corp.

TS NV-10-351356-NF

DoT Doc# 4/21/2005

Book/Page #: 20050427-000843

Inst #:

The mediation in this matter will be held on October 6, 2011 at 1:00 p.m.

Location: Nevada State Motor Pool, 7060 La Cienega Street, Las Vegas, Nevada.

This is a courtesy reminder of several Nevada Foreclosure Mediation Program requirements that are very important or are somewhat new:

1. The parties must make contact, request and exchange *all* necessary documents and information as soon as possible prior to the mediation. Please ensure that you have asked for and/or provided all information needed prior to the mediation. As a last resort bring such documents and information with you to the mediation as complete information is essential to a successful meeting.
2. The Lender/Beneficiary representative must bring to the mediation separately certified copies of the original mortgage note and deed of trust, and each endorsement of the note and each assignment of the deed of trust. Each certified document brought to the mediation must be accompanied by an *original (wet signed) certification* executed by or before a notary public meeting the requirements of NRS 240.1655(2), Rule 11(4).
3. Please carefully again review the Foreclosure Mediation Instruction Letter that was sent to you when the mediation was scheduled and make *very* sure that you have complied with each, every and all of the requirements contained in that document.

I look forward to a successful mediation session. Please call with any questions.

Sincerely,

Steve E. Wenzel, Esq.

ADJUSTABLE RATE NOTE

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

April 21st, 2005

[Date]

HENDERSON

[City]

NEVADA

[State]

6845 SWEET PECAN STREET, LAS VEGAS, Nevada 89149

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 269,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is FIRST HORIZON HOME LOAN CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.625 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

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

I will make my monthly payments on the first day of each month beginning on June 1st, 2005

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on May 1st, 2035, I still owe amounts under this

Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at PO BOX 809
MEMPHIS, TN 38101

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

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,260.94 . This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid Principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

MULTISTATE ADJUSTABLE RATE NOTE - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) -
Single Family - Fannie Mae UNIFORM INSTRUMENT

UMP-838N (0210)

Form 3520 1/01

VMP MORTGAGE FORMS - (800)521-7291

Page 1 of 4

Initials:

CAK



4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of May, 2010, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.625 % or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO & 00/100 percentage point(s) (2.00 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 11.625 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

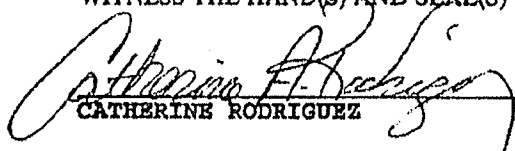
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales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

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

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

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

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


CATHERINE RODRIGUEZ

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

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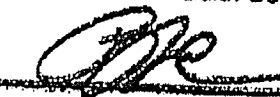
(Seal)

-Borrower

[Sign Original Only]

Pay to the order of Nationstar Mortgage LLC
Without recourse
First Horizon Home Loan Corporation

by



R. J. Beeley, Vice President

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE NOTE

THIS ADDENDUM is made this 21st day of April, 2005, and is incorporated into and intended to form a part of the Adjustable Rate Note (the "Note") dated the same date as this Addendum executed by the undersigned and payable to **FIRST HORIZON HOME LOAN CORPORATION** (the "Lender").

THIS ADDENDUM supercedes Section 3(A), 3(B), 4(C) and 7(A) of the Note. None of the other provisions of the Note are changed by this Addendum.

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest by making payments every month for the first 120 payments (the "Interest Only Period") in the amount sufficient to pay interest as it accrues. I will pay principal and interest by making payments every month thereafter for the next 240 payments in an amount sufficient to fully amortize the outstanding principal balance of the Note at the end of the Interest Only Period over the remaining term of the Note in equal monthly payments.

I will make my monthly payments on the first day of each month beginning on June 1st, 2005. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before principal. If, on May 1st, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my payments at PO BOX 809, MEMPHIS, TN 38101, or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,260.94. This payment amount is based on the original principal balance of the Note. This payment amount may change.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes


Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE-QUARTER percentage points (2.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

During this Interest Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest on the lower principal balance. At the end of the Interest Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest Only Period, my payment amount will not be reduced due to voluntary prepayments.

7. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

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

 04-22-05

CATHERINE RODRIGUEZ Date

Date_____
Date_____
Date_____
Date_____
Date_____
Date_____
Date

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATOR STATEMENT

PART 1: SIGN-IN SHEET		APN: 125-20-212-037
Mediator:	<p>Name: <u>Steve F. Wenzel, Esq</u> _____ <small>Print Signature</small></p> <p>Contact Info: <u>ADRNevada@gmail.com</u> _____ <small>Email Telephone # (775) 560-9596</small></p>	
Homeowner(s) (Grantor):	<p>Name: <u>Catherine Rodriguez</u> _____ <small>Print Signature</small></p> <p>Contact Info: <u>SEBCEB@YAHOO.COM</u> _____ <small>Email Telephone # 702-378-2838</small></p> <p>Participated: <input checked="" type="checkbox"/> In Person <input type="checkbox"/> By Telephone</p>	
Homeowner(s) (Grantor):	<p>Name: _____ <small>Print Signature</small></p> <p>Contact Info: _____ <small>Email Telephone #</small></p> <p>Participated: <input type="checkbox"/> In Person <input type="checkbox"/> By Telephone</p>	
Homeowner Atty or Rep: <u>10696</u> NV Bar/NRS 645F License #	<p>Name: <u>Tora D. Newberry</u> _____ <small>Print Signature</small></p> <p>Contact Info: <u>tnewberry@cnlawlv.com</u> _____ <small>Email Telephone # 702-608-4232</small></p> <p>Participated: <input checked="" type="checkbox"/> In Person <input type="checkbox"/> By Telephone</p>	
Lender (Beneficiary):	<p>Name: <u>Daniel Marks</u> _____ <small>Print Signature</small></p> <p>Contact Info: _____ <small>Email Telephone #</small></p> <p>Participated: <input type="checkbox"/> In Person <input checked="" type="checkbox"/> By Telephone</p>	
Lender Atty or Rep: <u>11519</u> NV Bar/NRS 645F License #	<p>Name: <u>Lindsey Bennett Marks</u> _____ <small>Print Signature</small></p> <p>Contact Info: <u>lbennett@mccarthy1104NW.com</u> _____ <small>Email Telephone # 685-0320</small></p> <p>Participated: <input checked="" type="checkbox"/> In Person <input type="checkbox"/> By Telephone</p>	
Other:	<p>Name: _____ <small>Print Signature</small></p> <p>Contact Info: _____ <small>Email Telephone #</small></p> <p>Participated: <input type="checkbox"/> In Person <input type="checkbox"/> By Telephone</p>	

If needed, a separate sheet may be utilized for additional attendees.

The attending parties are signing this sheet only to memorialize their presence at the mediation. If an agreement is reached, the parties will be requested by the mediator to execute the agreement section of this Mediator Statement, which will outline the basic terms agreed upon at mediation. Neither the mediator nor the mediation administrator may be compelled to testify in any subsequent proceedings regarding the contents of an agreement.

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATOR STATEMENT

HOMEOWNER'S NAME: <u>Catherine Rodriguez</u> CO-OWNER'S NAME: _____	BENEFICIARY: <u>MetLife Home Loans</u> TRUSTEE: <u>Quality Loan Services Corp.</u>
ASSESSOR PARCEL NUMBER (APN) <u>125-20-212-037</u> PROPERTY ADDRESS <u>6845 Sweet Pecan Street</u> <u>Las Vegas, NV 89149</u>	TS # <u>NV-10-3513560NF</u> Loan # _____ DoT Doc # <u>4/21/2005</u> Book #: <u>20050427</u> Page # <u>0003843</u> Inst # _____

- **If no mediation is held:** Please ensure the Mediation Summary, Mediation Certification and Mailing Certification (Parts 2, 2A & 4) are completed.
- **If no agreement is reached:** please ensure the Attending Parties, Mediation Summary, Mediator Certification and Mailing Certification (Parts 1, 2, 2A & 4) are completed.
- **If an agreement is reached by the parties:** please ensure all applicable parts of this form are attached.

PART 2: MEDIATION SUMMARY (Please check all that apply)

- ☒ A Foreclosure Mediation was held on: October 6, 2011
- ☐ A Foreclosure Mediation was **not** held (Explain): _____
- ☐ Parties came to an agreement prior to mediation (Explain): _____

The Mediator files the following report of the mediation (please check all that apply):

- ☐ The parties resolved this matter. If this box is marked, please complete **PART 3: MEDIATION AGREEMENT**.
- ☒ The parties participated but were unable to agree to a loan modification or make other arrangements.
- ☐ Lender (Beneficiary or designated representative) failed to attend the mediation.
- ☒ Lender (Beneficiary or designated representative) failed to bring to the mediation each document required. Please specify which document(s) were not provided: Lender failed to produce certified copies of Note, Deed of Trust, Assignments and Transfers. (Lender indicated original documents have not been located after recent transfer to new servicer-Nationstar). Lender also failed to provide NRS 645.2515 compliant BPO (initial BPO was dated "9/30/2006" and second BPO dated 9/2/2011 carried no signature).
- ☐ Lender (Beneficiary or designated representative) did not have the authority to fully negotiate and modify the loan.
- ☐ Lender (Beneficiary or designated representative) failed to participate in good faith. Please explain: _____
- ☐ Homeowner (grantor or person who holds the title of record) failed to attend the mediation.
- ☐ Homeowner (grantor or person who holds the title of record) failed to bring to the mediation each document required. Please specify which document(s) were not provided: _____
- ☐ Homeowner (grantor or person who holds the title of record) failed to participate in good faith. Please explain: _____
- ☒ Other: Homeowner attorney stated this was FMP third mediation with Lender unable to produce proper loan documents each time.

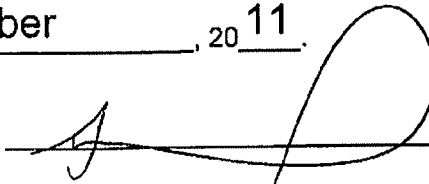
STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATOR STATEMENT

PART 2A: MEDIATOR CERTIFICATION

The Mediator hereby certifies, under the penalty of perjury, that the foregoing is true and accurate of the proceedings as required by NRS Chapter 107.

DATED this 11th day of October, 2011.

Mediator Signature: _____



Print Name: _____

Steve E. Wenzel, Esq.

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATOR STATEMENT

All documents and discussions presented during the mediation are confidential except in an action for Judicial Review as set forth in the applicable State of Nevada Foreclosure Mediation Rules and NRS Chapter 107.

PART 3: MEDIATION AGREEMENT (Sections A-G)

THE PARTIES AGREED TO THE FOLLOWING (Please Check all that apply):

A. RETAIN THE HOME

- ☐ 1. Reinstatement
- ☐ 2. Repayment Plan
- ☐ 3. Extension
- ☐ 4. ARM to Fixed Rate
- ☐ 5. Amortization Extended
- ☐ 6. Interest Rate Reduction
- ☐ 7. Principal Forbearance
- ☐ 8. Other Forbearance
- ☐ 9. Principal Reduction
- ☐ 10. Refinance
- ☐ 11. Temporary Modification
Expiration Date : _____
- ☐ 12. Permanent Modification
- ☐ 13. Short payoff: \$ _____
When: _____
Conditions: _____
- ☐ 14. Gov't. Program: _____
- ☐ 15. Other: _____

B. RELINQUISH THE HOME

- ☐ 1. Deed in Lieu of Foreclosure
- ☐ 2. Short Sale
- ☐ 3. Voluntary Surrender
- ☐ 4. Cash for Keys \$ _____
When: _____
Conditions: _____
- ☐ 5. Gov't. Program: _____
- ☐ 6. Other: _____

C. DETAILS

- ☐ Lender/Beneficiary will report the loan as paid in current status effective as of: _____
- ☐ Treatment of arrearages: _____
- ☐ Waiver of Fees and Penalties: _____
- ☐ Other treatment of fees/costs (list and outline details): _____
- ☐ Rescind Notice of Default: _____

D. THE FOLLOWING TERMS REMAIN UNCHANGED (Please check all that apply.)

- ☐ The balance due as shown on beneficiary's books, which is _____
- ☐ The interest rate stated in the original Note, which is _____
- ☐ The loan term stated in the original Note, which is _____

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATOR STATEMENT

E. LOAN MODIFICATION (Please complete all that apply)

	Temporary Modification	Permanent Modification												
1. Loan Balance	Total loan balance shall be modified to \$ _____ Effective date: _____	Total loan balance shall be modified to: \$ _____ Effective date: _____												
2. Interest Rate	Period 1 a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months Period 2 a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months *	Period 1 a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months Period 2 a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months*												
3. Loan Term	There are _____ monthly payments remaining as of _____ Begin Date: _____ End Date: _____	There are _____ monthly payments remaining as of _____ Begin Date: _____ End Date: _____												
4. Payment	Resulting initial payment: \$ _____ Principal & Interest: \$ _____ Escrow: \$ _____ Total: _____	Resulting initial payment: \$ _____ Principal & Interest: \$ _____ Escrow: \$ _____ Total: _____												
5. Fees & Costs	<div style="border: 1px solid black; padding: 5px;"> The aforementioned loan balance includes fees & costs for temporary and permanent modifications as follows: </div> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center;">Incurred</th> <th style="width: 50%; text-align: center;">Waived</th> </tr> </thead> <tbody> <tr> <td>Interest \$ _____</td> <td>Interest \$ _____</td> </tr> <tr> <td>Costs \$ _____</td> <td>Costs \$ _____</td> </tr> <tr> <td>Fees \$ _____</td> <td>Fees \$ _____</td> </tr> <tr> <td>Other \$ _____</td> <td>Other \$ _____</td> </tr> <tr> <td>TOTAL: \$ _____</td> <td>TOTAL: \$ _____</td> </tr> </tbody> </table>		Incurred	Waived	Interest \$ _____	Interest \$ _____	Costs \$ _____	Costs \$ _____	Fees \$ _____	Fees \$ _____	Other \$ _____	Other \$ _____	TOTAL: \$ _____	TOTAL: \$ _____
Incurred	Waived													
Interest \$ _____	Interest \$ _____													
Costs \$ _____	Costs \$ _____													
Fees \$ _____	Fees \$ _____													
Other \$ _____	Other \$ _____													
TOTAL: \$ _____	TOTAL: \$ _____													

Other: _____

Comments: _____

*If additional Periods agreed upon by the parties, please indicate on a separate sheet and attached hereto.

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATOR STATEMENT

F. DEFICIENCY & TAX LIABILITY

Please be advised that the mediator is not permitted to provide any legal or tax advice to the parties on any issues related to the mediation or the terms of any potential settlement agreement. It is suggested that the parties contact a licensed professional of their choice for legal or tax advice related to this mediation and any potential settlement.

1. Deficiency:

- ☐ The settlement agreement will include a provision waiving any deficiency resulting from recovery by the Trustee/Beneficiary of less than the full amount the Trustee/Beneficiary claims now to be due on the loan.

☐ Comments: _____

2. Other deficiency and/or tax liability terms not mentioned above:

- ☐ Additional terms, details are as follows: _____

3. Is this agreement contingent upon the signing of other documents and/or forms (i.e. updated financial information; tax returns, divorce decree, etc.)?

- ☐ If yes, please provide a detailed list and/or attach: _____

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATOR STATEMENT

G. SIGNATURE OF PARTIES

IN WITNESS WHEREOF, each of the participants in this mediation has executed this mediation agreement on the date set forth. The parties agree to separately prepare and execute the documents necessary to accomplish the terms of this agreement.

Date _____	_____
	Homeowner (Grantor)
Date _____	_____
	Homeowner (Grantor)
Date _____	_____
	Homeowner's Attorney/Representative
Date _____	_____
	Lender (Beneficiary)
Date _____	_____
	Lender's Attorney/Representative
Date _____	_____
	Other (Please specify relationship to Lender or Homeowner)
Date _____	_____
	Other (Please specify relationship to Lender or Homeowner)

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATOR STATEMENT

PART 4: MAILING CERTIFICATION

I hereby certify that I served the foregoing Mediator Statement on the 11th day of October, 2011, by placing true and correct copies thereof in the U.S. mail, postage prepaid, addressed to the following:

Homeowner (Grantor):

Catherine Rodriguez
6845 Sweet Pecan Street
Las Vegas, NV 89149

Homeowner's Attorney/Representative:

Tara D. Newberry
Connaghan Newberry
7854 W. Sahara Avenue
Las Vegas, NV 89117

Trustee:

Quality Loan Service Corp.
2141 5th Avenue
San Diego, CA 92101

Trustee's Attorney/ Representative:

Lender (Beneficiary):

Lender's Attorney/Representative:

Lindsey Bennet Morales, Esq.
McCarthy and Hollhus
9510 West Sahara Avenue, Suite 110
Las Vegas, NV 89117

Other:

Other:

Signature:

Print Name:

Title:

Steve E. Wenzel

Mediator

COPY

378-2838

Kristin A. Schuler-Hintz, Esq., SBN 7171
Stephanie Richter, Esq., SBN 12075
McCarthy & Holthus, LLP
9510 W. Sahara Ave., Suite 110
Las Vegas, NV 89117
Phone (702) 685-0329
Fax (866) 339-5691
Email NVJud@McCarthyHolthus.com

Attorneys for Plaintiff,

THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS TRUSTEE
FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE PASS-
THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON HOME
LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER SERVICER, IN
ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING AND
SERVICING AGREEMENT

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE BANK OF NEW YORK MELLON) Case No. A-12-661179-C
F/K/A THE BANK OF NEW YORK AS) Dept. No. XXXI
TRUSTEE FOR THE HOLDERS OF THE) **SUMMONS - CIVIL**
CERTIFICATES, FIRST HORIZON) **ARBITRATION EXCEPTION CLAIMED:**
MORTGAGE PASS-THROUGH) **TITLE TO REAL ESTATE**
CERTIFICATES SERIES FHAMS 2005-AA5,
BY FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK
NATIONAL MASTER SERVICER, IN ITS
CAPACITY AS AGENT FOR THE TRUSTEE
UNDER THE POOLING AND SERVICING
AGREEMENT,

Plaintiff

v.

CATHERINE RODRIGUEZ; REPUBLIC
SERVICES; CITY OF LAS VEGAS; DOES I-
X; and ROES 1 -10 inclusive,

Defendants.

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ
THE INFORMATION BELOW.**

TO THE DEFENDANTS: a Civil Complaint has been filed by the Plaintiff against you
for the relief set for in this Complaint.

MCCARTHY & HOLTHUS, LLP
ATTORNEYS AT LAW
9510 WEST SAHARA AVENUE, SUITE 110
LAS VEGAS, NV 89117
TELEPHONE (702) 685-0329 Facsimile (866) 339-5691
Email NVJud@McCarthyHolthus.com

MCCARTHY & HOLTHUS, LLP
ATTORNEYS AT LAW
9310 WEST SAHARA AVENUE, SUITE 110
LAS VEGAS, NV 89117
TELEPHONE (702) 885-1123/FAX (702) 333-5561
Email: mholthus@mccarthyholthus.com

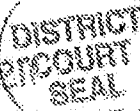
1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must to the following:
 - (a) File with the Clerk of This Court, whose address is shown below, a formal written response to the Complaint in accordance with the Rules of the Court, with the appropriate filing fee.
 - (b) Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiff and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested by the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Respectfully submitted,
MCCARTHY & HOLTHUS, LLP

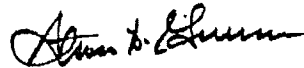
By: Stephanie Richter
Kristin A. Schuler-Hintz (NSB# 7171)
Stephanie Richter (NSB# 12075)
9510 West Sahara Ave. Suite 110
Las Vegas, NV 89117

CLERK OF COURT

By: Kristelle M. Gonder
Deputy Clerk



Date: MAY 04 2012


CLERK OF THE COURT

Kristin A. Schuler-Hintz, Esq., SBN 7171
Stephanie Richter, Esq., SBN 12075
McCarthy & Holthus, LLP
9510 W. Sahara Ave., Suite 110
Las Vegas, NV 89117
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Fax (866) 339-5691
Email NVJud@McCarthyHolthus.com

Attorneys for Plaintiff,
THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS TRUSTEE
FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE PASS-
THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON HOME
LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER SERVICER, IN
ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING AND
SERVICING AGREEMENT

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK AS
TRUSTEE FOR THE HOLDERS OF THE
CERTIFICATES, FIRST HORIZON
MORTGAGE PASS-THROUGH
CERTIFICATES SERIES FHAMS 2005-AA5,
BY FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK
NATIONAL MASTER SERVICER, IN ITS
CAPACITY AS AGENT FOR THE TRUSTEE
UNDER THE POOLING AND SERVICING
AGREEMENT

Plaintiff

v.

CATHERINE RODRIGUEZ; REPUBLIC
SERVICES; CITY OF LAS VEGAS; DOES
I-X; and ROES 1 -10 inclusive,

Defendants.

Case No. A - 12 - 661179 - C

Dept. No. XXXI

VERIFIED COMPLAINT FOR JUDICIAL
FORECLOSURE AND DEFICIENCY
JUDGMENT OF DEED OF TRUST

ARBITRATION EXCEPTION CLAIMED:
TITLE TO REAL ESTATE

COMES NOW Plaintiff, THE BANK OF NEW YORK MELLON F/K/A THE BANK OF
NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST
HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY
FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL

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NV-11-478461-JUD

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LAS VEGAS, NV 89117
TELEPHONE (702) 885-9329/Facsimile (702) 339-5891
Email: NVJud@McCarthyHolthuis.com

1 MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
2 POOLING AND SERVICING AGREEMENT, filing this civil action against Defendants for (1)
3 Judicial Foreclosure and (2) Deficiency Judgment on Deed of Trust.

4 INTRODUCTION

5 1. This action is a judicial foreclosure with money demand within the jurisdictional limits
6 of this Court and this venue is appropriate because the property involved is within this Court's
7 jurisdiction. Plaintiff is authorized to bring this action in the state of Nevada by NRS 40.430.

8 2. The real property on which Plaintiff seeks foreclosure consists of a single-family
9 residence commonly known as 6845 Sweet Pecan Street, Las Vegas, Nevada 89149 and more
10 specifically described in Exhibit "1" attached hereto and incorporation herein by this reference.

11 3. Plaintiff, THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW
12 YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON
13 MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST
14 HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
15 MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
16 POOLING AND SERVICING AGREEMENT, is an Entity authorized to do business within the
17 State of Nevada. Nationstar Mortgage LLC is the servicer of the loan.

18 4. Defendant, Catherine Rodriguez, is an individual believed to be residing in Clark
19 County, Nevada who executed the subject Note and Deed of Trust relative to real property located
20 in Clark County, Nevada of which this Complaint arises, or claims an interest in the property, or
21 both.

22 5. Defendant, Republic Services, is an entity that may claim an interest in the subject
23 property pursuant to a recorded lien.

24 6. Defendant, City of Las Vegas, is an entity that may claim an interest in the subject
25 property pursuant to a recorded lien.

26 7. Plaintiff does not know the true names, capacities or bases of liability of Defendants
27 sued as Does I-X and Roes 1-10 inclusive. Each fictitiously named defendant is in some way
28 liable to Plaintiff or claims some right, title or interest in the subject property that is subsequent to

NV-11-478461-JUD

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Email NVJud@McCarthyHolthus.com

1 and subject to the interest of Plaintiff, or both. Plaintiff will amend this Complaint to reflect the
2 true names of said Defendants when the same have been ascertained.

3 FACTUAL BACKGROUND

4 8. Plaintiff incorporates and re-alleges the allegations of paragraphs 1 through 7 above, as
5 if fully set forth herein.

6 9. The real property which is the subject matter of this action is commonly known as 6845
7 Sweet Pecan Street, Las Vegas, Nevada 89149 (hereinafter the "Property"). The Parcel ID
8 Number of the Property is 125-20-212-037. The subject real property is more particularly
9 described in Exhibit "1", attached hereto and incorporated herein by this reference.

10 10. The Property that is the subject matter of this action is in Clark County, Nevada.

11 11. On or about 4/21/2005, Catherine Rodriguez signed a Note in the principal amount of
12 \$269,000.00, which was secured by a Deed of Trust recorded on 4/27/2005 as document number
13 20050427-0003843 in the records of Clark County, Nevada. A copy of the Note (made at or near
14 the time of loan origination), Deed of Trust, and Assignment are attached hereto collectively as
15 Exhibit "1". The Note and Deed of Trust were subsequently assigned to THE BANK OF NEW
16 YORK MELLON F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR THE HOLDERS OF
17 THE CERTIFICATES, FIRST HORIZON MORTGAGE PASS-THROUGH CERTIFICATES
18 SERIES FHAMS 2005-AA5, BY FIRST HORIZON HOME LOANS, A DIVISION OF FIRST
19 TENNESSEE BANK NATIONAL MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR
20 THE TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT.

21 FIRST CAUSE OF ACTION

22 (Judicial Foreclosure)

23 12. Plaintiff incorporates and re-alleges the allegations of paragraphs 1 through 11 above,
24 as if fully set forth herein.

25 13. Counsel is informed and believes and on that basis alleges that Defendant, Catherine
26 Rodriguez, has defaulted under the terms of the Note and Deed of Trust by having failed and
27 refused to make monthly payments of \$1,547.17 (P&I) commencing with the payment due on
28

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1 12/1/2009 and in subsequent months. Counsel is informed and believes that the delinquent
2 monthly installments total \$46,415.10 exclusive of associated fees, costs and advances.

3 14. The Deed of Trust provides that, if the Trustor defaults in paying any indebtedness
4 secured by the Deed of Trust, or in the performance of any agreement in the subject agreement or
5 Deed of Trust, the entire principal and interest secured by the Deed of Trust will, upon notice to
6 the Borrower, become immediately due and payable.

7 15. Pursuant to the terms of the Note and Deed of Trust and the acceleration letter attached
8 hereto as Exhibit "2", THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW
9 YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON
10 MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST
11 HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
12 MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
13 POOLING AND SERVICING AGREEMENT, has declared all sums immediately due and
14 payable and accelerated all sums due.

15 16. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS
16 TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE
17 PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON
18 HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
19 SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING
20 AND SERVICING AGREEMENT is entitled to foreclose on its interest in the property.

21 17. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS
22 TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE
23 PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON
24 HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
25 SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING
26 AND SERVICING AGREEMENT is entitled to an award of its attorney's fees and costs pursuant
27 to the terms of the Note and Deed of Trust, including post-judgment attorney's fees and costs.
28

NV-11-478461-JUD

1 18. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS
2 TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE
3 PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON
4 HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
5 SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING
6 AND SERVICING AGREEMENT's lien is prior and paramount to the interest of any Defendants
7 hereto, and all such subordinate interests should be eliminated by this foreclosure action. THE
8 BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR
9 THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE PASS-
10 THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON HOME
11 LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER SERVICER, IN
12 ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING AND
13 SERVICING AGREEMENT is entitled to judgment foreclosing the interests of any Defendant
14 hereto in the Property and forever barring that interest, and that of any successors, assigns or
15 heirs.

16 19. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS
17 TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE
18 PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON
19 HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
20 SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING
21 AND SERVICING AGREEMENT is entitled to the appointment of a receiver to protect the
22 Property from neglect and waste during the pendency of this action and to collect any rents to
23 which any Defendants would be entitled.

24 20. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS
25 TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE
26 PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON
27 HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
28 SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING

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TELEPHONE (702) 886-0329/Facsimile (888) 339-6691
Email NVJud@McCarthyHolthus.com

1 AND SERVICING AGREEMENT is entitled to decree or judgment of the court directing a sale
2 of the encumbered property and application of the proceeds of sale as provided in NRS 40.462.

3 21. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS
4 TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE
5 PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON
6 HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
7 SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING
8 AND SERVICING AGREEMENT is entitled to a judgment permitting it to bid all or part of its
9 judgment at sale.

10 SECOND CAUSE OF ACTION

11 (Deficiency Judgment on Deed of Trust)

12 22. Plaintiff incorporates and re-alleges the allegations of paragraphs 1 through 21 above,
13 as if fully set forth herein.

14 23. If a Borrower has obtained a bankruptcy discharge then no deficiency will be sought.
15 If there has been no discharge and a deficiency remains after the application of proceeds from the
16 sale, plaintiff is entitled to seek a deficiency judgment against the Borrower(s), pursuant to NRS
17 40.455.

18 A. Against Defendants, Catherine Rodriguez, for the minimum sum of \$269,000.00,
19 plus all post-filing advances, costs and attorney's fees, and interest from 12/1/2009 until paid in
20 full, plus post-judgment interest on advances, costs and attorney's fees from the date each was due
21 until paid in full, for its costs incurred herein, including post-judgment costs, for its attorney's
22 fees, including post-judgment attorney's fees, pursuant to the terms of the Note and Deed of
23 Trust, and for such other and further relief as the Court deems just and proper.

24 B. Against Defendants Catherine Rodriguez, Republic Services, City of Las Vegas
25 Does I-X inclusive and Roes 1-10 inclusive, individually and collectively, jointly and severally as
26 follows:

27 (1) That the sums prayed for and alleged to be secured by the Property are
28 secured and that the Deed of Trust is a valid lien on the Property described in the Complaint and

NV-11-478461-JUD

MCCARTHY & HOLTHUS, LLP
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LAS VEGAS, NV 89117
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1 on the whole thereof, and on the rents, issues, and profits of the Property, and all buildings and
2 improvement thereon and fixtures attached thereto as used in connection with the Property;

3 (2) That the Deed of Trust be declared superior to any right, title, interest, lien,
4 equity or estate of the Defendants;

5 (3) That it be adjudged and decreed that said Deed of Trust be foreclosed and a
6 decree or judgment of the court directing a sale of the encumbered property and application of the
7 proceeds of sale as provided in NRS 40.462 in satisfaction of the judgment herein;

8 (4) That the Defendants, and all persons claiming by, through or under them, or
9 any of them, be foreclosed of and forever barred from any and all right, title, claim, interest, or
10 lien in or to the Property or with respect thereto except such rights of redemption as they may
11 have by law;

12 (5) That THE BANK OF NEW YORK MELLON F/K/A THE BANK OF
13 NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST
14 HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY
15 FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
16 MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
17 POOLING AND SERVICING AGREEMENT is granted any further relief in satisfaction of the
18 judgment as may be permitted under Nevada law;

19 (6) That THE BANK OF NEW YORK MELLON F/K/A THE BANK OF
20 NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST
21 HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY
22 FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
23 MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
24 POOLING AND SERVICING AGREEMENT is entitled at its discretion to the appointment of a
25 receiver to protect the Property from neglect and waste during the pendency of this action and to
26 collect any rents to which any Defendants would be entitled;

27 (7) That if the proceeds of the sale do not satisfy Plaintiffs' judgment in full,
28 the Plaintiff may amend its complaint to seek a deficiency judgment against Defendants,

NV-11-478461-JUD

MCCARTHY & HOLTHUS, LLP
ATTORNEYS AT LAW
9410 WEST SAHARA AVENUE, SUITE 110
LAS VEGAS, NV 89117
TELEPHONE (702) 885-0329/Facsimile 866) 395-5891
Email NVJud@McCarthyHolthus.com

1 Catherine Rodriguez for the deficiency; No deficiency judgment shall be sought against
2 Defendants, Republic Services, or City of Las Vegas.

3 (8) For its costs incurred herein, including post-judgment costs;

4 (9) For its attorney's fees, including post-judgment fees, pursuant to the Note
5 and Deed of Trust; and

6 (10) For any other further relief as this court deems just and proper.

7 Dated: May 3rd, 2012

Respectfully submitted,
MCCARTHY & HOLTHUS, LLP

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9
10 By: Stephanie Richter
Stephanie Richter (NSB# 12075)
Kristin A. Schuler-Hintz (NSB# 7171).

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NV-11-478461-JUD

VERIFICATION

I, Stephanie Richter, Esq., am one of the attorneys for Petitioner, THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT. Such party is absent from the county aforesaid where such attorneys have their office and I make the verification for and on behalf of that party for that reason. I have read the Complaint for Judicial Foreclosure and know its contents. I am informed, believe, and on that ground allege the matters stated are true.

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

Date: May 3, 2012

By: Stephanie Richter
Stephanie Richter (NSB #12075)
Kristin A. Schuler-Hintz (NSB# 7171)
9510 West Sahara, Suite 110
Las Vegas, NV 89117

MCCARTHY & HOLTHUS, LLP
ATTORNEYS AT LAW
9510 WEST SAHARA AVENUE, SUITE 110
LAS VEGAS, NV 89117
TELEPHONE (702) 885-0328/Facsimile (866) 330-5693
Email NVJud@McCarthyHolthus.com

NV-11-478461-JUD

EXHIBIT "1"

REDACTED

ADJUSTABLE RATE NOTE

(LIBOR Six-Month Index (As Published In The Wall Street Journal) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

April 21st, 2005

HENDERSON

NEVADA

[Date]

[City]

[State]

6845 SWEET PECAN STREET, LAS VEGAS, Nevada 89149

[Property Address]

I hereby certify that this is a true and exact copy of the original. Old Republic Title

by: 

269,000.00

(this amount is called

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ "Principal", plus interest, to the order of Lender. Lender is FIRST HORIZON HOME LOAN CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.625%. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

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

I will make my monthly payments on the first day of each month beginning on June 1st, 2005

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on May 1st, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at PO BOX 809 MEMPHIS, TN 38101

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

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$

1,260.94

. This amount

may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid Principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

MULTISTATE ADJUSTABLE RATE NOTE - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) -
Single Family - Fannie Mae UNIFORM INSTRUMENT

838N (0210)

Form 3520 1/01

WMP MORTGAGE FORMS - (800)521-7281

Initials: 

Page 1 of 4



REDACTED

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The interest rate I will pay may change on the first day of May, 2010, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding two and one-quarter percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.625 % or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than two & 00/100 percentage point(s) (2.00 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 11.625 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

REDACTED

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be \$.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

REDACTED

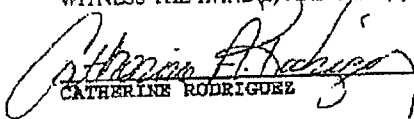
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales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

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

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

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

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


CATHERINE RODRIGUEZ

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

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-Borrower

(Seal)
-Borrower

[Sign Original Only]

REDACTED

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE NOTE

THIS ADDENDUM is made this 21st day of April, 2005, and is incorporated into and intended to form a part of the Adjustable Rate Note (the "Note") dated the same date as this Addendum executed by the undersigned and payable to FIRST HORIZON HOME LOAN CORPORATION (the "Lender").

THIS ADDENDUM supercedes Section 3(A), 3(B), 4(C) and 7(A) of the Note. None of the other provisions of the Note are changed by this Addendum.

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest by making payments every month for the first 120 payments (the "Interest Only Period") in the amount sufficient to pay interest as it accrues. I will pay principal and interest by making payments every month thereafter for the next 240 payments in an amount sufficient to fully amortize the outstanding principal balance of the Note at the end of the Interest Only Period over the remaining term of the Note in equal monthly payments.

I will make my monthly payments on the first day of each month beginning on June 1st, 2005. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before principal. If, on May 1st, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my payments at PO BOX 809, MEMPHIS, TN 38101, or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,260.94. This payment amount is based on the original principal balance of the Note. This payment amount may change.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding percentage points (2.250 %) to the Current Index. TWO AND ONE-QUARTER
The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125 %). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

During this Interest Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest on the lower principal balance. At the end of the Interest Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest Only Period, my payment amount will not be reduced due to voluntary prepayments.


REDACTED

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

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

 04-22-05
CATHERINE RODRIGUEZ Date

Date

Date

Date

Date

Date

Date

Date

20050427-0003843

Fee: \$36.00
N/C Fee: \$0.00

04/27/2005 14:01:32
T20050077114

Requestor:
OLD REPUBLIC TITLE COMPANY OF NEVADA

Frances Deane ARO
Clark County Recorder Pgs: 23

Assessor's Parcel Number:
County: 125-20-212-037 City:
Return To:
FHHLC - POST CLOSING MAIL ROOM

1555 W. WALNUT HILL LN. #200 MC 6712
IRVING, TX 75038
Prepared By: FIRST HORIZON HOME LOAN CORPORATION

7375 PRAIRIE FALCON DR STR 120
LAS VEGAS, NV 89128
Recording Requested By:
FIRST HORIZON HOME LOAN CORPORATION
4000 HORIZON WAY
IRVING, TX 75063

51160035826M (Space Above This Line For Recording Data)

REDACTED

DEED OF TRUST
MTN

100085200533345205

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 21st, 2005 together with all Riders to this document.

(B) "Borrower" is
CATHERINE RODRIGUEZ, An Unmarried Woman

Borrower is the trustor under this Security Instrument.

(C) "Lender" is FIRST HORIZON HOME LOAN CORPORATION

Lender is a CORPORATION
organized and existing under the laws of THE STATE OF KANSAS

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

Form 3029 1/01

VMP-6A(NV) (0307)

Page 1 of 15

VMP Mortgage Solutions (800)521-7291

Initials: CAR



Lender's address is 4000 Horizon Way, Irving, Texas 75063

(D) "Trustee" is OLD REPUBLIC TITLE

140 N. STEPHANIE ST., HENDERSON, NV 89074

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

(F) "Note" means the promissory note signed by Borrower and dated April 21st, 2005
The Note states that Borrower owes Lender

TWO HUNDRED SIXTY NINE THOUSAND & 00/100 Dollars
(U.S. \$ 269,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MAY 1, 2035

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

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

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

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

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time

REDACTED

6A(NV) (0307)

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Initials: CAR

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time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of CLARK [Name of Recording Jurisdiction]:

All that tract or parcel of land as shown on Schedule "A" attached hereto which is incorporated herein and made a part hereof.

Parcel ID Number: County: 125-20-212-037 City: which currently has the address of
6945 SWEET PECAN STREET [Street]
LAS VEGAS [City], Nevada 89149 [Zip Code]

("Property Address"):

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

REDACTED

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Initials: CAR

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of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

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

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

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

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

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds

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for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10

days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position

in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the

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Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

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

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

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

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

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

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

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

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

12. Borrower Not Released; Forbearance By Lender Not a Waiver, Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender

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

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

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

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

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

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

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations

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contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

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

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

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

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

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

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the

Initials: CAR

address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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

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

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

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

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

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

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

REDACTED

UMP-6A(NY) (0307)

Page 13 of 15

Initials *DAE*

Form 3029 1/01

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

Catherine Rodriguez (Seal)
-Borrower

-Borrower (Seal)
-Borrower

-Borrower (Seal)
-Borrower

-Borrower (Seal)
-Borrower

-Borrower (Seal)
-Borrower

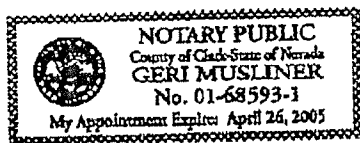
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VINE -6A(NV) (0307)

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Form 3029 1/01

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on April 22, 2005 by
CATHERINE RODRIGUEZ




Geri Musliner

Mail Tax Statements To: TOTAL MORTGAGE SOLUTIONS, LP
1555 W. WALNUT HILL LANE, SUITE 200A
IRVING, TX 75038

REDACTED

6A(NV) (0307)

Page 15 of 15

Initials 

Form 3029 1/01

Order No. : 5116003582-GM

EXHIBIT "A"

The land referred to is situated in the State of Nevada, County of Clark, City of Las Vegas, and is described as follows:

Lot 37 in Block 3 of Concordia @ Deer Springs Unit 3, as shown by map thereof on file in Book 112 of Plats, Page 28, in the Office of the County Recorder, Clark County, Nevada.

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 21st day of April, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

FIRST HORIZON HOME LOAN CORPORATION

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

6845 SWEET PECAN STREET, LAS VEGAS, Nevada 89149

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in PER C&E'S

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

CONCORDIA @ DEER SPRINGS

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of Incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

REDACTED

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3150 1/01

Page 1 of 3

Initials: *CRP*

VAMP-7R (0411)

VMP Mortgage Solutions, Inc. (800)521-7291



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

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

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

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

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

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

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

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

REDACTED

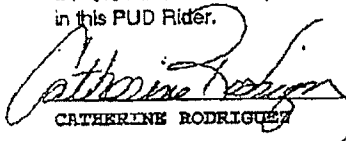
7R (0411)

Page 2 of 3

Initials: CAP

Form 3150 1/01

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



CATHERINE RODRIGUEZ (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

REDACTED
VMP-7R (0411)

Page 3 of 3

Form 3150 1/01

ADJUSTABLE RATE RIDER

REDACTED

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 21st day of April, 2005 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to FIRST HORIZON HOME LOAN CORPORATION

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

6845 SWEET PECAN STREET
LAS VEGAS, NV 89149

[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 5.625 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of May, 2010 and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of

MULTISTATE ADJUSTABLE RATE RIDER - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) - Single Family - Fannie Mae Uniform Instrument

VMP-838R (0402) Form 3138 1/01

Page 1 of 3

Initials: JAP

VMP Mortgage Solutions, Inc.

(800)521-7291



this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.625 % or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than

two $\frac{00}{100}$ percentage points
(2.00 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 11.625 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

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

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

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

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

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

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

REDACTED

UMP-838H (04/02)

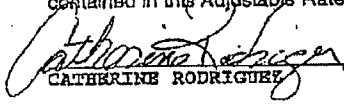
Page 2 of 3

Initials: CAR

Form 3138 1/01

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

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

 (Seal) _____ (Seal)
CATHERINE RODRIGUEZ -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

REDACTED
MP-838R (0402)

Page 3 of 3

Form 3138 1/01

**INTEREST ONLY ADDENDUM
TO ADJUSTABLE RATE RIDER**

THIS ADDENDUM is made this 21st day of April, 2005, and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date as this Addendum executed by the undersigned and payable to FIRST HORIZON HOME LOAN CORPORATION (the "Lender").

THIS ADDENDUM supercedes Section 4(C) of the Rider. None of the other provisions of the Rider are changed by this Addendum.


4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

During this Interest Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest on the lower principal balance. At the end of the Interest Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest Only Period, my payment amount will not be reduced due to voluntary prepayments.

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

 0422-05

CATHERINE RODRIGUEZ Date

Date

Date

Date

Date

Date

Date

Date

REDACTED

Interest Only Addendum to ARM Rider

Page 1 of 1

FH6D03U 9/04

APN: 125-20-212-037

Recording requested by:

When recorded mail to:

MetLife Home Loans a division of MetLife
Bank NA
4000 Horizon Way
Foreclosure Dept. #6205
Irving, TX 75063

Inst #: 201006160002631

Fees: \$15.00

N/C Fee: \$25.00

06/16/2010 12:24:11 PM

Receipt #: 390718

Requestor:

UTLS DEFAULT SERVICES

Recorded By: DXI Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Space above this line for recorders use

APN: 125-20-212-037

TS # NV-10-351356-NF

Order # 30240344

Investor No.

REDACTED

Assignment of Deed of Trust

For value received, the undersigned corporation hereby grants, assigns, and transfers to

The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the holders of the Certificates, First Horizon Mortgage Pass-Through Certificates Series FHAMS 2005-AA5, by First Horizon Home Loans, a division of First Tennessee Bank National Association, Master Servicer, in its capacity as agent for the Trustee under the Pooling and Servicing Agreement

All beneficial interest under that certain Deed of Trust dated 4/21/2005 executed by CATHERINE RODRIGUEZ, AN UNMARRIED WOMAN, as Trustor(s) to OLD REPUBLIC TITLE, as Trustee and recorded as Instrument No. 20050427-0003843, on 4/27/2005, in Book XXX, Page XXX of Official Records, in the office of the County Recorder of CLARK County, NV together with the Promissory Note secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of Trust.

Dated: 5-24-2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC. AS NOMINEE FOR FIRST HORIZON HOME LOAN
CORPORATION


By: _____

Wanda Collier
Assistant Secretary

State of Texas

County of Dallas

On 5-24-10 before me, Sherian Hopkins the
undersigned Notary Public, personally appeared Wanda Collier personally known
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature _____

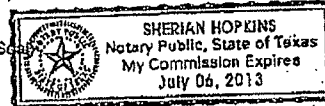


EXHIBIT "2"



03/20/2012

Sent Via Certified Mail
7196 9006 9295 8655 0711

CATHERINE RODRIGUEZ
6845 SWEET PECAN ST
LAS VEGAS, NV 89149-3040

Loan Number:
Property Address: 6845 SWEET PECAN STREET
LAS VEGAS, NV 89149

Dear CATHERINE RODRIGUEZ :

You are hereby provided formal notice by Nationstar Mortgage, LLC, the Servicer of the above-referenced loan, on behalf of First Tennessee Bank National Association, the Creditor to whom the debt is owed, that you are in default under the terms and conditions of the Note and Security Instrument (i.e. Deed of Trust, Mortgage, etc.), for failure to pay the required installments when due.

This letter serves as further notice that Nationstar Mortgage, LLC intends to enforce the provisions of the Note and Security Instrument. You must pay the full amount of the default on this loan by the thirty-fifth (35th) day from the date of this letter which is 04/24/2012 (or if said date falls on a Saturday, Sunday, or legal holiday, then on the first business day thereafter). If you do not pay the full amount of the default, we shall accelerate the entire sum of both principal and interest due and payable, and invoke any remedies provided for in the Note and Security Instrument, including but not limited to the foreclosure sale of the property. If you received a bankruptcy discharge which included this debt, this notice is not intended and does not constitute an attempt to collect a debt against you personally; notice provisions may be contained within your mortgage/deed of trust which notice may be required prior to foreclosure.

You are hereby informed that you have the right to "cure" or reinstate the loan after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense you may have to acceleration and sale.

As of 03/20/2012 the amount of the debt that we are seeking to collect is \$36,242.41, which includes the sum of payments that have come due on and after the date of default 12/01/2009, any late charges, periodic adjustments to the payment amount (if applicable) and expenses of collection. Because of interest, late charges, and other charges or credits that may vary from day to day, or be assessed during the processing of this letter, the amount due on the day that you pay may be greater. Please contact Nationstar Mortgage, LLC at (888) 480-2432 on the day that you intend to pay for the full amount owed on your account. This letter is in no way intended as a payoff statement for your mortgage, it merely states an amount necessary to cure the current delinquency.

Please note, however, that your right to cure this default as referenced herein does not suspend your payment obligations. Pursuant to the terms of the Note, your 04/01/2012 installment is still due on 04/01/2012 (or if



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Page 1 of 3

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said date(s) falls on a Saturday, Sunday, or legal holiday, then on the first business day thereafter). In addition, any subsequent advances made by the Servicer to protect their lien position must be added to the total amount necessary to cure the default. Please disregard this notice if a payment sufficient to cure the default has already been sent.

A "CURE" or "Reinstatement Right" similar to that described in the prior paragraph may be available in many states. If, at any time, you make a written request to us not to be contacted by phone at your place of employment, we will not do so. If, at any time, you make a written request to us not to contact you, we will not do so, except to send statutorily and/or contractually required legal notice.

Nationstar Mortgage, LLC would like you to be aware that if you are unable to make payments or resume payments within a reasonable period of time due to a reduction in your income resulting from a loss or reduction in your employment, you may be eligible for Homeownership Counseling. To obtain a list of HUD approved counseling agencies, please call (800) 569-4287 or by visiting <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>. You may also contact the Homeownership Preservation Foundation's Hope hotline at (888) 995-HOPE (4673).

Attention Servicemembers and dependents: The Federal Servicemembers' Civil Relief Act ("SCRA") and certain state laws provide important protections for you, including prohibiting foreclosure under most circumstances. If you are currently in the military service, or have been within the last nine (9) months, AND joined after signing the Note and Security Instrument now in default, please notify Nationstar Mortgage, LLC immediately. When contacting Nationstar Mortgage, LLC as to your military service, you must provide positive proof as to your military status. If you do not provide this information, it will be assumed that you are not entitled to protection under the above-mentioned Act.

You are notified that this default and any other legal action that may occur as a result thereof may be reported to one or more local and national credit reporting agencies by Nationstar Mortgage, LLC. Nationstar Mortgage, LLC requests that all payments be made in certified funds, cashier's check or money order(s) payable to and mailed to Nationstar Mortgage, LLC at PO Box 650783, Dallas TX 75265-0783. You may contact Nationstar Mortgage, LLC at (888) 480-2432 should you have servicing questions regarding your account or by mail at 350 Highland Drive, Lewisville, TX 75067-4177. You may have options available to you to help you avoid foreclosure. Please contact Nationstar Mortgage, LLC's Loss Mitigation Department at (888) 480-2432 or by visiting www.nationstarmtg.com for additional information and to see what options are available to you.

The matters discussed herein are of extreme importance. We trust you will give them appropriate attention.

Sincerely,

Viviana Acosta
Assigned Foreclosure Prevention Specialist
Nationstar Mortgage, LLC
(800)766-7751 ext. 6874

350 Highland Drive
Lewisville, TX 75067

Unless you notify us within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, we will assume this debt is valid. If you notify us in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, we will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. Upon your written request within thirty days after the receipt of this notice, we will provide you with the name and address of the original creditor, if the original creditor is different from the current creditor.



CIVIL COVER SHEET A - 12 - 661179 - C

Clark County, Nevada

XXXI

Case No. _____

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): THE BANK OF NEW YORK MELLON
FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE HOLDERS OF
THE CERTIFICATES, FIRST HORIZON MORTGAGE PASS-THROUGH
CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON HOME
LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
POOLING AND SERVICING AGREEMENT

Attorney (name/address/phone):

Kristin A. Schuler-Hintz, Esq., SBN 7171

Stephanie Richter, Esq., SBN 12075

McCarthy & Holthus, LLP

9510 W. Sahara Ave., Suite 110

Las Vegas, NV 89117

Phone (702) 685-0329

Email: NVJud@McCarthyHolthus.com

Defendant(s) (name/address/phone): Catherine Rodriguez /
6845 SWEET PECAN STREET, LAS VEGAS, NV 89149

Republic Services / C/O The Corporation Trust Company of
Nevada / 311 S Division St, Carson City, NV 89703

City of Las Vegas / 200 Lewis Avenue, Las Vegas, NV 89101

Attorney (name/address/phone):

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

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property <input checked="" type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	Negligence <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

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

- ☐ NRS Chapters 78-88
☐ Commodities (NRS 90)
☐ Securities (NRS 90)

- ☐ Investments (NRS 104 Art. 8)
☐ Deceptive Trade Practices (NRS 598)
☐ Trademarks (NRS 600A)

- ☐ Enhanced Case Mgmt/Business
☐ Other Business Court Matters

5/2/12

Stephanie Richter

1 Kristin A. Schuler-Hintz, Esq., SBN 7171
2 McCarthy & Holthus, LLP
3 9510 W. Sahara Ave., Suite 110
4 Las Vegas, NV 89117
5 Phone (702) 685-0329
6 Fax (866) 339-5691
7 Email NVJud@McCarthyHolthus.com

8 Attorneys for Plaintiff,
9 THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS TRUSTEE
10 FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE PASS-
11 THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON HOME
12 LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER SERVICER, IN
13 ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING AND
14 SERVICING AGREEMENT

15 **IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
16 **IN AND FOR THE COUNTY OF CLARK**

17	THE BANK OF NEW YORK MELLON)	Case No. A-12-661179-C
18	F/K/A THE BANK OF NEW YORK AS)	
19	TRUSTEE FOR THE HOLDERS OF THE)	Dept. No. XXXI
20	CERTIFICATES, FIRST HORIZON)	
21	MORTGAGE PASS-THROUGH)	VERIFIED AMENDED COMPLAINT FOR
22	CERTIFICATES SERIES FHAMS 2005-AA5,)	JUDICIAL FORECLOSURE AND
23	BY FIRST HORIZON HOME LOANS, A)	DEFICIENCY JUDGMENT OF DEED OF
24	DIVISION OF FIRST TENNESSEE BANK)	TRUST
25	NATIONAL MASTER SERVICER, IN ITS)	ARBITRATION EXCEPTION CLAIMED:
26	CAPACITY AS AGENT FOR THE TRUSTEE)	TITLE TO REAL ESTATE
27	UNDER THE POOLING AND SERVICING)	
28	AGREEMENT)	
	Plaintiff)	
	v.)	
	CATHERINE RODRIGUEZ; REPUBLIC)	
	SERVICES; DOES I-X; and ROES 1 -10)	
	inclusive,)	
	Defendants.)	

29 COMES NOW Plaintiff, THE BANK OF NEW YORK MELLON F/K/A THE BANK OF
30 NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST
31 HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY
32 FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
33 MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE

1 POOLING AND SERVICING AGREEMENT, filing this civil action against Defendants for (1)
2 Judicial Foreclosure and (2) Deficiency Judgment on Deed of Trust.

3 **INTRODUCTION**

4 1. This action is a judicial foreclosure with money demand within the jurisdictional limits
5 of this Court and this venue is appropriate because the property involved is within this Court's
6 jurisdiction. Plaintiff is authorized to bring this action in the state of Nevada by NRS 40.430.

7 2. The real property on which Plaintiff seeks foreclosure consists of a single-family
8 residence commonly known as 6845 Sweet Pecan Street, Las Vegas, Nevada 89149 and more
9 specifically described in Exhibit "1" attached hereto and incorporation herein by this reference.

10 3. Plaintiff, THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW
11 YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON
12 MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST
13 HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
14 MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
15 POOLING AND SERVICING AGREEMENT, is an Entity authorized to do business within the
16 State of Nevada. Nationstar Mortgage LLC is the servicer of the loan.

17 4. Defendant, Catherine Rodriguez, is an individual believed to be residing in Clark
18 County, Nevada who executed the subject Note and Deed of Trust relative to real property located
19 in Clark County, Nevada of which this Amended Complaint arises, or claims an interest in the
20 property, or both.

21 5. Defendant, Republic Services, is an entity that may claim an interest in the subject
22 property pursuant to recorded liens as instrument numbers 0002691, 0001923, 0003893, and
23 0002984.

24 6. Plaintiff does not know the true names, capacities or bases of liability of Defendants
25 sued as Does I-X and Roes 1-10 inclusive. Each fictitiously named defendant is in some way
26 liable to Plaintiff or claims some right, title or interest in the subject property that is subsequent to
27 and subject to the interest of Plaintiff, or both. Plaintiff will amend this Amended Complaint to
28 reflect the true names of said Defendants when the same have been ascertained.

1 **FACTUAL BACKGROUND**

2 7. Plaintiffs incorporates and re-alleges the allegations of paragraphs 1 through 6 above, as
3 if fully set forth herein.

4 8. The real property which is the subject matter of this action is commonly known as 6845
5 Sweet Pecan Street, Las Vegas, Nevada 89149 (hereinafter the "Property"). The Parcel ID
6 Number of the Property is 125-20-212-037. The subject real property is more particularly
7 described in Exhibit "1", attached hereto and incorporated herein by this reference.

8 9. The Property that is the subject matter of this action is in Clark County, Nevada.

9 10. On or about April 21, 2005, Catherine Rodriguez signed a Note in the principal
10 amount of \$269,000.00, which was secured by a Deed of Trust recorded on 4/27/2005 as
11 document number 20050427-0003843 in the records of Clark County, Nevada. A copy of the
12 Note (made at or near the time of loan origination), Deed of Trust, and Assignment are attached
13 hereto collectively as Exhibit "1". The Note and Deed of Trust were subsequently assigned to
14 THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS TRUSTEE
15 FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE PASS-
16 THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON HOME
17 LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER SERVICER, IN
18 ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING AND
19 SERVICING AGREEMENT.

20 **FIRST CAUSE OF ACTION**

21 **(Judicial Foreclosure)**

22 11. Plaintiff incorporates and re-alleges the allegations of paragraphs 1 through 10 above,
23 as if fully set forth herein.

24 12. Counsel is informed and believes and on that basis alleges that Defendant, Catherine
25 Rodriguez, has defaulted under the terms of the Note and Deed of Trust by having failed and
26 refused to make monthly payments of \$1,547.17 (P&I) commencing with the payment due on
27 December 1, 2009 and in subsequent months. Counsel is informed and believes that the
28 delinquent monthly installments total \$57,245.29 exclusive of associated fees, costs and advances.

1 13. The Deed of Trust provides that, if the Trustor defaults in paying any indebtedness
2 secured by the Deed of Trust, or in the performance of any agreement in the subject agreement or
3 Deed of Trust, the entire principal and interest secured by the Deed of Trust will, upon notice to
4 the Borrower, become immediately due and payable.

5 14. Pursuant to the terms of the Note and Deed of Trust and the acceleration letter attached
6 hereto as Exhibit "2", THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW
7 YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON
8 MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON
9 HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
10 MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
11 POOLING AND SERVICING AGREEMENT, has declared all sums immediately due and
12 payable and accelerated all sums due.

13 15. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS
14 TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE
15 PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON
16 HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
17 SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING
18 AND SERVICING AGREEMENT is entitled to foreclose on its interest in the property.

19 16. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS
20 TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE
21 PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON
22 HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
23 SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING
24 AND SERVICING AGREEMENT is entitled to an award of its attorney's fees and costs pursuant
25 to the terms of the Note and Deed of Trust, including post-judgment attorney's fees and costs.

26 17. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS
27 TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE
28 PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON

1 HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
2 SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING
3 AND SERVICING AGREEMENT's lien is prior and paramount to the interest of any Defendants
4 hereto, and all such subordinate interests should be eliminated by this foreclosure action. THE
5 BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR
6 THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE PASS-
7 THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON HOME
8 LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER SERVICER, IN
9 ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING AND
10 SERVICING AGREEMENT is entitled to judgment foreclosing the interests of any Defendant
11 hereto in the Property and forever barring that interest, and that of any successors, assigns or
12 heirs.

13 18. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS
14 TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE
15 PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON
16 HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
17 SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING
18 AND SERVICING AGREEMENT is entitled to decree or judgment of the court directing a sale
19 of the encumbered property and application of the proceeds of sale as provided in NRS 40.462.

20 19. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS
21 TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE
22 PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY FIRST HORIZON
23 HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL MASTER
24 SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE POOLING
25 AND SERVICING AGREEMENT is entitled to a judgment permitting it to bid all or part of its
26 judgment at sale.

27 **SECOND CAUSE OF ACTION**

28 **(Deficiency Judgment on Deed of Trust)**

1 20. Plaintiff incorporates and re-alleges the allegations of paragraphs 1 through 19 above,
2 as if fully set forth herein.

3 21. If a Borrower has obtained a bankruptcy discharge then no deficiency will be sought.
4 If there has been no discharge and a deficiency remains after the application of proceeds from the
5 sale, plaintiff is entitled to seek a deficiency judgment against the Borrower(s), pursuant to NRS
6 40.455.

7 A. Against Defendant, Catherine Rodriguez, for the minimum sum of \$269,000.00,
8 plus all post-filing advances, costs and attorney's fees, and interest from 12/1/2009 until paid in
9 full, plus post-judgment interest on advances, costs and attorney's fees from the date each was due
10 until paid in full, for its costs incurred herein, including post-judgment costs, for its attorney's
11 fees, including post-judgment attorney's fees, pursuant to the terms of the Note and Deed of
12 Trust, and for such other and further relief as the Court deems just and proper.

13 B. Against Defendants, Catherine Rodriguez, and Republic Services, Does I-X
14 inclusive and Roes 1-10 inclusive, individually and collectively, jointly and severally as follows:

15 (1) That the sums prayed for and alleged to be secured by the Property are
16 secured and that the Deed of Trust is a valid lien on the Property described in the Amended
17 Complaint and on the whole thereof, and on the rents, issues, and profits of the Property, and all
18 buildings and improvement thereon and fixtures attached thereto as used in connection with the
19 Property;

20 (2) That the Deed of Trust be declared superior to any right, title, interest, lien,
21 equity or estate of the Defendants;

22 (3) That it be adjudged and decreed that said Deed of Trust be foreclosed and a
23 decree or judgment of the court directing a sale of the encumbered property and application of the
24 proceeds of sale as provided in NRS 40.462 in satisfaction of the judgment herein;

25 (4) That the Defendants, and all persons claiming by, through or under them, or
26 any of them, be foreclosed of and forever barred from any and all right, title, claim, interest, or
27 lien in or to the Property or with respect thereto except such rights of redemption as they may
28 have by law;

1 (5) That THE BANK OF NEW YORK MELLON F/K/A THE BANK OF
2 NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST
3 HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY
4 FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
5 MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
6 POOLING AND SERVICING AGREEMENT is granted any further relief in satisfaction of the
7 judgment as may be permitted under Nevada law;

8 (6) That THE BANK OF NEW YORK MELLON F/K/A THE BANK OF
9 NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST
10 HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY
11 FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
12 MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE TRUSTEE UNDER THE
13 POOLING AND SERVICING AGREEMENT is entitled at its discretion to the appointment of a
14 receiver to protect the Property from neglect and waste during the pendency of this action and to
15 collect any rents to which any Defendants would be entitled;

16 (7) That if the proceeds of the sale do not satisfy Plaintiffs' judgment in full,
17 the Plaintiff may amend its Amended Complaint to seek a deficiency judgment against
18 Defendants, Catherine Rodriguez for the deficiency; No deficiency judgment shall be sought
19 against Defendants, Republic Services, or City of Las Vegas.

20 (8) For its costs incurred herein, including post-judgment costs;

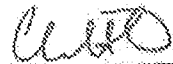
21 (9) For its attorney's fees, including post-judgment fees, pursuant to the Note
22 and Deed of Trust; and

23 (10) For any other further relief as this court deems just and proper.

24 Dated: December 14, 2012

Respectfully submitted.

25 MCCARTHY & HOLTHUS, LLP

26
27 By: 
28 Kristin A. Schuler-Hintz (NSB# 7171)
Christopher M. Hunter (NSB# 8127)

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Tara Newberry, Esq.
7854 W. Sahara Ave.
Las Vegas, NV 89117
Attorney for Catherine Rodriguez

Fennemore Craig Jones Vargas
300 South Fourth Street
Suite 1400
Las Vegas, NV 89101
Attorney for Republic Services

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EXHIBIT “1”

REDACTED

ADJUSTABLE RATE NOTE

(LIBOR Six-Month Index (As Published In The Wall Street Journal) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

April 21st, 2005

[Date]

HENDERSON

[City]

NEVADA

[State]

6845 SWEET PECAN STREET, LAS VEGAS, Nevada 89149

[Property Address]

I hereby certify that this is a true and exact copy of the original. Old Republic Title

by: 269,000.00 (this amount is called

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ "Principal", plus interest, to the order of Lender. Lender is FIRST HORIZON HOME LOAN CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.625%. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

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

I will make my monthly payments on the first day of each month beginning on June 1st, 2005

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on May 1st, 2035, I still owe amounts under this

Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at PO BOX 809 MEMPHIS, TN 38101

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

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,260.94. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid Principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

MULTISTATE ADJUSTABLE RATE NOTE - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) - Single Family - Fannie Mae UNIFORM INSTRUMENT

UHP-836N (0210)

Form 3520 1/01

VMP MORTGAGE FORMS - (600)521-7291

Page 1 of 4

Initials: CAL



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4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The interest rate I will pay may change on the first day of **May, 2010**, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **TWO AND ONE-QUARTER** percentage points (**2.250** %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.625** % or less than **2.250** %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than **TWO & 00/100** percentage point(s) (**2.00** %) from the rate of interest I have been paying for the preceding **6** months. My interest rate will never be greater than **11.625** %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

REDACTED

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

REDACTED

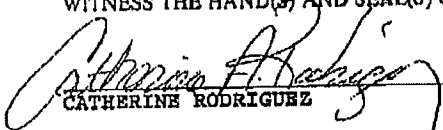
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales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

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

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

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

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


CATHERINE RODRIGUEZ

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

Pay to the order of
Without recourse
First Horizon Home Loan Corporation

by 
B. J. Seeley, Vice President

REDACTED

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE NOTE

THIS ADDENDUM is made this 21st day of April, 2005, and is incorporated into and intended to form a part of the Adjustable Rate Note (the "Note") dated the same date as this Addendum executed by the undersigned and payable to FIRST HORIZON HOME LOAN CORPORATION (the "Lender").

THIS ADDENDUM supercedes Section 3(A), 3(B), 4(C) and 7(A) of the Note. None of the other provisions of the Note are changed by this Addendum.

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest by making payments every month for the first 120 payments (the "Interest Only Period") in the amount sufficient to pay interest as it accrues. I will pay principal and interest by making payments every month thereafter for the next 240 payments in an amount sufficient to fully amortize the outstanding principal balance of the Note at the end of the Interest Only Period over the remaining term of the Note in equal monthly payments.

I will make my monthly payments on the first day of each month beginning on June 1st, 2005. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before principal. If, on May 1st, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my payments at PO BOX 809, MEMPHIS, TN 38101

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

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,260.94. This payment amount is based on the original principal balance of the Note. This payment amount may change.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE-QUARTER percentage points (2.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

During this Interest Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest on the lower principal balance. At the end of the Interest Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest Only Period, my payment amount will not be reduced due to voluntary prepayments.


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7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter, I will pay this late charge promptly but only once on each late payment.

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

 04-22-05
CATHERINE RODRIGUEZ Date

Date

Date

Date

Date

Date

Date

Date

20050427-0003843

Assessor's Parcel Number:
County: 125-20-212-037 City:
Return To:
FHHLC - POST CLOSING MAIL ROOM

1555 W. WALNUT HILL LN. #200 MC 6712
IRVING, TX 75038
Prepared By: FIRST HORIZON HOME LOAN CORPORATION

7375 PRAIRIE FALCON DR STE 120
LAS VEGAS, NV 89128
Recording Requested By:
FIRST HORIZON HOME LOAN CORPORATION
4000 HORIZON WAY
IRVING, TX 75063

Fee: \$36.00
N/C Fee: \$0.00

04/27/2005 14:01:32
720050077114

Requestor:
OLD REPUBLIC TITLE COMPANY OF NEVADA

Frances Deane ARO
Clark County Recorder Pgs: 23

5116203582GM

(Space Above This Line For Recording Data)

REDACTED

DEED OF TRUST
MIN

100085200533345205

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 21st, 2005 together with all Riders to this document.

(B) "Borrower" is
CATHERINE RODRIGUEZ , An Unmarried Woman

Borrower is the trustor under this Security Instrument.

(C) "Lender" is FIRST HORIZON HOME LOAN CORPORATION

Lender is a CORPORATION
organized and existing under the laws of THE STATE OF KANSAS

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

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VRM-6A(NV) (0307)

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Initials: CAR

VMP Mortgage Solutions (800)521-7291



Lender's address is 4000 Horizon Way, Irving, Texas 75063

(D) "Trustee" is OLD REPUBLIC TITLE

140 N. STEPHANIE ST., HENDERSON, NV 89074

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

(F) "Note" means the promissory note signed by Borrower and dated April 21st, 2005
The Note states that Borrower owes Lender

TWO HUNDRED SIXTY NINE THOUSAND & 00/100 Dollars
(U.S. \$ 269,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MAY 1, 2035

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

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

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

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

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time.

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time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of CLARK [Name of Recording Jurisdiction]

All that tract or parcel of land as shown on Schedule "A" attached hereto which is incorporated herein and made a part hereof.

Parcel ID Number: County: 125-20-212-037 City: which currently has the address of
6845 SWEET PECAN STREET [Street]
LAS VEGAS [City], Nevada 89149 [Zip Code]
("Property Address"):

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

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of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

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

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

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

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

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds

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for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10

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days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

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the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position

in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the

Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

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

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

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

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

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

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

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

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

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender

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

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

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

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

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

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

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations

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contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

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

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

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

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

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

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the

Initials: CAR

address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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

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

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

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

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

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

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

REDACTED

UML-6A(NV) (0307)

Page 13 of 15

Initials *AL*

Form 3029 1/01

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

 (Seal)
CATHERINE RODRIGUEZ -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower


_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

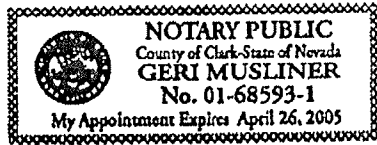
REDACTED

 -6A(NV) (0307)

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on April 22, 2005 by

CATHERINE RODRIGUEZ




Geri Musliner

Mail Tax Statements To: TOTAL MORTGAGE SOLUTIONS, LP
1555 W. WALNUT HILL LANE, SUITE 200A
IRVING, TX 75038

REDACTED
VME-6A(NV) (0307)

Page 15 of 15

Initials: 

Form 3029 1/01

Order No. : 5116003582-GM

EXHIBIT "A"

The land referred to is situated in the State of Nevada, County of Clark, City of Las Vegas, and is described as follows:

Lot 37 in Block 3 of Concordia @ Deer Springs Unit 3, as shown by map thereof on file in Book 112 of Plats, Page 28, in the Office of the County Recorder, Clark County, Nevada.

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 21st day of April, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to
FIRST HORIZON HOME LOAN CORPORATION

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
6845 SWEET PECAN STREET, LAS VEGAS, Nevada 89149

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in
PER CC&R'S

(the "Declaration"). The Property is a part of a planned unit development known as
CONCORDIA @ DEER SPRINGS

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of Incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

REDACTED

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM
INSTRUMENT
Form 3150 1/01

VMP-7R (0411)

Page 1 of 3

VMP Mortgage Solutions, Inc. (800)521-7291

Initials: CH



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

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

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

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

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

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

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

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

REDACTED

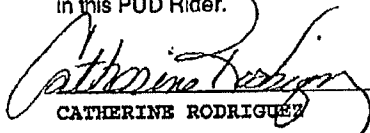
7R (0411)

Page 2 of 3

Initials: CR

Form 3150 1/01

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


CATHERINE RODRIGUEZ

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

REDACTED
-7R (0411)

Page 3 of 3

Form 3150 1/01

ADJUSTABLE RATE RIDER

REDACTED

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 21st day of April, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to FIRST HORIZON HOME LOAN CORPORATION

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

6845 SWEET PECAN STREET
LAS VEGAS, NV 89149

[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 5.625 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of May, 2010 and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of

MULTISTATE ADJUSTABLE RATE RIDER - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) - Single Family - Fannie Mae Uniform Instrument

VMP-838R (0402) Form 3138 1/01

Page 1 of 3

Initials: AP

VMP Mortgage Solutions, Inc.
(800)521-7291



this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.625 % or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than

Two & 00/100 percentage points
(2.00 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 11.625 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

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

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

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

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

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

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

REDACTED
VMP-838R (0402)

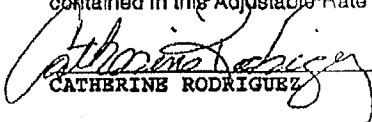
Page 2 of 3

Initials: CAR

Form 3138 1/01

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

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



CATHERINE RODRIGUEZ (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

REDACTED

VMP-838R (0402)

Page 3 of 3

Form 3138 1/01

**INTEREST ONLY ADDENDUM
TO ADJUSTABLE RATE RIDER**

THIS ADDENDUM is made this 21st day of April, 2005, and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date as this Addendum executed by the undersigned and payable to FIRST HORIZON HOME LOAN CORPORATION (the "Lender").

THIS ADDENDUM supercedes Section 4(C) of the Rider. None of the other provisions of the Rider are changed by this Addendum.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

During this Interest Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest on the lower principal balance. At the end of the Interest Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest Only Period, my payment amount will not be reduced due to voluntary prepayments.

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

 04-22-05
CATHERINE RODRIGUEZ Date

Date

Date

Date

Date

Date

Date

Date

REDACTED

Interest Only Addendum to ARM Rider

Page 1 of 1

FH6D03U 9/04

APN: 125-20-212-037

Recording requested by:

When recorded mail to:

MetLife Home Loans a division of MetLife
Bank NA
4000 Horizon Way
Foreclosure Dept. #6205
Irving, TX 75063

Inst #: 201006160002631

Fees: \$15.00

N/C Fee: \$25.00

06/16/2010 12:24:11 PM

Receipt #: 390718

Requestor:

UTLS DEFAULT SERVICES

Recorded By: DXI Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Space above this line for recorders use

APN: 125-20-212-037

TS # NV-10-351356-NF

Order # 30240344

Investor No.

REDACTED

Assignment of Deed of Trust

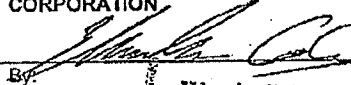
For value received, the undersigned corporation hereby grants, assigns, and transfers to

The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the holders of the Certificates, First Horizon Mortgage Pass-Through Certificates Series FHAMS 2005-AA5, by First Horizon Home Loans, a division of First Tennessee Bank National Association, Master Servicer, in its capacity as agent for the Trustee under the Pooling and Servicing Agreement

All beneficial interest under that certain Deed of Trust dated 4/21/2005 executed by CATHERINE RODRIGUEZ, AN UNMARRIED WOMAN, as Trustor(s) to OLD REPUBLIC TITLE, as Trustee and recorded as Instrument No. 20050427-0003843, on 4/27/2005, in Book XXX, Page XXX of Official Records, in the office of the County Recorder of CLARK County, NV together with the Promissory Note secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of Trust.

Dated: 5-24-2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC. AS NOMINEE FOR FIRST HORIZON HOME LOAN
CORPORATION


By _____

Wanda Collier
Assistant Secretary

State of Texas

County of Dallas

On 5-24-10 before me, Sherian Hopkins the
undersigned Notary Public, personally appeared Wanda Collier personally known
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature _____

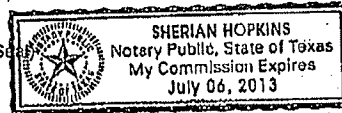


EXHIBIT “2”



03/20/2012

Sent Via Certified Mail
7196 9006 9295 8655 0711

CATHERINE RODRIGUEZ
6845 SWEET PECAN ST
LAS VEGAS, NV 89149-3040

Loan Number:
Property Address: 6845 SWEET PECAN STREET
LAS VEGAS, NV 89149

Dear CATHERINE RODRIGUEZ :

You are hereby provided formal notice by Nationstar Mortgage, LLC, the Servicer of the above-referenced loan, on behalf of First Tennessee Bank National Association, the Creditor to whom the debt is owed, that you are in default under the terms and conditions of the Note and Security Instrument (i.e. Deed of Trust, Mortgage, etc.), for failure to pay the required installments when due.

This letter serves as further notice that Nationstar Mortgage, LLC intends to enforce the provisions of the Note and Security Instrument. You must pay the full amount of the default on this loan by the thirty-fifth (35th) day from the date of this letter which is 04/24/2012 (or if said date falls on a Saturday, Sunday, or legal holiday, then on the first business day thereafter). If you do not pay the full amount of the default, we shall accelerate the entire sum of both principal and interest due and payable, and invoke any remedies provided for in the Note and Security Instrument, including but not limited to the foreclosure sale of the property. If you received a bankruptcy discharge which included this debt, this notice is not intended and does not constitute an attempt to collect a debt against you personally; notice provisions may be contained within your mortgage/deed of trust which notice may be required prior to foreclosure.

You are hereby informed that you have the right to "cure" or reinstate the loan after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense you may have to acceleration and sale.

As of 03/20/2012 the amount of the debt that we are seeking to collect is \$36,242.41, which includes the sum of payments that have come due on and after the date of default 12/01/2009, any late charges, periodic adjustments to the payment amount (if applicable) and expenses of collection. Because of interest, late charges, and other charges or credits that may vary from day to day, or be assessed during the processing of this letter, the amount due on the day that you pay may be greater. Please contact Nationstar Mortgage, LLC at (888) 480-2432 on the day that you intend to pay for the full amount owed on your account. This letter is in no way intended as a payoff statement for your mortgage, it merely states an amount necessary to cure the current delinquency.

Please note, however, that your right to cure this default as referenced herein does not suspend your payment obligations. Pursuant to the terms of the Note, your 04/01/2012 installment is still due on 04/01/2012 (or if



said date(s) falls on a Saturday, Sunday, or legal holiday, then on the first business day thereafter). In addition, any subsequent advances made by the Servicer to protect their lien position must be added to the total amount necessary to cure the default. Please disregard this notice if a payment sufficient to cure the default has already been sent.

A "CURE" or "Reinstatement Right" similar to that described in the prior paragraph may be available in many states. If, at any time, you make a written request to us not to be contacted by phone at your place of employment, we will not do so. If, at any time, you make a written request to us not to contact you, we will not do so, except to send statutorily and/or contractually required legal notice.

Nationstar Mortgage, LLC would like you to be aware that if you are unable to make payments or resume payments within a reasonable period of time due to a reduction in your income resulting from a loss or reduction in your employment, you may be eligible for Homeownership Counseling. To obtain a list of HUD approved counseling agencies, please call (800) 569-4287 or by visiting <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>. You may also contact the Homeownership Preservation Foundation's Hope hotline at (888) 995-HOPE (4673).

Attention Servicemembers and dependents: The Federal Servicemembers' Civil Relief Act ("SCRA") and certain state laws provide important protections for you, including prohibiting foreclosure under most circumstances. If you are currently in the military service, or have been within the last nine (9) months, **AND** joined after signing the Note and Security Instrument now in default, please notify Nationstar Mortgage, LLC immediately. When contacting Nationstar Mortgage, LLC as to your military service, you must provide positive proof as to your military status. If you do not provide this information, it will be assumed that you are not entitled to protection under the above-mentioned Act.

You are notified that this default and any other legal action that may occur as a result thereof may be reported to one or more local and national credit reporting agencies by Nationstar Mortgage, LLC. Nationstar Mortgage, LLC requests that all payments be made in **certified funds, cashier's check or money order(s)** payable to and mailed to **Nationstar Mortgage, LLC at PO Box 650783, Dallas TX 75265-0783**. You may contact Nationstar Mortgage, LLC at (888) 480-2432 should you have servicing questions regarding your account or by mail at 350 Highland Drive, Lewisville, TX 75067-4177. You may have options available to you to help you avoid foreclosure. Please contact Nationstar Mortgage, LLC's Loss Mitigation Department at (888) 480-2432 or by visiting www.nationstarmtg.com for additional information and to see what options are available to you.

The matters discussed herein are of extreme importance. We trust you will give them appropriate attention.

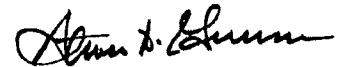
Sincerely,

Viviana Acosta
Assigned Foreclosure Prevention Specialist
Nationstar Mortgage, LLC
(800)766-7751 ext. 6874

350 Highland Drive
Lewisville, TX 75067

Unless you notify us within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, we will assume this debt is valid. If you notify us in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, we will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. Upon your written request within thirty days after the receipt of this notice, we will provide you with the name and address of the original creditor, if the original creditor is different from the current creditor.





CLERK OF THE COURT

1 **PTJR**

2 Venicia Considine, Esq.

3 Nevada Bar No: 11544

4 **LEGAL AID CENTER OF**
5 **SOUTHERN NEVADA, INC.**

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18 tnewberry@cnlawlv.com

19 *Attorneys for Petitioner Catherine Rodriguez*

20 **EIGHTH JUDICIAL DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 CATHERINE RODRIGUEZ,

23 Petitioner,

24 vs.

25 NATIONSTAR MORTGAGE LLC.; METLIFE
26 HOME LOANS; and THE BANK OF NEW
27 YORK MELLON F/K/A THE BANK OF NEW
28 YORK AS TRUSTEE FOR THE HOLDERS
OF THE CERTIFICATES, FIRST HORIZON
MORTGAGE PASS-THROUGH
CERTIFICATES SERIES FHAMS 2005-AA5,
BY FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK
NATIONAL MASTER SERVICER, IN ITS
CAPACITY AS AGENT FOR THE TRUSTEE
UNDER THE POOLING AND SERVICING
AGREEMENT

Defendants.

VERIFIED PETITION
FOR JUDICIAL REVIEW

Case No.: A-13-685616-J

Dept No.: XXV

VERIFIED PETITION FOR JUDICIAL REVIEW

1 Petitioner, CATHERINE RODRIGUEZ (hereinafter "PETITIONER"), by and through
2 her attorneys, Venicia G. Considine, Esq., of the LEGAL AID CENTER OF SOUTHERN
3 NEVADA, INC., and Tara D. Newberry of CONNAGHAN NEWBERRY LAW FIRM, petition
4 this Court, pursuant to NRS 107.080, NRS 107.086, and Nevada Supreme Court decisions, for
5 review of the Nevada foreclosure mediation conducted on October 6, 2011 pursuant to NRS
6 107.086 and the Nevada Supreme Court Amended Foreclosure Mediation Rules 11 and 21, and
7 to hold a hearing to determine bad faith and appropriate sanctions. Alternatively, the Petitioner
8 seeks declaratory relief under NRS 30.040 and injunctive relief under NRS 30.010.
9

10 **STATUTORY AND REGULATORY SCHEME**

11 **A. NRS 107.080 and NRS 107.086**

12 NRS 107.080 establishes certain requirements a trustee must follow to sell an estate in
13 real property. NRS 107.086 requires the trustee to provide a grantor of a deed of trust or the
14 person who holds title of record a form on which the grantor may elect mediation in order to try
15 to work out an alternative to foreclosure, such as a loan modification. Once mediation is
16 requested, no further action may be taken to exercise the power of sale until the completion of
17 the mediation.
18

19 The Supreme Court has adopted rules outlining mediation procedures and protecting "the
20 mediation process from abuse and to ensure that each party to the mediation acts in good faith."
21 [See NRS 107.086(8)(d)].
22

23 The Court may issue an order imposing sanctions against the beneficiary of the deed of
24 trust or his representative as the court determines appropriate, including without limitation,
25 requiring a loan modification in the manner determined proper by the court. See NRS
26 107.086(5). Basis for sanctions include: (1) failure to attend the mediation; (2) failure to
27 participate in the mediation in good faith; (3) failure to bring to the mediation each document
28

1 required by the statute; or (4) not having the authority (or access to a person with the authority)
2 required by the statute.

3 According to NRS 107.086, the Supreme Court is to adopt rules governing the
4 procedures of mediation and to ensure that such rules "*protect the mediation process from abuse*
5 *and to ensure that each party to the mediation acts in good faith.*" [Emphasis added; see NRS
6 107.086 (8)(d)].
7

8 **B. Nevada Supreme Court Foreclosure Mediation Rules**

9 Rule 21(1) of the Nevada Supreme Court Amended Foreclosure Mediation Rules in
10 existence at the time of the mediation states that "a party to the mediation" may file a "petition
11 for judicial review" in district court for "limited purposes." Limited purpose includes a
12 determination of bad faith, the enforcement of an agreement made during the mediation, and the
13 determination of appropriate sanctions.
14

15 **C. Nevada Supreme Court Decisions**

16 On July 7, 2011, the Nevada Supreme Court released decisions in two foreclosure
17 mediation cases; Pasillas v. HSBC Bank, USA, 127 Nev. Adv. Op. 39, 255 P.3d 1281 (Nev.
18 2011) and Leyva v. National Default Servicing Corp., 127 Nev. Adv. Op. 40, 255 P.3d 1275
19 (Nev. 2011). The decisions require strict compliance by lenders to the foreclosure mediation
20 statutes and rules provisions. Violations of the statutes and/or Rules are sanctionable offenses.
21

22 **D. Declaratory Judgment**

23 NRS 30.040(1) states that any person interested under a written contract or other writings
24 constituting a contract, or whose rights, status or other legal relations are affected by a statute or
25 contract may have determined any question of construction or validity arising under the statute,
26 or contract and obtain a declaration of rights, status or other legal relations there under.
27

28 ///

1 **E. Injunctive Relief**

2 NRS 33.010 states that an injunction may be granted if “it shall appear by the complaint
3 that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in
4 restraining the commission or continuance of the act complained of, either for a limited period or
5 perpetually” or “... the commission or continuance of some act, during the litigation, would
6 produce great or irreparable injury”
7

8 **F. Supplemental Relief**

9 NRS 30.100 states “further relief based on a declaratory judgment or decree may be
10 granted whenever necessary or proper.”
11

12 **JURISDICTION**

13 NRS 107.086, the Nevada Supreme Court Foreclosure Mediation Rules, and NRS
14 30.040, 33.010 and 33.010 vests this court with jurisdiction over the instant case.

15 **STATEMENT OF FACTS**

16 Petitioner entered into an agreement for the purchase of a home located at 6845 Sweet
17 Pecan St., Las Vegas, NV 89149, on April 21, 2005. See Exhibit “1”. The terms of the
18 Adjustable Rate Note included \$269,000 in principal at 5.625% interest over a term of 30 years
19 with a monthly payment of \$1,260.94 for the first five years. After the first five years, the
20 interest rate adjusts every six months with a capped interest rate of 11.625%. *Id.* The Deed of
21 Trust was originally in First Horizon’s name with MERS as nominee. See Exhibit “2”.
22 Petitioner has lived in the home continuously since the purchase.
23

24 Petitioner works in the tourist industry at the MGM Mirage. She was hit particularly hard
25 by the recession. Petitioner defaulted on her mortgage, after being advised by an employee of
26 First Horizon that she could not obtain a loan modification unless she was behind on payments.
27 Petitioner defaulted and then applied for a loan modification; however, First Horizon ignored all
28

1 of her requests for modification. Eventually a Notice of Default was recorded and upon notice,
2 Petitioner elected to participate in the Nevada Foreclosure Mediation Program believing she
3 would be able to secure an affordable mortgage payment through the mediation program.
4 Instead, Petitioner has been through *three* mediations and is currently in the judicial foreclosure
5 process. During the judicial foreclosure process Defendant provided the original Note with an
6 endorsement clearly different than the endorsement provided at the last mediation, which is the
7 basis of this Petition for Judicial Review. At each foreclosure mediation, different documents
8 have been produced with conflicting entities claiming ownership and authority over the
9 mortgage. Each mediation resulted in essentially the same outcome by different mediators: no
10 proper documentation by beneficiary. Petitioner is filing this Petition for Judicial Review timely
11 to preserve her rights, avoid losing this avenue of relief and to stop future abuses of the Nevada
12 Foreclosure Mediation Program. A short history of the litigation follows.
13

14
15 **Mediation #1: July 19, 2010**

16 A Notice of Breach and Default and of Election to Cause Sale of Real Property Under
17 Deed of Trust was recorded with the Clark County Recorder's Office on March 18, 2010. See
18 Exhibit "3". The Notice lists Mortgage Electronic Registration Systems, Inc (hereinafter,
19 "MERS") as Nominee for First Horizon Home Loan Corporation as holder of the obligation. *Id.*

20 Petitioner elected to participate in the Nevada Foreclosure Mediation Program on April
21 13, 2010. See Exhibit "4".

22
23 On June 16, 2010, MERS recorded an Assignment of the Deed of Trust with the Clark
24 County Recorder's Office. See Exhibit "5". The Assignment was dated and notarized May 24,
25 2010, two months after the recording of the Notice of Default. *Id.* The document assigns "[a]ll
26 beneficial interest under that certain Deed of Trust" to The Bank of New York Mellon from
27 MERS. *Id.*
28

1 The mediation took place on July 17, 2010 with MetLife Home Loans as the servicer of
2 the mortgage. See Exhibit "6" (mediator's statement). The mediator found against MetLife
3 Home Loans for failure to provide the proper documents for the mediation. *Id.*

4 MetLife Home Loans filed a Petition for Judicial Review on August 11, 2010 contesting
5 the mediator's determinations. See Exhibit "7". MetLife Home Loans stated "Counsel for the
6 Petitioners attended the 07/17/2010 Mediation with copies of the documentation pursuant to the
7 documentary requirements of the Nevada Foreclosure Mediation Rules..." *Id* page 3, lines 21 –
8 23. Further, Counsel stated she had the "requisite authority" to "make loss mitigation decisions
9 with full force and effect." *Id* page 4, lines 1-4. After the Petition for Judicial Review hearing,
10 Judge Moseley issued his "Findings of Fact Conclusions of Law and Order" on October 1, 2010,
11 upholding the mediator's findings of a lack of required documents and a lack of authority. See
12 Exhibit "8".
13

14
15 **Mediation #2: December 10, 2010**

16 Quality Loan Servicing recorded a Breach and Election to Sell with the Clark County
17 Recorder's Office on September 20, 2010 (Ten days before Judge Moseley issued his Order on
18 the bank's Petition for Judicial Review). Petitioner elected to participate in the Nevada
19 Foreclosure Mediation program again. A Nevada Foreclosure Mediation was held on December
20 10, 2010, and Met Life Home Loans again appeared as the servicer of the loan.

21 The mediation resulted in the same outcome as the previous mediation; there was a
22 failure to produce documents by the bank and no certification issued.
23

24 Quality Loan Servicing rescinded the Breach and Election to Sell on February 7, 2011.

25 **Mediation #3: October 6, 2011**

26 In late March, 2011 a Breach and Election to Sell was posted on Petitioner's property by Quality
27 Loan Servicing on behalf of Met Life Home Loans who was still the servicer at that time.
28

1 Petitioner timely elected to participate in the Nevada Foreclosure Mediation Program. The
2 mediation was initially scheduled to occur on September 15, 2011, however, counsel for Met
3 Life indicated that the servicing of the loan had been transferred to Nationstar Mortgage LLC.,
4 and requested a continuance. Petitioner's counsel agreed to the continuance and the mediation
5 was held on October 6, 2011. See Exhibit "9".
6

7 At this mediation, Nationstar Mortgage, LLC presented a copy of the Note, but this time
8 Counsel provided a copy of an undated endorsement unlike the version of the note produced at
9 the two prior mediations. See Exhibit "10". The endorsement stated, "Pay to the Order of
10 Nationstar Mortgage LLC." *Id.* Nationstar claimed to be the owner and beneficiary of the Note
11 at mediation.

12 Daniel Marks appeared telephonically on behalf of Nationstar and Attorney Lindsey
13 Bennett-Morales of McCarthy & Holthus appeared in person at mediation, in addition to
14 Petitioner and undersigned counsel, Tara D. Newberry. The mediation resulted in no certificate
15 being issued. The Mediator's Statement cited a failure of the lender to bring the required
16 documents. See Exhibit "11".
17

18 **Judicial Foreclosure: May 4, 2012**

19 On May 4, 2012, the Bank of New York Mellon et. al. (hereinafter "BONY") filed a
20 Verified Complaint for Judicial Foreclosure and Deficiency Judgment of Deed of Trust. See
21 Exhibit "12". Petitioner filed a Motion to Cancel Lis Pendens and Dismiss Complaint arguing a
22 lack of standing. BONY then filed an Amended Complaint which included a copy of an
23 endorsement in blank. See Exhibit "13". BONY subsequently filed a Motion for Summary
24 Judgment See Exhibit "14" and Petitioner filed an Opposition to the Motion for Summary
25 Judgment See Exhibit "15". BONY filed its Reply to Defendant's Opposition to Plaintiff's
26 Motion for Summary Judgment See Exhibit "16" and a hearing was held on the matter. BONY
27
28

1 then brought the original Note to the Summary Judgment hearing with an endorsement in blank.

2 The endorsement in blank produced at the hearing on BONY's motion for Summary
3 Judgment directly contradicts the endorsement to Nationstar Mortgage, LLC produced at the
4 October 6, 2011 mediation.

5 POINTS AND AUTHORITIES

6 Overview of NRS 107.086 and the Rules

7
8 The Nevada Legislature passed Assembly Bill 149 ("AB149") during the 2009 legislative
9 session. It became effective July 1, 2009. The purpose of the law was to give homeowners and
10 lenders the opportunity to resolve a potential foreclosure and to discuss alternatives to
11 foreclosure. The law, codified in NRS 107.086 seeks to "make foreclosure a remedy of last
12 resort." (Hearing on A.B. 149 before the Joint Commerce and Labor Committee, 2009 Leg., 75th
13 Sess., February 11, 2009) (Statement of Barbara Buckley, Speaker of the Nevada Assembly).

14
15 The Supreme Court has adopted rules outlining mediation procedures and protecting "the
16 mediation process from abuse and to ensure that each party to the mediation acts in good faith."
17 [See NRS 107.086(8)(d)]. These Rules have been revised five times. The program's
18 requirements are found in two sources, the law (NRS 107.080 et. al.) and the Nevada Supreme
19 Court Amended Foreclosure Rules.

20 The goal of the statutes and the rules is to bring lenders and borrowers together to review
21 available options for the subject property to avoid foreclosure when possible.

22
23 Rule 21(1) of the Nevada Amended Foreclosure Mediation Rules states that "a party to
24 the mediation" may file a "petition for judicial review" in district court for "limited purposes."
25 Limited purposes determining bad faith, enforcing an agreement made during the mediation, and
26 determining appropriate sanctions.¹

27
28 ¹ The instant mediation was held October 6, 2011 and therefore, subject to Foreclosure Mediation Rules in existence

1 The non-judicial foreclosure process is governed by NRS 107.080. NRS 107.086
2 requires mandatory mediation under certain situations prior to a trustee's exercise of power
3 under NRS 107.080. NRS 107.086 imposes some specific obligations which include but are not
4 limited to:

- 5 1. Requiring the lender to produce the original or certified copies of three
6 documents, the note, the deed of trust, and each and every assignment of the
7 note and deed of trust.
 - 8 a. Additionally, it requires the lender to:
 - 9 i. Bring an appraisal or broker's price opinion.
 - 10 ii. Provide an estimate of the short sale value.
 - 11 iii. Provide the evaluative methodology used to determine whether
12 the homeowner qualifies for a modification.
 - 13 iv. Offer a proposal to resolve the foreclosure.
- 14 2. It imposes a good faith requirement upon the lender. The lender must
15 participate in good faith.
- 16 3. It requires the beneficiary of the note to be physically present and participate
17 in good faith.

18 This section also gives the Court the power to order a loan modification in the manner deemed
19 proper by the Court. Another source of such authority comes from the Nevada Supreme Court
20 Amended Foreclosure Rule 21 which states that an aggrieved party may file a Petition for
21 Judicial Review.

22 The question of whether or not the failure of a lender to fully comply with NRS 107.086
23 and the rules, as well as whether non-compliance was sanctionable, was decided in two Nevada
24 Supreme Court cases. The Court concluded:

25 [T]hat NRS 107.086(4) and (5) and FMR 5(7)(a)² clearly and unambiguously
26 mandate that the beneficiary of the deed of trust or its representative (1) attend the
27 mediation, (2) mediate in good faith, (3) provide the required documents, and (4)
28 have a person present with authority to modify the loan or access to such a person.
Pasillas v. HSBC Bank, USA, 127 Nev. Adv. Op. No. 39, 255 P.3d 1281 (Nev.
2011).

____ (continued)

at that time (See Order Amending Foreclosure Mediation Rules (ADKT No. 435), dated February 16, 2011,
effective March 1, 2011).

² Refers to the FMR in effect at the time of the Pasillas' mediation; Rule 10 and 11 in the FMR
rules in effect at the time of the mediation.

1 Here, we again conclude that, due to the statute's and the FMRs' mandatory
2 language regarding documents production, a party is considered to have fully
3 complied with statute and the rules only upon production of all documents
4 required. Failure to do so is a sanctionable offense, and the district court is
5 prohibited from allowing the foreclosure process to proceed. Leyva v. National
Default Servicing Corp., 127 Nev. Adv. Op. No. 40, 255 P.3d 1275 (Nev. 2011).

6 The Court determined, "...that NRS 107.086 and the FMRs necessitate strict compliance." *Id.*
7 Although recommending sanctions is within the purview of the mediator, it is the district court
8 which must impose any sanctions. Especially when the discovery of fraudulent documentation is
9 discovered after the mediation. This court has the power to determine the amount of sanctions.

10 **I. The Endorsement Provided at the October 6, 2011 Mediation was Fabricated and**
11 **Shows the Banks Failure to Attend the Mediation in Good Faith.**

12 Foreclosure Mediation Rule 21(1) (hereinafter "FMR"), effective as of the time of this
13 mediation, states that "[a] party to the mediation may file a petition for judicial review with the
14 district court in the county where the notice of default was properly recorded. A hearing shall be
15 held... for the limited purposes of *determining bad faith...and determining appropriate*
16 *sanctions...*" (emphasis added).

17 Here, Nationstar Mortgage, LLC intentionally provided a false endorsement of the Note
18 at the mediation and claimed the Note was a copy of the original in order to deceive Petitioner
19 and Mediator after failing to fulfill the FMP requirements in the previous mediations. This was
20 the third mediation for the same loan and the legal representation was provided by the same law
21 firm at each mediation. Nationstar Mortgage, LLC provided the false endorsement and claimed
22 it was the owner of the Note in order to perpetrate a fraud on the mediator and the Nevada
23 Foreclosure Mediation Program.
24

25 **a. This Petition is Timely Filed**

26 The FMP rules state that a Petition for Judicial Review "shall be filed within 30 days that
27 the party to mediation received the Mediator's Statement." See FMR 21(2). In this case, the
28

1 breach of the rules and the fraud committed against Petitioner was not known until the day of the
2 hearing on the Motion for Summary Judgment. Petitioner was unaware of the documented fraud
3 and bad faith committed by lender and beneficiary. When this issue was brought up by
4 Petitioner, BONY cited FMP Rule 19:

5 All documents and discussions presented during the mediation shall be deemed
6 Confidential and inadmissible in any subsequent actions or proceedings, *except*
7 in an action for judicial review according to these rules. In that case, non-
8 privileged evidence submitted for mediation is discoverable to the extent
9 that it is relevant to a determination of bad faith, enforceability of agreements
made between parties within the Program, including temporary agreements, and
appropriate sanctions pursuant to NRS Chapter 107, as amended. See Exhibit "16".

10 BONY also claimed "[a]ll of this documentation and discussion is confidential and inadmissible
11 because this is not an action for judicial review. As a result, under no circumstances can
12 Defendant statements or arguments concerning mediation be considered here." *Id* page 3, lines 5
13 - 7. BONY argued that the endorsement was provided at mediation, that *everything* at mediation
14 is confidential and, at the same time, argued the proper forum to argue over fraudulent
15 documentation at a mediation is exclusively in an action for Petition for Judicial Review.
16

17 BONY wants to utilize the Nevada Foreclosure Mediation Rules as both a sword and a
18 shield. A sword, in order to provide fraudulent documentation without repercussion, and a
19 shield, to claim that because those documents were provided at the mediation, the documents, no
20 matter how flawed, cannot be questioned later.

21 FMP Rule 11(1), in effect at the time of the mediation, states that parties to the mediation
22 shall exchange documents 10 days prior to the mediation. "These documents, at a minimum
23 shall include the following, outlined in Rules 11.2, 11.3 and 11.4." Rule 11(3)(a) is the rule on
24 mortgage documents, requiring, among other documents, the original or a certified copy of the
25 note and each endorsement. The Defendant provided the note and fraudulent endorsement at the
26 mediation instead of 10 days prior to the mediation, as required by the Rules. The Defendant
27
28

1 then argued that because it did not follow the rules but produced the documents at the mediation,
2 it should be allowed to claim the documents are confidential. The documents required prior to
3 the mediation are not confidential and producing them late doesn't magically make them
4 confidential.

5
6 Petitioner was unaware of the fraud until the hearing on BONY's Motion for Summary
7 Judgment. It was not possible for Petitioner to file a Petition for Judicial Review within 30 days
8 of the Mediator's Statement because Petitioner was not aware of fraud. However, once
9 Petitioner was shown the true endorsement, Petitioner drafted this Petition for Judicial Review
10 requesting sanctions against Defendant. FMP Rule 21(2) is met because Petitioner is filing this
11 Petition within 30 days of the discovery of the breach of the rules.

12 **b. Defendant Should Be Sanctioned for Bad Faith and Fraudulent Documentation**

13
14 The beneficiary failed to provide Petitioner and the mediator with the statutorily-required
15 documents under NRS 107.086(4) prior to the mediation and when the documents were produced
16 at the mediation, a fraudulent document was provided and as a certified copy of the original Note
17 and endorsement. The failure to provide all of the required documents and providing a
18 counterfeit endorsement must be deemed an intentional violation of NRS 107.086 and the FMP
19 Rules. As this was the third mediation, Nationstar Mortgage, LLC, MetLife Bank, and/or First
20 Horizon knew the rules of mediation, knew what documents were required to be exchanged and
21 brought to the mediation, and knew the documents provided were false/altered reproductions of
22 the real documents.

23
24 "In Pasillas, we held that if a party fails to (1) provide the required documents, or (2)
25 either attend the mediation in person or, if the beneficiary attends through a representative, that
26 person fails to have authority to modify the loan or access to such a person, the district court is
27 required to impose appropriate sanctions." Leyva v. National Default Servicing Corp., 127 Nev.
28

1 Adv. Op. No. 40, 255 P.3d 1275, 1278 (Nev. 2011) (*citing* Pasillas v. HSBC Bank, USA, 127
2 Nev. Adv. Op. 39, 255 P.3d 1281 (Nev. 2011)).

3 “We interpret NRS 107.086(5) to mean that the commission of any one of these four
4 statutory violations prohibits the program administrator from certifying the foreclosure process
5 to proceed and may also be sanctionable.” Pasillas, 127 Nev. Adv. Op. 39, 255 P.3d at 1286.
6 “The nature of the sanctions imposed on the beneficiary or its representative is within the
7 discretion of the district court.” Pasillas, 127 Nev. Adv. Op. 39, 255 P.3d at 1287.

8
9 When the court is considering factors for sanctions, certain mediation specific factors
10 should be considered. See Pasillas, 127 Nev. Adv. Op. 39, 255 P.3d 128. The list is not
11 nonexhaustive but should include: “whether the violations were intentional, the amount of
12 prejudice to the nonviolating party, and the violating party’s willingness to mitigate any harm by
13 continuing meaningful negotiation.” *Id.*

14
15 The violation of the rules and the attempt to deceive the FMP through the use of a fake
16 endorsement in order to prejudice the mediation were intentional. This was not their first
17 mediation. The use of the counterfeit endorsement gave Nationstar Mortgage, LLC the authority
18 to deny the Petitioner a true opportunity to obtain relief from foreclosure which is the entire
19 purpose of the mediation. Nationstar Mortgage, LLC refused foreclosure relief to Petitioner and
20 later filed a Judicial Foreclosure.

21 These are intentional violations of NRS 107.086 and the FMP rules. The use of
22 fraudulent documents to avoid true participation in the Nevada Foreclosure Mediation Program
23 is egregious behavior. These violations are sanctionable and Defendant should be heavily
24 sanctioned. The appropriate amount for sanctions is determined by this Court. Sanctions can be
25 strictly monetary, a loan modification, or whatever the Court determines is a just amount to stop
26 any further abuse of the mediation program.
27
28

1 **CONCLUSION**

2 Defendant failed to comply with the NRS 107.086 or the rules governing the Foreclosure
3 Mediation process. The intentional presentment of the fraudulent endorsement is a sanctionable
4 offense. The bad faith introduction of the endorsement is egregious and sanctions should be
5 enforced.
6

7 WHEREFORE, Petitioners pray that:

- 8 1. The Court review the record and hold an evidentiary hearing to determine the
9 appropriateness of imposing sanctions pursuant to NRS 107.086;
10 2. The Court find the Lender and Beneficiary provided fraudulent documentation at
11 the mediation;
12 3. The Court find that the Lender and Beneficiary failed to strictly comply with the
13 NRS and FMR;
14 4. The Court issue an injunction staying all other litigation pending the outcome
15 here;
16 5. After review, the Court order Nationstar Mortgage, LLC and the beneficiary to:
17 a. Void all interest, late fees, and ancillary fees accrued and compounded since
18 October 6, 2011;
19 b. Review Petitioner for a loan modification
20 c. Award Petitioner attorney's fees and costs to be imposed on Nationstar
21 Mortgage, LLC³;
22
23
24

25 ³ Plaintiffs are entitled to an award of attorney's fees and costs. In Miller v. Wilfong, 121 Nev. 619, 622, 119 P.3d
26 727, 729 (Nev., 2005), the Supreme Court of Nevada held that, "... awards of attorney's fees to pro bono counsel
27 are proper, provided a legal basis exists and proper factors are applied in making the award." The proper factors to
28 be applied are the qualities of the advocate, the character and difficulty of the work performed, the work actually
performed by the attorney, and the result obtained. Id. at 623, 730 (Citing Brunzell v. Golden Gate National Bank,
85 Nev. 345, 455 P.2d 31 (Nev., 1969)).

In addition to Miller, ample authority exists to support this request for attorney's fees. 121 Nev. at 622. A
non-profit, private legal services organization which represents person who would otherwise receive no legal

1 d. Issue sanctions against the Lender and Beneficiary appropriately to ensure the
2 presentation of fraudulent documents is not an acceptable practice for lenders
3 and beneficiaries.

4 DATED this _18th_ day of _July_, 2013.

5 Respectfully Submitted by:

6 **CONNAGHAN|NEWBERRY LAW FIRM**

7
8 /s/ Tara D. Newberry
9 TARA D. NEWBERRY, ESQ.
10 Nevada Bar No. 10696
11 7854 W. Sahara Ave.
12 Las Vegas, Nevada 89117
13 Attorney for Petitioner

14 **LEGAL AID CENTER OF**
15 **SOUTHERN NEVADA, INC.**

16 /s/ Venicia G. Considine
17 VENICIA G. CONSIDINE, ESQ.
18 Nevada Bar No: 11544
19 **LEGAL AID CENTER OF**
20 **SOUTHERN NEVADA, INC.**
21 725 E. Charleston Blvd.
22 Las Vegas, NV 89104

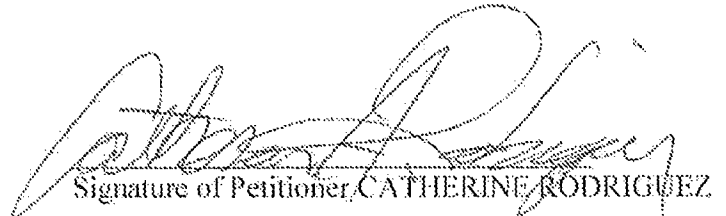
23 (continued)

24 assistance can receive an award of attorney's fees in a civil rights class action where, although the organization is
25 funded to a substantial extent from public funds, it exercises independent judgment in performing its legal
26 function. Palmer v. Columbia Gas of Ohio, Inc., 375 F.Supp. 634 (N.D. Ohio 1974). Attorney's fees are routinely
27 awarded to legal services, *pro bono*, or other nonprofit legal organizations every day. See, e.g., Blum v. Stenson,
28 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984); Washington v. Seattle School Dist. No. 1, 458 U.S. 457, 102
S.Ct. 3187, 73 L.Ed.2d 896 (1982); Dennis v. Chang, 611 F.2d 1302 (9th Cir. 1980); Holley v. Lavine, 605 F.2d 638
(2nd Cir. 1979). It is well settled that attorney's fees under 42 U.S.C. § 1988 are not barred merely because counsel
"is a legal services organization providing free legal representation." Dennis, supra, 611 F.2d at 1304. Accord:
Blum, supra, 465 U.S. at 894, 104 S.Ct. at 1547. See also: Washington, 458 U.S. at 488 n. 31, 102 S.Ct. at 3204 n.
31 (courts "have held with substantial unanimity that publicly funded legal services organizations may be awarded
fees").

VERIFICATION

I, CATHERINE RODRIGUEZ, am the Petitioner in the above-entitled action; that I have read the foregoing document and am competent to testify that the contents are true of my own knowledge except for those matters stated therein on information and belief; and, as to those matters, I believe them to be true.

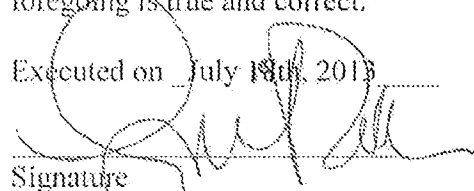
7/19/13
Date


Signature of Petitioner, CATHERINE RODRIGUEZ

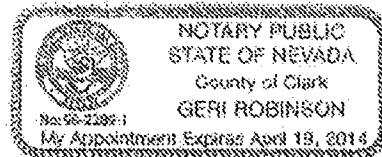
Pursuant to NRS 53.045:

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

Executed on July 18th, 2013


Signature

GERI ROBINSON
Print Name



CERTIFICATE OF SERVICE BY MAILING

On July 19, 2013 I served the foregoing documents described as **VERIFIED PETITION FOR JUDICIAL REVIEW**, on the following individuals by depositing true and correct copies thereof, with postage prepaid, in the United States mail at Las Vegas, Nevada, addressed as follows:

Lindsey Bennett Morales, Esq.
c/o McCarthy Holthus
9510 W. Sahara Avenue Suite 110
Las Vegas, NV 89117

Certified Mail

Quality Loan Service Corp.
2141 5th Avenue
San Diego, CA 92101

Certified Mail

Foreclosure Mediation Program
Attn: Program Administrator
200 Lewis Avenue, 17th Floor
Las Vegas, NV 89101

Certified Mail

MetLife Home Loans
4000 Horizon Way
Irving, TX 75063

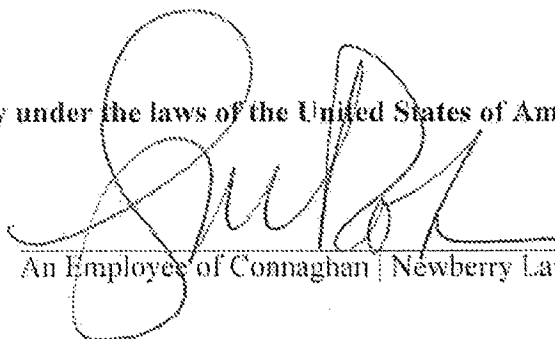
Certified Mail

NationStar Mortgage LLC.
350 Highland Drive
Lewisville, TX 75067

Certified Mail

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

By:



An Employee of Connaghan | Newberry Law Firm

SOLA
Venicia Considine, Esq.
Nevada Bar No. 11544
**LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.**
725 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 386-1070 x 1452
Facsimile: (702) 388-1642

Attorney for Plaintiff, Catherine Rodriguez

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CATHERINE RODRIGUEZ,

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON F/K/A THE BANK OF
NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE
CERTIFICATES, FIRST HORIZON MORTGAGE
PASS-THROUGH CERTIFICATES SERIES FHAMS
2005-AA5, BY FIRST HORIZON HOME LOANS, A DIVISION
OF FIRST TENNESSEE BANK NATIONAL MASTER
SERVICER, IN ITS CAPACITY AS AGENT FOR THE
TRUSTEE UNDER THE POOLING AND SERVICING
AGREEMENT,

Defendants.

Case No.

Dept. No.

**STATEMENT OF LEGAL AID
REPRESENTATION
(PURSUANT TO NRS 12.015)**

Party Filing Statement: ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

STATEMENT

CATHERINE RODRIGUEZ, has qualified and been accepted for placement as Pro Bono clients or as direct client of **LEGAL AID CENTER OF SOUTHERN NEVADA, INC.**, a nonprofit organization providing free legal assistance to indigents, and is entitled to pursue or defend this action without costs, including filing fees and fees for service of writ, process, pleading or paper without charge, as set forth in NRS 12.015.

Dated: July 18, 2013

VENICIA CONSIDINE, ESQ.

Printed Name of Legal Aid Center of S.N., Preparer
Nevada Bar No.: 11544

/s/ Venicia Considine, Esq.

Signature of Legal Aid Center of S.N. Preparer

Submitted by:
**LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.**
725 East Charleston Blvd.
Las Vegas, Nevada 89101
Phone: (702) 386-1070

1

REDACTED

ADJUSTABLE RATE NOTE

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

April 21st, 2005

HENDERSON

NEVADA

(Date)

(City)

(State)

6845 SWEET PECAN STREET, LAS VEGAS, Nevada 89149
(Property Address)

I hereby certify that this is a true and exact copy of the original. Old Republic Title

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$
"Principal", plus interest, to the order of Lender. Lender is
FIRST HORIZON HOME LOAN CORPORATION

269,000.00 by: CID (this amount is called

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.625%. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

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

I will make my monthly payments on the first day of each month beginning on June 1st, 2005

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on May 1st, 2035, I still owe amounts under this

Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at PO BOX 809
MEMPHIS, TN 38101

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

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,260.94. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid Principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

MULTISTATE ADJUSTABLE RATE NOTE - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) -
Single Family - Fannie Mae UNIFORM INSTRUMENT

227-838N (0210)

Form 3520 1/01

VAR MORTGAGE FORMS - (800)521-7291

Page 1 of 4

Initials: CAL



REDACTED

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The interest rate I will pay may change on the first day of May, 2010, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.625 % or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO & 00/100 percentage point(s) (2.00 %). From the rate of interest I have been paying for the preceding 6 months, my interest rate will never be greater than 11.625 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

REDACTED

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be \$.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder will require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

REDACTED

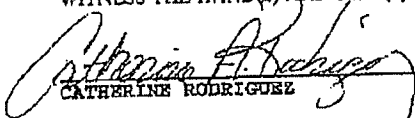
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales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

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

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

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

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


CATHERINE RODRIGUEZ

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

REDACTED

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE NOTE

THIS ADDENDUM is made this 21st day of April, 2005, and is incorporated into and intended to form a part of the Adjustable Rate Note (the "Note") dated the same date as this Addendum executed by the undersigned and payable to FIRST HORIZON HOME LOAN CORPORATION (the "Lender").

THIS ADDENDUM supercedes Section 3(A), 3(B), 4(C) and 7(A) of the Note. None of the other provisions of the Note are changed by this Addendum.

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest by making payments every month for the first 120 payments (the "Interest Only Period") in the amount sufficient to pay interest as it accrues. I will pay principal and interest by making payments every month thereafter for the next 240 payments in an amount sufficient to fully amortize the outstanding principal balance of the Note at the end of the Interest Only Period over the remaining term of this Note in equal monthly payments.

I will make my monthly payments on the first day of each month beginning on June 1st, 2005. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before principal. If, on May 1st, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my payments at PO BOX 809, MEMPHIS, TN 38101, or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,260.94. This payment amount is based on the original principal balance of the Note. This payment amount may change.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE-QUARTER percentage points (2.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

During this Interest Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest on the lower principal balance. At the end of the Interest Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest Only Period, my payment amount will not be reduced due to voluntary prepayments.


REDACTED

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

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

 04-22-05
CATHERINE RODRIGUEZ Date

Date

Date

Date

Date

Date

Date

Date

20050427-0003843

Assessor's Parcel Number:
County: 125-20-212-037 City:
Return To:
FHRLC - POST CLOSING MAIL ROOM

1555 W. WALNUT HILL LN. #200 MC 6712
IRVING, TX 75038
Prepared By: FIRST HORIZON HOME LOAN CORPORATION

7375 PRAIRIE FALCON DR STE 120
LAS VEGAS, NV 89128
Recording Requested By:
FIRST HORIZON HOME LOAN CORPORATION
4000 HORIZON WAY
IRVING, TX 75063

Fee: \$36.00
N/C Fee: \$0.00

04/27/2005 14:01:32
T20050377114

Requestor:
OLD REPUBLIC TITLE COMPANY OF NEVADA

Frances Deane ARO
Clark County Recorder Pgs: 23

5116003582GM

(Space Above This Line For Recording Data)

REDACTED

DEED OF TRUST

MIN

100085200533345205

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 21st, 2005 together with all Riders to this document.

(B) "Borrower" is
CATHERINE RODRIGUEZ, An Unmarried Woman

Borrower is the trustor under this Security Instrument.

(C) "Lender" is FIRST HORIZON HOME LOAN CORPORATION

Lender is a CORPORATION
organized and existing under the laws of THE STATE OF KANSAS

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

Form 3029 1/01

VMP -6A(NV) (0307)

Page 1 of 15

Initials: CAR

VMP Mortgage Solutions (800)521-7291



Lender's address is 4000 Horizon Way, Irving, Texas 75063

(D) "Trustee" is OLD REPUBLIC TITLE

140 N. STEPHANIE ST., HENDERSON, NV 89074

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

(F) "Note" means the promissory note signed by Borrower and dated April 21st, 2005

The Note states that Borrower owes Lender

TWO HUNDRED SIXTY NINE THOUSAND & 00/100 Dollars
(U.S. \$ 269,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MAY 1, 2035

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

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

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

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

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time.

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time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of CLARK [Name of Recording Jurisdiction]:

All that tract or parcel of land as shown on Schedule "A" attached hereto which is incorporated herein and made a part hereof.

Parcel ID Number: County: 125-20-212-037 City: which currently has the address of
6845 SWEET PECAN STREET [Street]
LAS VEGAS [City], Nevada 89149 [Zip Code]
("Property Address"):

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

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

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of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

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

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

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

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

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds

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for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10

days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position.

in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the

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Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

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

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

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

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

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

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

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

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

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender

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

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

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

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

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

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

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations

Initials: CAR

contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the

address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

Initials: CAR

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

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

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

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

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

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

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

REDACTED

CD-6A(NV) (0307)


Page 13 of 15

Initials: *DAE*

Form 3029 1/01

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

 (Seal)
CATHERINE RODRIGUEZ -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

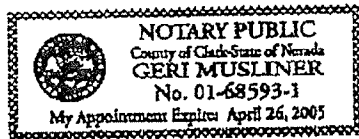
_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

REDACTED
VND-6A(NV) (0307)

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on April 22, 2005 by
CATHERINE RODRIGUEZ




Geri Musliner

Mail Tax Statements To: TOTAL MORTGAGE SOLUTIONS, LP
1555 W. WALNUT HILL LANE, SUITE 200A
IRVING, TX 75038

REDACTED

WSP-6A(NV) (0307)

Page 15 of 15

Initials 

Form 3029 1/01

Order No. : 5116003582-GM

EXHIBIT "A"

The land referred to is situated in the State of Nevada, County of Clark,
City of Las Vegas, and is described as follows:

Lot 37 in Block 3 of Concordia @ Deer Springs Unit 3, as shown by map
thereof on file in Book 112 of Plats, Page 28, in the Office of the County
Recorder, Clark County, Nevada.

Inst #: 201003180003719

Fees: \$66.00

N/C Fee: \$26.00

03/18/2010 02:48:05 PM

Receipt #: 276208

Requestor:

UTLS DEFAULT SERVICES

Recorded By: SUO Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Assessors Parcel No(s): 125-20-212-037
Recording requested by:

When recorded mail to:
Quality Loan Service Corp.
2141 5th Avenue
San Diego, CA 92101
619-645-7711

Space above this line for recorders use only
Order # 30240344

TS # NV-10-351356-NF

Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust

NOTICE IS HEREBY GIVEN: That Quality Loan Service Corp. is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated 4/21/2005, executed by CATHERINE RODRIGUEZ, AN UNMARRIED WOMAN, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR FIRST HORIZON HOME LOAN CORPORATION, as beneficiary, recorded 4/27/2005, as Instrument No. 20050427-0003843, in Book XXX, Page XXX of Official Records in the Office of the Recorder of CLARK County, Nevada securing, among other obligations including 1 NOTE(S) FOR THE ORIGINAL sum of \$269,000.00, that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the beneficiary; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of;

The installments of principal and interest which became due on 12/1/2009, and all subsequent installments of principal and interest through the date of this Notice, plus amounts that are due for late charges, delinquent property taxes, insurance premiums, advances made on senior liens, taxes and/or insurance, trustee's fees, and any attorney fees and court costs arising from or associated with the beneficiaries efforts to protect and preserve its security, all of which must be paid as a condition of reinstatement, including all sums that shall accrue through reinstatement or pay-off. This amount is no less than \$7,424.96 as of 3/17/2010 and will increase until your account becomes current. Nothing in this notice shall be construed as a waiver of any fees owing to the Beneficiary under the Deed of Trust pursuant to the terms of the loan documents.

That by reason thereof the present Beneficiary under such deed of Trust has executed and delivered a written Declaration of Default and Demand for Sale and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

EXHIBIT "1"

NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. As to owner occupied property, where reinstatement is possible, the time to reinstate may be extended to 5 days before the date of sale pursuant to NRS 107.080. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:

MetLife Home Loans a division of MetLife Bank NA
C/O Quality Loan Service Corp.
2141 5th Avenue
San Diego, CA 92101
619-645-7711

To reach a Loss Mitigation Representative who is authorized to negotiate a Loan Modification, please contact:

MetLife Home Loans a division of MetLife Bank NA
Contact: SHANTELL WILLIAMS
Department: Loss Mitigation Department
Phone: 214-441-6013

Contact: DEWANNA RICHARD
Department: Loss Mitigation Department
Phone: 214-441-7516

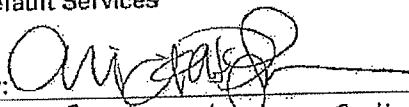
You may wish to consult a credit-counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with the name and address of the local HUD approved counseling agency by calling their toll-free hotline at (800) 569-4287 or you can go to The Department of Housing and Urban Development (HUD) web site at www.hud.gov/offices/hsg/sfh/hcc/hcs.com.

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Dated: 3/17/2010

Quality Loan Service Corp., AS AGENT FOR
BENEFICIARY
BY: UTLS Default Services fka Land America
Default Services

By:



Ericka Larson, Authorized Signature

State of CA)
County of Orange) ss.

On 3/18/10 before me, Dana Rosas a notary public,
personally appeared Ericka Larson, who proved to me on the basis
of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

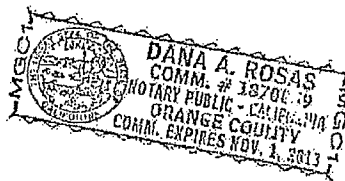
WITNESS my hand and official seal.

(Seal)



THIS OFFICE IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE.

As required by law, you are hereby notified that a negative credit report reflecting on your
credit record may be submitted to a credit report agency if you fail to fulfill the terms of your
credit obligations.



newberry@deanerin.com

Declarer & Trustee

Tara Newberry
702-382-6911 (o)

720 South Fourth St. Suite 300
Las Vegas, NV 89101

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM

ELECTION/WAIVER OF MEDIATION FORM

(To be filed out by Trustee)

ASSESSOR PARCEL NUMBER (APN) 125-20-212-037

PROPERTY ADDRESS 6845 SWEET PECAN STREET

LAS VEGAS, NV 89149

TRUSTEE Quality Loan Service Corp.

DoT 4/27/2005

TS # NV-10-351356-NF

Book/Inst XXX 20050427-0003843

*****ATTENTION—YOU MUST ACT WITHIN THIRTY (30) DAYS*****
IF NO ACTION IS TAKEN, THE FORECLOSURE MAY PROCEED

You have been served with a Notice of Default and Election to sell, a copy of which is enclosed, that could result in the loss of your home. You may want to consult with an attorney concerning your rights and responsibilities.

The State of Nevada has created a mediation program for homeowners whose owner-occupied, primary residence is subject to foreclosure. Mediation is a process through which you and the lender meet with a neutral mediator to determine whether an agreement can be reached to cure any defaults in the loan or modify the terms of the loan to enable you to remain in your home. The mediator will be appointed by the Foreclosure Mediation Program Administrator. The mediator will not provide legal advice to either party. If you feel the need for legal representation, it is recommended that you retain an attorney to assist you in the mediation. [Use additional paper if needed]

Property Owner's Name: CATHERINE A. RODRIGUEZ

Mailing Address: 6845 Sweet Pecan St
Las Vegas, NV 89149

Phone No: 702-456-8228 (telephone)

702-382-8338 (cellular)

Email: _____

Co-owner's Name: _____

Mailing Address: _____

Phone No: () _____ (telephone)

() _____ (cellular)

Email: _____

PLEASE SELECT ONE OF THE CHOICES BELOW AND RETURN COPIES IN ENCLOSED ENVELOPES.

☒ **ELECTION OF MEDIATION** The undersigned hereby request[s] that mediation be scheduled to attempt to work out a resolution of the loan. (\$200.00 Money Order or Cashier's Check Applies—See Below).

Do you have an open Bankruptcy proceeding?

If so, Date filed? Discharged - 12-01-08
case # 08-15209

☐ **WAIVER OF MEDIATION** The undersigned is/are aware of the right to seek mediation but have determined that I/we do not want to proceed with a mediation and hereby waive the right to do so.

The undersigned hereby certify under the penalty of perjury that I/we are the owner[s] of the real property that is the subject of the pending foreclosure and occupy the real property as my/our primary residence.

Catherine A. Rodriguez 04-13-05
Signature of Property Owner Date

N.A.
Signature of Co-Owner Date

COMPLETE TWO COPIES OF THIS FORM AND FORWARD ONE TO THE MEDIATION ADMINISTRATOR AND THE OTHER TO THE TRUSTEE OF THE DEED OF TRUST. TWO UNSTAMPED, PRE-ADDRESSED ENVELOPES HAVE BEEN ENCLOSED.

IF YOU HAVE CHOSEN TO SEEK MEDIATION, YOU MUST SEND A MONEY ORDER OR CASHIER'S CHECK IN THE SUM OF \$200 PAYABLE TO: "STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM." THIS PAYMENT MUST BE RETURNED TO THE ADMINISTRATOR WITHIN 30 DAYS OF THE DATE THE NOTICE OF DEFAULT AND ELECTION TO SELL WAS MAILED TO YOU.

PAYMENT MUST BE SENT TO THE ADMINISTRATOR IN THE ENVELOPE THAT WAS ENCLOSED WITH THIS FORM.

APN 125-20-212-037

Recording requested by:

When recorded mail to:

MetLife Home Loans a division of MetLife
Bank NA
4000 Horizon Way
Foreclosure Dept. #6205
Irving, TX 75063

Inst #: 201006160002631

Fees: \$15.00

N/C Fee: \$25.00

06/16/2010 12:24:11 PM

Receipt #: 390718

Requestor:

UTLS DEFAULT SERVICES

Recorded By: DXI Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Space above this line for recorders use

APN: 125-20-212-037

TS # NV-10-351356-NF

Order # 30240344

Investor No. 5020021417

Assignment of Deed of Trust

For value received, the undersigned corporation hereby grants, assigns, and transfers to

The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the holders of the Certificates, First Horizon Mortgage Pass-Through Certificates Series FHAMS 2005-AA5, by First Horizon Home Loans, a division of First Tennessee Bank National Association, Master Servicer, in its capacity as agent for the Trustee under the Pooling and Servicing Agreement

All beneficial interest under that certain Deed of Trust dated 4/21/2005 executed by CATHERINE RODRIGUEZ, AN UNMARRIED WOMAN, as Trustor(s) to OLD REPUBLIC TITLE, as Trustee and recorded as Instrument No. 20050427-0003843, on 4/27/2005, in Book XXX, Page XXX of Official Records, in the office of the County Recorder of CLARK County, NV together with the Promissory Note secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of Trust.

NV-10-351356-NF
Page 2

Dated: 5-24-2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC. AS NOMINEE FOR FIRST HORIZON HOME LOAN
CORPORATION



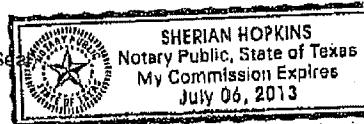
Wanda Collier
Assistant Secretary

State of Texas)
County of Dallas) ss

On 5-24-10 before me, Sherian Hopkins the
undersigned Notary Public, personally appeared Wanda Collier personally known
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature  (Seal)



STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM

MEDIATOR'S STATEMENT

Assessor Parcel Number (APN) 125-20-212-D37

Property Owner Catherine A. Rodriguez Beneficiary MetLife Home Loans

Property Address 6845 Sweet Pecan St. TS# NV-10-351356-NF
Las Vegas, NV 89149

Trustee Quality Loan Service Corp DoT Book/Inst _____

A Foreclosure Mediation conference was held on July 19, 2010.

The Mediator files the following report of the proceedings:

_____ The parties resolved this matter. No further action is required.

_____ The parties participated but were unable to agree to a loan modification or make other arrangements.

_____ The beneficiary or his representative failed to attend the mediation. No further action is required.

_____ The beneficiary or his representative failed to participate in good faith. No further action is required. Please explain: _____

X _____ The beneficiary failed to bring to the mediation each document required. No further action is required. Beneficiary did not bring appraisal or BPO

X _____ The beneficiary did not have the required authority or access to a person with the required authority. No further action is required. See attached Addendum

_____ The Grantor or person who holds the title of record (homeowner) failed to attend the mediation.

_____ The Grantor or person who holds the title of record (homeowner) failed to participate in good faith. Please explain: _____

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM

_____ The Grantor or person who holds the title of record (homeowner) failed to bring to the mediation each document required.

Other _____

The Mediator hereby certifies, under the penalty of perjury, that the foregoing is a true and accurate report of the proceedings as required by NRS Chapter 107.

DATED this 20th day of July, 2010.

Saur J Ben

MEDIATOR

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Mediator's Statement on the 20th day of July, 2010, by placing true and correct copies thereof in the U. S. mail, postage prepaid, addressed to the following:

metLife Home Loans
4000 Horizon Way
Irving, TX 75063

Tara Newberry
Deaner, Deaner Scann Malan + Larsu
Attorney for Homeowner
tnewberry@deanerlaw.com

Catherine A. Rodriguez
Homeowner
6845 Sweet Pecan Dr.
Las Vegas, 89149

Kali Fox Miller, 909
McCarthy + Hothus LLP
Representative for Beneficiary of deed of Trust
Kfmiller@mccarthyhothus.com

By: Saur J Ben

MEDIATOR

APN No: 125-20-212-037

Property Owner: Catherine A. Rodriguez

Property Address: 6845 Sweet Pecan Street, Las Vegas, NV 89149

Beneficiary: MetLife Home Loans

TS#: NV-I--351356-NF

Date of Mediation: July 19, 2010

ADDENDUM TO MEDIATOR'S STATEMENT

It is my opinion that the beneficiary's representative did not have the required authority or access to a person with the required authority "to negotiate and modify the loan secured by the deed of trust" as required by FMP Rule 5(8)(a). The representative was severely limited in the modification terms which she could offer and did not have authority to negotiate a legitimate, good faith modification proposal. The representative offered a traditional modification which consisted of a temporary interest rate reduction, which would have reduced the homeowner's monthly payment by approximately \$150.00 per month from \$1547.00 to approximately \$1403.00 per month. The homeowner and her counsel indicated the homeowner did not have the means to comply with the terms of this proposed modification, as was clear from the financials submitted. The representative indicated the beneficiary was not a participant in the Federal HAMP Program and that the representative was limited in terms of the modifications she could offer by the beneficiary's pulling and servicing agreement. The beneficiary's representative stated that there is no person with authority to negotiate terms that are outside the scope of the beneficiary's pulling and servicing agreement. It is therefore my opinion that the representative did not have proper authority to participate in good faith modification negotiations of the loan given the rigid, inflexible guidelines to which the representative was bound.

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BY:

Alvin L. Blum

CLERK OF THE COURT

Kristin A. Schuler-Hintz, Esq., Nevada SBN 7171
Seth J. Adams, Esq., Nevada SBN 11034
Kali Fox Miller, Esq., Nevada SBN 11656
McCarthy & Holthus, LLP
9510 W. Sahara, Suite 110
Las Vegas, NV 89117
Phone (702) 685-0329 x 2015
Fax (866) 339-5691
kfmiller@mccarthyholthus.com

Attorneys for Petitioners MetLife Home Loans a division of MetLife Bank NA as subservicer for The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the holders of the Certificates, First Horizon Mortgage Pass-Through Certificates Series FHAMS 2005-AA5, by First Horizon Home Loans, a division of First Tennessee Bank National Association, Master Servicer, in its capacity as agent for the Trustee under the Pooling and Servicing Agreement

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

METLIFE HOME LOANS

Petitioners,

v.

CATHERINE A. RODRIGUEZ;
SARAH J. BEAN, ESQ.

Respondent.

) Case No. A - 10 - 622878 - J

)
) Dept. No. XIV

)
)
) PETITION FOR JUDICIAL REVIEW
) PURSUANT TO AB 149

VERIFIED PETITION FOR JUDICIAL REVIEW

Petitioners, METLIFE HOME LOANS A DIVISION OF METLIFE BANK NA AS
SUBSERVICER FOR THE BANK OF NEW YORK MELLON F/K/A THE BANK OF
NEW YORK, TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST
HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-

1 AA5, BY FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE
2 BANK NATIONAL ASSOCIATION, MASTER SERVICER, IN ITS CAPACITY AS
3 AGENT FOR THE TRUSTEE UNDER THE POOLING AND SERVICING
4 AGREEMENT ("Petitioner"), by and through its counsel, Kali Fox Miller of McCarthy &
5 Holthus, LLP, petitions this Court, pursuant to NRS 107 as amended by AB 149 (2009),
6 inclusive, for review of the mediation conducted pursuant to NRS 107, as amended by AB 149
7 (2009), and Nevada Supreme Court Foreclosure Mediation Rule 5 for a determination of Good
8 Faith participation, compliance with the Mediation Rules and an Order granting Petitioners right
9 to receive a foreclosure mediation certificate.
10

11
12 **I.**
13 **JURISDICTION**

14 1. NRS 107, as amended by AB 149 (2009), Nevada Supreme Court Foreclosure
15 Mediatin Rule 5(7)(f), NRS 30.040 and NRS 33.010 vests this Court with sole jurisdiction over
16 the determination of mediation proceedings.

17 **II.**
18 **PARTIES**

19 2. Petitioner is the Beneficiary of a Deed of Trust on owner-occupied residential
20 property commonly-known as 6845 Sweet Pecan Street, Las Vegas, NV 89149, APN 125-20-
21 212-037.
22

23 **III.**
24 **STATEMENT OF FACTS**

25 3. Petitioner caused to be recorded a Notice of Default on 03/18/2010 due to a
26 default in the monthly payment obligations due and owing beginning with the 12/01/2009
27 payment. (A true and correct copy of the Notice of Breach and Default is attached as Exhibit 1).
28
29

1 4. On 03/26/2010, the Petitioners' Foreclosure Trustee Quality Loan Service Corporation
2 ("Trustee") mailed an Election/Waiver of Mediation forms, the Foreclosure Mediation
3 Frequently Asked Questions, an addressed envelope, and a copy of the Notice of Default to Ms.
4 Catherine Rodriguez ("Borrower").
5

6 5. The Trustee received an Election to Mediate from the Borrower's Attorney, Ms.
7 Tara Newberry, Esq., indicating that Respondent elected to mediate on or about 04/13/2010
8 within the 30-day window provided by Rule 5, subsection 5(a) of the Amended Foreclosure
9 Mediation Rules ("Rules"). (A true and correct copy of the Mediator's Statement is attached as
10 Exhibit 2).
11

12 6. On or about 06/29/2010, the Foreclosure Mediation Program Administration
13 assigned the file to Sarah J. Bean, Esq. ("Mediator") who set the mediation for 07/17/2010 and
14 mailed the notice to appear. (A true and correct copy of the Notice to Appear is attached as
15 Exhibit 3).
16

17 7. Borrower and her Attorney appeared at the scheduled mediation.

18 8. Petitioner was represented during the mediation by undersigned counsel, Kali Fox
19 Miller, Esq. of McCarthy & Holthus, LLP ("Counsel").
20

21 9. Counsel for the Petitioners attended the 07/17/2010 Mediation with copies of the
22 documentation pursuant to the documentary requirements of the Nevada Foreclosure Mediation
23 Rules, namely: 1) Certified copies of the Note, Deed of Trust, and Assignment to Petitioner, 2) a
24 Mediation Brief containing a proposed short sale list price and other proposals, 3) an Evaluative
25 Methodology, 4) and a valuation.
26
27
28
29

1 10. Additionally, Counsel for the Petitioners represented that she had the requisite
2 authority on behalf of the named Petitioner to participate in the mediation program and make
3 loss mitigation decisions with full force and effect.

4 11. The mediation was conducted at the office of Borrowers Attorney, Ms. Newberry,
5 and the parties were unable to reach an agreement during the mediation. The parties were present
6 at 8:00 am and the mediation concluded at approximately 10:30 am, a total of two and a half
7 hours.
8

9 12. The Mediator did not provide a copy of the Mediator's Statement at the
10 mediation.
11

12 13. On or about 07/20/2010, the Mediator signed and mailed her Mediator's
13 Statement to Petitioners' Counsel indicating that "The beneficiary failed to bring to the
14 mediation each document required. No further action is required. Beneficiary did not bring
15 appraisal or BPO" and "The beneficiary's representative did not have the required authority or
16 access to a person with the required authority 'to negotiate and modify the loan secured by the
17 deed of trust' as required by FMP Rule 5(8)(a)...there is no person with authority to negotiate
18 terms that are outside the scope of the beneficiary's *pulling and servicing agreement*[sic]...It is
19 therefore my opinion that the representative did not have proper authority to participate in good
20 faith modification negotiation..."
21

22 14. Counsel for Petitioners is unable to determine, and accordingly seeks a
23 determination by the Court, as to Petitioner's ability to receive a mediation certificate given the
24 statements by the Mediator. Petitioner has filed this petition for Judicial Review to preserve its
25 rights.
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IV.
CLAIM FOR RELIEF

A. **Petitioners Satisfied the Foreclosure Mediation Requirements for information**

15. Petitioner hereby incorporates by reference the allegations of paragraphs number 1 through 14 as though fully set forth herein.

16. Rule 8, subsections (1) through (7), of the Amended Foreclosure Mediation Rules memorialize the documents the beneficiary must present at a Foreclosure Mediation, namely a Document Certification, a Certified Copy (or Original) of the Deed of Trust, Promissory Note and "each assignment." Additionally, Rule 8(3) provides additional requirements such as an appraisal, estimate of the short sale value the beneficiary may be willing to consider, a nonbinding proposal for resolving the foreclosure and the evaluative methodology used by the beneficiary.

17. In the instant case, the Petitioner satisfied the documentary requirements by providing a document certification dated 07/01/2010 attesting to the Possession of the copies of the Promissory Note, Deed of Trust, and Assignment, a valuation, a Mediation Brief (which included a proposed short sale value), and the Evaluative Methodology utilized by the Petitioners in attempting to resolve the foreclosure.

18. AB 149 does not provide a requirement for the valuation of the property for the mediations.

19. However, the Mediation Rules designated by the Supreme Court of Nevada on 04/13/2010 specify that the beneficiary "shall produce an appraisal done no more than 60 days before the commencement date of the mediation with respect to the real property that is the subject of the notice of default and shall prepare an estimate of the 'short sale' value of the

1 residence that it may be willing to consider as a part of the negotiation if the loan modification is
2 not agreed upon." Rule 8(3).

3 20. Under NRS 645C.030, an Appraisal means "an analysis, opinion or conclusion,
4 whether written or oral, relating to the nature, quality, value or use of a specified interest in, or
5 aspect of, identified real estate for or with the expectation of receiving compensation."

6
7 21. Here, Counsel provided the Borrower with a document valuation and an oral
8 concrete amount the beneficiary was willing to accept during the mediation as a short sale value.

9
10 22. Counsel is at a loss as to just what was not gained by the Borrower by not
11 receiving a document which guesses at a value as opposed to the actual value itself and how it
12 might have had any bearing upon the mediation, when the short sale value was not the reason the
13 parties failed to reach an agreement.

14 23. A lengthily portion of the discussions during mediation was the likelihood that the
15 Borrower could retain the property through a modification; however Borrower did not want to
16 pay an amount contractually due.

17
18 24. Borrower only wanted to retain the property if the loan amount and arrears
19 magically dissipated via principle reduction or were hidden in principle forbearance. Borrower
20 was not willing to pay a monthly payment representative of the balance owed or their ability to
21 pay.
22

23 25. Despite the lack of intent on behalf of the Borrower to repay the debt to retain the
24 property, the Mediator's Statement is silent as to the Borrowers intentions for retaining the
25 property.
26

27 26. The Borrower herself did not submit financials until 07/15/2010 at 3:13 pm, three
28 days before mediation, one business day before the weekend.
29

1 27. As opposed to the appraisal, which is only necessary if the property is listed for
2 short sale and only gives an estimation of what the beneficiary is willing to consider, the
3 documents which are essential to mediation are the financials. (Only without the financials is
4 mediation unable to determine if alternative to foreclosure can be extended to the Borrowers
5 prior to the mediation.)

6
7 28. It was the Borrowers strategic decision to not reach an agreement in an effort to
8 maximize the time in the property without paying the contractual obligation.

9
10 29. The mediation was not halted by the Beneficiary's failure to provide an Appraisal
11 or BPO. In the end it was irrelevant.

12 30. Furthermore, as evidenced by the date the Notice to Appear, 06/29/2010, and the
13 date of the actual mediation, 07/19/2010, the beneficiary only had 12 business days, to receive
14 the Notice to Appear, provide all of the documentary requirements of the program, and offer
15 options to modify the loan.

16
17 31. The Mediator seeks to circumvent the true intention of the program which is to
18 bring both parties together to discuss alternatives to foreclosure and reach an agreement based on
19 the totality of all options available.

20
21 32. Counsel spent over two hours explaining modification and non-retention options,
22 scrutinizing and getting clarification on the incomplete financials provided during mediation, and
23 showing compliance with the documentary requirements.

24 33. This should be indicative of a person with the kind of experience and authority which
25 the program seeks. Counsel is at a loss as to just what was not gained by the Borrower by not
26 receiving a piece of paper which would have served no purpose.

1 34. Petitioner appeals the finding by the Mediator that they failed to bring each
2 document required as the rule was fully complied with.
3

4
5 **B. Petitioners were at all times in good faith in their negotiations**

6
7 35. Counsel for Petitioner was at all times a person with requisite authority to
8 *negotiate* a loan modification during the mediation. This was proven by the several offers made
9 during mediation which were rejected by the Borrower.

10 36. The Mediator would have us believe that the program entitles she and her fellow
11 mediators to force Petitioners' into contractual agreements that go against their own best
12 interests.
13

14 37. No where in AB 149 or the rules adopted thereunder is the Mediator granted the
15 authority to require the Petitioner to override their own judgment because in the opinion of the
16 Mediator their offers are not good enough. The only determination the mediator is permitted to
17 make is whether or not the attending representative had the requisite authority, as discussed
18 above.
19

20 38. Authority to modify the loan was present as show by the attached Trial Period
21 Modification which capitalized over twelve thousand dollars in missed payments, dropped the
22 interest rate to 2% for five years, and extended the term was rejected by the Borrower. (A true
23 and correct copy of the Loan Modification offered is attached as Exhibit 4).
24

25 39. The Mediator seeks to circumvent the fact that the Borrower rejected the Trail
26 Period Modification.
27

28 40. The Mediator seeks to circumvent the fact that non-retention alternatives were
29 proposed during the mediation, namely a short-sale and a deed-in-lieu (of foreclosure).

41. The Mediator seeks to circumvent the fact that Borrower rejected the non-retention alternatives.

42. The Mediator's Statement, as a whole, contains irrelevant, immaterial, and unsupported allegations regarding the PSA and how the Servicer did not have "proper authority" because they would not magically extinguish the obligation of a borrower to repay the contractual obligation.

43. Petitioner appeals the finding by the Mediator that they did not have the requisite authority to negotiate the loan.

CONCLUSION

44. Petitioners provided documented and oral valuations of the property and refute the finding that they did not provide an appraisal.

45. Petitioners refute that the Mediators opinion of the offers made during mediation has any bearing on the authority to reach an agreement.

46. This petition was filed to preserve Petitioners' rights and remedies under the law as undersigned Counsel is unable to ensure that the program administration will issue a certificate.

///

111

///

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1 47. WHEREFORE, for the above reasons, Petitioner respectfully request that the
2 Court determine that Petitioner participated in Good Faith and met the documentation
3 requirements as imposed by the Amended Foreclosure Mediation Rules in effect. Petitioner
4 respectfully requests an Order of the Court that Petitioner be able to receive a Mediation
5 Certificate from the Foreclosure Mediation Program Administration.
6
7
8
9

10 Dated: August 11, 2010

 McCarthy & Holthus, LLP

11
12
13 By: /s/ Kali Fox Miller

 Kali Fox Miller, Esq.
 Attorney for Petitioners
 9510 W. Sahara, Suite 110
 Las Vegas, NV 89117
 (702) 685-0329
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VERIFICATION

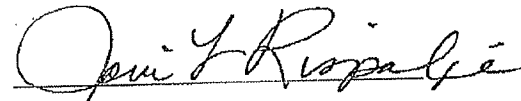
I, Kali Fox Miller, am Counsel for the Petitioners in the above-entitled action; that I have read the foregoing document and am competent to testify that the contents are true of my own knowledge except for those matters stated therein on information and belief; and, as to those matters, I believe them to be true.

Date 08/11/2010

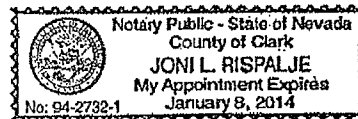


Kali Fox Miller, Esq.

SUBSCRIBED and SWORN to before me this 11th day of August, 2010.



Notary Public



CERTIFICATE OF SERVICE

8/13/2010

On ~~08/11/2010~~ 8/13/2010, I served the foregoing documents described as **PETITION FOR JUDICIAL REVIEW PURSUANT TO AB 149**, on the following individuals by depositing true copies thereof in the United States mail at Las Vegas, Nevada, enclosed in a sealed envelope, with postage paid, addressed as follows:

Ms. Sara J. Bean, Esq.
300 S. fourth St.
Las Vegas, NV 89101

Via Certified Mail

Ms. Catherine A. Rodriguez
6845 Sweet Pecan St.
Las Vegas, NV 89149

Via Certified Mail

Ms. Tara Newberry
Deaner Deaner Scan
720 Fourth Street, Suite 300
Las Vegas, NV 89101

Via Certified Mail

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

/s/ Ellen McAbee

Ellen McAbee

Inst #: 201003180003719

Fees: \$66.00

N/C Fee: \$26.00

03/18/2010 02:48:05 PM

Receipt #: 276208

Requestor:

UTLS DEFAULT SERVICES

Recorded By: SUO Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Assessors Parcel No(s): 125-20-212-037
Recording requested by:

When recorded mail to:
Quality Loan Service Corp.
2141 5th Avenue
San Diego, CA 92101
619-645-7711

Space above this line for recorders use only
Order # 30240344

TS # NV-10-351356-NF

Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust

NOTICE IS HEREBY GIVEN: That Quality Loan Service Corp. is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated 4/21/2005, executed by CATHERINE RODRIGUEZ, AN UNMARRIED WOMAN, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR FIRST HORIZON HOME LOAN CORPORATION, as beneficiary, recorded 4/27/2005, as Instrument No. 20050427-0003843, in Book XXX, Page XXX of Official Records in the Office of the Recorder of CLARK County, Nevada securing, among other obligations including 1 NOTE(S) FOR THE ORIGINAL sum of \$269,000.00, that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the beneficiary; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

The installments of principal and interest which became due on 12/1/2009, and all subsequent installments of principal and interest through the date of this Notice, plus amounts that are due for late charges, delinquent property taxes, insurance premiums, advances made on senior liens, taxes and/or insurance, trustee's fees, and any attorney fees and court costs arising from or associated with the beneficiaries efforts to protect and preserve its security, all of which must be paid as a condition of reinstatement, including all sums that shall accrue through reinstatement or pay-off. This amount is no less than \$7,424.96 as of 3/17/2010 and will increase until your account becomes current. Nothing in this notice shall be construed as a waiver of any fees owing to the Beneficiary under the Deed of Trust pursuant to the terms of the loan documents.

That by reason thereof the present Beneficiary under such deed of Trust has executed and delivered a written Declaration of Default and Demand for Sale and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

EXHIBIT "1"

NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. As to owner occupied property, where reinstatement is possible, the time to reinstate may be extended to 5 days before the date of sale pursuant to NRS 107.080. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:

MetLife Home Loans a division of MetLife Bank NA
C/O Quality Loan Service Corp.
2141 5th Avenue
San Diego, CA 92101
619-645-7711

To reach a Loss Mitigation Representative who is authorized to negotiate a Loan Modification, please contact:

MetLife Home Loans a division of MetLife Bank NA
Contact: SHANTELL WILLIAMS
Department: Loss Mitigation Department
Phone: 214-441-6013

Contact: DEWANNA RICHARD
Department: Loss Mitigation Department
Phone: 214-441-7516

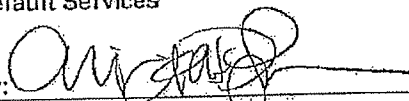
You may wish to consult a credit-counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with the name and address of the local HUD approved counseling agency by calling their toll-free hotline at (800) 569-4287 or you can go to The Department of Housing and Urban Development (HUD) web site at www.hud.gov/offices/hsg/sfh/hcc/hcs.com.

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Dated: 3/17/2010

Quality Loan Service Corp., AS AGENT FOR
BENEFICIARY
BY: UTLS Default Services fka Land America
Default Services

By:



Ericka Larson, Authorized Signature

State of CA)
County of Orange) ss.

On 3/18/10 before me, Dana Rosas a notary public,
personally appeared Ericka Larson, who proved to me on the basis
of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

(Seal)



THIS OFFICE IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE.

As required by law, you are hereby notified that a negative credit report reflecting on your
credit record may be submitted to a credit report agency if you fail to fulfill the terms of your
credit obligations.



STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM

MEDIATOR'S STATEMENT

Assessor Parcel Number (APN) 125-20-212-037

Property Owner Catherine A. Rodriguez Beneficiary MetLife Home Loans

Property Address 6845 Sweet Pecan St. TS# NV-10-351356-NF
Las Vegas, NV 89149

Trustee Quality Loan Service Corp DoT Book/Inst _____

A Foreclosure Mediation conference was held on July 19, 2010.

The Mediator files the following report of the proceedings:

_____ The parties resolved this matter. No further action is required.

_____ The parties participated but were unable to agree to a loan modification or make other arrangements.

_____ The beneficiary or his representative failed to attend the mediation. No further action is required.

_____ The beneficiary or his representative failed to participate in good faith. No further action is required. Please explain: _____

X _____ The beneficiary failed to bring to the mediation each document required. No further action is required. Beneficiary did not bring appraisal or BPO

X _____ The beneficiary did not have the required authority or access to a person with the required authority. No further action is required. See attached Addendum

_____ The Grantor or person who holds the title of record (homeowner) failed to attend the mediation.

_____ The Grantor or person who holds the title of record (homeowner) failed to participate in good faith. Please explain: _____

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM

_____ The Grantor or person who holds the title of record (homeowner) failed to bring to the mediation each document required.

Other _____

The Mediator hereby certifies, under the penalty of perjury, that the foregoing is a true and accurate report of the proceedings as required by NRS Chapter 107.

DATED this 20th day of July, 2010.

Saur J Ben
MEDIATOR

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Mediator's Statement on the 20th day of July, 2010, by placing true and correct copies thereof in the U. S. mail, postage prepaid, addressed to the following:

metLife Home Loans
4000 Horizon Way
Irving, TX 75063

Tara Newberry
Deaner, Deaner Scann Malan + Larsu
Attorney for Homeowner
tnewberry@deanerlaw.com

Catherine A. Rodriguez
Homeowner
6845 Sweet Pecan St.
Las Vegas, 89149

Kali Fox Miller, 909
McCarthy + Hothaus LLP
Representative for Beneficiary of deed of trust
Kfmiller@mccarthyhothaus.com

By: Saur J Ben
MEDIATOR

APN No: 125-20-212-037
Property Owner: Catherine A. Rodriguez
Property Address: 6845 Sweet Pecan Street, Las Vegas, NV 89149
Beneficiary: MetLife Home Loans
TS#: NV-1--351356-NF
Date of Mediation: July 19, 2010

ADDENDUM TO MEDIATOR'S STATEMENT

It is my opinion that the beneficiary's representative did not have the required authority or access to a person with the required authority "to negotiate and modify the loan secured by the deed of trust" as required by FMP Rule 5(8)(a). The representative was severely limited in the modification terms which she could offer and did not have authority to negotiate a legitimate, good faith modification proposal. The representative offered a traditional modification which consisted of a temporary interest rate reduction, which would have reduced the homeowner's monthly payment by approximately \$150.00 per month from \$1547.00 to approximately \$1403.00 per month. The homeowner and her counsel indicated the homeowner did not have the means to comply with the terms of this proposed modification, as was clear from the financials submitted. The representative indicated the beneficiary was not a participant in the Federal HAMP Program and that the representative was limited in terms of the modifications she could offer by the beneficiary's pulling and servicing agreement. The beneficiary's representative stated that there is no person with authority to negotiate terms that are outside the scope of the beneficiary's pulling and servicing agreement. It is therefore my opinion that the representative did not have proper authority to participate in good faith modification negotiations of the loan given the rigid, inflexible guidelines to which the representative was bound.

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATION SCHEDULING NOTICE

ASSESSOR PARCEL NUMBER (APN) 125-20-212-037

Property Owner (s) Catherine Rodriguez

PROPERTY ADDRESS 6845 Sweet Pecan St., Las Vegas, NV 89149

BENEFICIARY MetLife Home Loans

TRUSTEE Quality Loan Service Corp.

TS NV-10-351356-NF

DoT Doc# 4/27/2005

Book #: XXX 20050427-0003843

Page # _____

Inst _____

NOTICE TO APPEAR

TO: Catherine Rodriguez, Property Owner(s); and

TO: MetLife Home Loans, Beneficiary;

The mediation in this matter will be held on July 19, 2010, at 8:00 a.m. AM/PM.

Location: Deaner Deaner Scann Malan & Larson, 720 South Fourth Street, Suite 300, Las Vegas, Nevada.

All beneficiaries of the deed of trust or assignees, or their representatives, who are seeking to invoke foreclosure against a homeowner, shall participate in the foreclosure mediation program, and shall be represented at all times during a mediation by a person or persons who have the authority to modify the underlying loan, and who shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note, and each assignment of the deed of trust and the mortgage note.

The homeowner and lender representative with authority to modify the underlying loan shall be physically present, or, if approved by the mediator, may participate by phone for good cause.

Failure by the beneficiaries of the deed of trust, or their representatives, to attend and participate at the mediation in good faith or to bring all requisite documents and authorities to the mediation, shall result in the mediator preparing and submitting a statement to the Foreclosure Mediation Program Manager of the facts which may result in an inability to proceed with the foreclosure.

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM

All parties are herein noticed to comply with Rule 8 of the Foreclosure Mediation Program. The parties shall submit the required statements, disclosure forms, and documents to the presiding mediator at least ten (10) days prior to the scheduled mediation, unless otherwise agreed.

Pursuant to Rule 9 of the Foreclosure Mediation Rules, in the event the foreclosure issues are resolved before the scheduled mediation, the parties must, no later than two business days prior to the scheduled mediation date, notify the mediator of their settlement. Failure to abide by Rule 9 may subject the parties to sanctions.

DATED this 30th day of June, 2010.

Mediator: _____

Please Print Name: Sarah J. Bean

Contact Number: 419-996-9005

COPY TO: Foreclosure Mediation Program Coordinator

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Mediation Scheduling Notice on the 29th day of June, 2010, by placing true and correct copies thereof in the U. S. mail, postage prepaid, addressed to the following:

Property Owner(s): Catherine A. Rodriguez 6845 Sweet Pecan Street, Las Vegas, NV 89149

Attorney(s)/Representative for Property Owner(s): Tara Newberry, DEANER DEANER SCANN
MALAN & LARSON, 720 South Fourth Street, Suite 300, Las Vegas, NV 89101

Beneficiary(ies): MetLife Home Loans, 4000 Horizon Way, Irving, TX 75063

Attorney(s)/Representative for Beneficiary(ies): Kristin Schuler-Hintz, MCCARTHY & HOLTHUS, LLP, 9510
West Sahara Avenue, Suite 110, Las Vegas, NV 89117

Trustee(s): Quality Loan Service Corp, 2141 5th Avenue, San Diego, CA 92101

By: 

Please Print Name: Sarah J. Bean

Title: Mediator

STATE OF NEVADA
FORECLOSURE
MEDIATION
PROGRAM

SARAH J. BEAN, Esq.
MEDIATOR
sarah.bean@ymail.com
PH: (419) 996-9005

June 30, 2010

VIA US MAIL

Catherine A. Rodriguez
6845 Sweet Pecan St.
Las Vegas, NV 89149

MetLive Home Loans
4000 Horizon Way
Irving, TX 75063

Tara Newberry
DEANER DEANER SCANN
MALAN & LARSON
720 South Fourth Street, Suite 300
Las Vegas, NV 89101

Quality Loan Service Corp.
2141 5th Ave
San Diego, CA 92101

Kristin Schuler-Hintz
MCCARTHY & HOLTHUS, LLP
9510 West Sahara Avenue, Suite 110
Las Vegas, NV 89117

Re: Mediation Scheduling Notice & Notice to Appear
APN: 125-20-212-037
Address: 6845 Sweet Pecan St., Las Vegas 89149

SCHEDULED DATE & TIME OF MEDIATION: July 19, 2010, 8:00 a.m.

To All Interested Parties:

Please be advised that a foreclosure mediation has been scheduled in the above-referenced matter. The mediation will be held in accordance with Nevada AB 149 and the Rules adopted by the Nevada Supreme Court. Please be advised that AB 149 and the Rules require the parties mediate in good faith. Failure to abide by this requirement may result in termination of the mediation process and imposition of sanctions by the District Court.

Pursuant to AB 149 and the Rules, please be advised of the following:

- This mediation has been scheduled because the borrower has elected mediation.
- No further action may be taken by the Lender to foreclose on the Property which is the subject of this Mediation until completion of the mediation process.
- The Lender must be represented at all times at the mediation by a person or persons who have written authority to modify the loan secured by the deed of trust being foreclosed upon. Pursuant to Rule 8, a beneficiary of the deed of trust of its representative shall be physically present, or, if approved by the mediator in advance, and for good cause shown, may participate in the mediation by phone.

This mediation will be held at the law offices of Deaner Deaner Scann Malan & Larson, 720 South Fourth Street, Suite 300, Las Vegas, NV 89101. Please be aware that there are no facilities available at this location for children. The mediation session will last no longer than four (4) hours, although the mediation session could take less time depending upon the facts and circumstances regarding the loan at issue.

Please note that any party requiring the services of an interpreter is responsible for contacting, scheduling and ensuring an interpreter is present for the mediation. The interpreter's compensation is the responsibility of the party requesting the service.

Additional information on the State of Nevada Foreclosure Mediation process is available on the Nevada Supreme Court's website (www.nevadajudiciary.us) as well as the web site maintained by the Legal Aid Center of Southern Nevada (www.lacsn.org).

A copy of the Mediation Scheduling Notice/Notice to Appear is enclosed herewith. Please note:

- If the Lender fails to attend the mediation and/or fully comply with the requirements of AB 149 and the Rules, including the production of documents and the requirement to negotiate in good faith, the Lender's ability to proceed with the foreclosure may be restricted or other sanctions may be imposed by the Clark County District Courts.
- If the Borrower fails to attend the mediation or provide the requisite documents(s), listed below, the Lender may be permitted to proceed with the foreclosure.

This mediation is **not** a judicial proceeding.

- The role of the mediator is to facilitate negotiations with the goal of reaching a resolution to the foreclosure.
- Although the mediator is an attorney, the mediator does not render any legal opinions, judgments or legal advice of any kind.
- The mediator is not a judge and does not render a judgment, findings of fact or conclusions of law.
- The mediator is required to be impartial and unbiased and does not represent either party in the mediation.
- Both parties are free to retain an attorney to accompany them in the mediation. If the Lender retains an attorney to appear as its duly designated representative at the mediation, the attorney must be fully authorized, in writing, to fully participate in the mediation on behalf of the Lender, which includes the fully ability to settle this matter and/or enter into a loan modification agreement.

DOCUMENTS MUST BE PRODUCED. Both the Lender and the Borrower are required to provide certain documents and information to one another prior to the mediation. Please pay particular attention to these requirements and associated timelines as they are requisite to a finding of good faith negotiations.

Documents required from the Lender. Not less than seven (7) days before the scheduled mediation, the Lender must provide to the borrower and to the Mediator the following documents:

- An appraisal performed no more than 60 days prior to the mediation date;

- An estimate of the "short sale" value of the residence that the Lender may be willing to consider as part of the negotiations.

Not less than seven (7) days prior to the scheduled mediation, the Lender will provide to the mediator only via email or U.S. Mail the following documents:

- A confidential, nonbinding proposal for resolving the foreclosure;
- The evaluative methodology used in determining the eligibility or non-eligibility of the Borrower for the loan modification;
- The name and contact information of the party(ies) who will be attending the mediation on behalf of the Lender and evidence of their authority to negotiate.

The Lender must bring to the mediation:

- The original or a certified copy of the deed of trust, the mortgage note, and each assignment of the deed of trust and mortgage note. Please see the Rules for the circumstances under which a certified copy will be accepted.
- It would be helpful to the mediator and the process if the Lender brings a form loan modification agreement which can be executed by the parties during the mediation should the parties reach an agreement.

Documents required from the Borrower. Not less than seven (7) days prior to the scheduled mediation, the Borrower must provide the following documents to the Lender and the Mediator:

- A completed Financial Statement (a blank copy is attached hereto);
- A completed Housing Affordability Worksheet (a blank copy is attached hereto).

Not less than seven (7) days prior to the scheduled mediation, the Borrower will provide to the Mediator only, the following documents via email or U.S. Mail:

- A confidential, nonbinding proposal for resolving the foreclosure;
- The name and contact information of the party(ies) who will be attending the mediation on behalf of the Borrower and, for representatives of the Borrower, written evidence of their authority to negotiate.

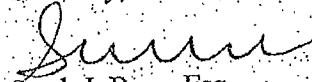
A Mediator's Statement will be issued within ten (10) days following conclusion of the mediation. A party to the mediation may file a petition for judicial review with the Clark County District Court seeking a determination of bad faith participation and sanctions pursuant to Nevada Revised Statutes ("NRS") Chapter 107, as amended. Such Petitions must be filed within 15 days of the date of the Mediator's Statement.

IMPORTANT! Should the parties reach a resolution prior to the mediation:

Pursuant to Rule 8 of the Foreclosure Mediation Rules, in the event the foreclosure issues are resolved prior to the scheduled mediation, the parties must, no later than two (2) days prior to the scheduled mediation date, notify the mediator of the settlement. Failure to abide by Rule 8 may subject the parties to sanctions. Such notification must be provided to the mediator, in writing or via email.

Please contact me if you have any questions or concerns. I look forward to meeting you at the mediation.

Sincerely,



Sarah J. Bean, Esq.
sarah.bean@gmail.com

Enclosures:

Mediation Scheduling Notice/Notice to Appear
Financial Statement Form (Borrower only)
Housing Affordability Worksheet (Borrower only)



First Horizon
Home Loan Corporation
4000 Horizon Way
Irving, Texas 75063
www.fhhlc.com

August 03, 2010

Catherine Rodriguez
6845 Sweet Pecan St
Las Vegas, NV 89149-3040

Dear Catherine Rodriguez :

We have good news about providing you a more affordable mortgage.
You are eligible for the Trial Period Modification.

Please carefully read the enclosed Trial Period Agreement. The monthly trial period payments are based on the income information that you previously provided. These payments are an estimate of what your payment(s) will be IF we are able to modify your loan under the terms of the program. Defaulting on this Trial Period Modification eliminates the opportunity for a modification of your loan terms. Please read all enclosed documents provided and make sure you understand the statements set forth in the plan.

Step 1 - Accept the Trial Period Plan Offer

To accept this offer and enter into the Trial Period Modification, all borrowers must sign both copies of the enclosed Trial Period Plan. You must then return BOTH signed copies to us - along with your first trial period payment in the amount of \$ 1,460.00 - no later than 08/15/10.

Step 2 - Make Your Trial Period Payments On Time

Your remaining trial period payments in the amount of \$ 1,460.00 will be due on or before 09/15/10. Your trial period payments should be sent instead of - NOT IN ADDITION TO - your normal monthly mortgage payments.

By no later than 08/15/10, please mail two signed copies of the Trial Period Plan and your first trial period payment to:

First Horizon Home Loans
cc 6207
4000 Horizon Way Ste. 100
Irving, TX 75063

EXHIBIT "4"



First Horizon
Home Loan Corporation
4000 Horizon Way
Irving, Texas 75063
www.fhhlc.com

Page 2

Step 3 - Contact Us

Once your final payment has been submitted, contact us for a re-review of your modification.

If you have any questions, please contact us at (800) 364 - 7662

Respectfully,

Loss Mitigation Specialist

LM181-003 TWX



First Horizon
Home Loan Corporation
4000 Horizon Way
Irving, Texas 75063
www.fhhlc.com

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TRIAL PERIOD PLAN/MODIFICATION AGREEMENT. The Trial Period Plan is the first step. If/Once we are able to finalize your modified loan terms; we will send you a loan modification agreement ("Modification Agreement"), which will reflect the terms of your modified loan. In addition to successfully completing the trial period, you will need to sign and promptly return to us both copies of the Modification Agreement or your loan will not be modified.

NEW PRINCIPAL BALANCE. Any past due amounts as of the end of the trial period, including unpaid interest, real estate taxes, insurance premiums and certain assessments paid on your behalf to a third party, will be added to your mortgage loan balance (the "Past Due Arrearage Amount").

FEES AND COSTS. Should a modification of your loan be approved; outstanding fees and costs will be assessed. The total outstanding amount of these costs will be required to be included upfront in order to complete the modification process.

ESTIMATED MONTHLY PAYMENT. At this time, we are not able to calculate precisely the Past Due Arrearage Amount or the amount of the modified loan payment that will be due after successful completion of the trial period. However, based on information we currently have, your trial period payment may be close to your modified loan payment. As we near the end of the trial period, we will calculate any past due amount to determine your new permanent monthly payment and other modified loan terms.

ESCROW ACCOUNT. The terms of your Trial Period Plan and your Modification Agreement may require the servicer to set aside a portion of your new monthly payment in an escrow account for payment of your property taxes, insurance premiums and other required fees. Your current loan may also require escrows. If it does not, the previous waiver of escrows is cancelled under your Trial Period Plan. First Horizon Home Loans will draw on this account to pay your real estate taxes and insurance premiums as they come due. Please note that your escrow payment amount will adjust if your taxes, insurance premiums and/or assessment amounts change, so the amount of your monthly payment that the servicer must place in escrow will also adjust as permitted by law. This means that your monthly payment may change. Your monthly escrow payment of \$ 246.68 is included in your trial payment amount.

CREDIT COUNSELING. If you have very high levels of debt, you will be required to obtain credit counseling and provide the HUD completed certification letter prior to the completion of your trial period agreement.



First Horizon
Home Loan Corporation
4000 Horizon Way
Irving, Texas 75063
www.fhhlc.com

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CREDIT REPORTING. During the trial period, we will report your loan as delinquent to the credit reporting agencies even if you make your trial period payments on time. However, after your loan is modified, we will only report the loan as delinquent if the modified payment is not received in a timely manner.

LM182-005 TWX

LM006 900

Catherine Rodriguez
Loan Number 0053334520
August 03, 2010
Page Three

FORBEARANCE AGREEMENT:

PLAN	DATE	AMT	PLAN	DATE	AMT
01	08/15/10	1,460.00	02	09/15/10	1,460.00
03	10/15/10	1,460.00	04	11/15/10	13,938.03

I understand and acknowledge the terms of this agreement executed
by my/our hand(s) this _____ day of _____, 20____.

Return to:
First Horizon Home Loans
Attention: COLLECTIONS
4000 Horizon Way, Suite 100
Irving, TX 75063

Catherine Rodriguez

Accepted by First Horizon Home Loans

Loan Counselor's Signature

Date

LM006-005 TWX



First Horizon
Home Loan Corporation
4000 Horizon Way
Irving, Texas 75063
www.fhhlc.com

Frequently Asked Questions:

Q. What if my trial period payment is less than the payment I currently owe on my loan?

We will add the difference between the monthly payment that you currently owe on your loan and the trial period payment to your loan balance and allow you to pay it over the remainder of the modified loan term.

Q. Will a foreclosure occur if I participate in the Trial Period Modification?

As long as you comply with the terms of the Trial Period Plan, we will not start foreclosure proceedings or conduct a foreclosure sale if foreclosure proceedings have started. If you fail to comply with the terms of the Trial Period Plan, your loan will be enforced according to its original terms, which could include foreclosure.

Q. What happens to my trial period payments if I do not comply with the terms of the Trial Period Plan?

Your trial period payments will be applied to your existing loan according to the terms of your loan documents.

Q. If I get a Trial Period Modification, can my modified loan terms ever revert to the original terms?

No. This is one of the advantages of the Trial Period Modification. Once your loan is modified, the new terms stay in place for the remainder of your loan.

Q. Do all borrowers have to sign the Trial Period Plan and other documents?

Unless a borrower or co-borrower is deceased, all borrowers who signed the original loan documents or their duly authorized representative(s) must sign the Trial Period Plan, the Modification Agreement and all other required modification documents. Contact your servicer if it would be difficult or impossible for you to comply with this requirement.

Q. Could my trial period payment be more than my current payment?

Yes. For example, if your current payment does not include an escrow payment and you are now required to make monthly escrow payments, your trial period payment could be higher than your current payment. Note, however, that the increase in your payment under these circumstances would be offset by other tax and insurance bills you would no longer have to pay directly as we will pay those for you out of your escrow account.

Addendum to Special Forbearance Plan

You have agreed to enter into a Loss Mitigation Special Forbearance Type II Plan. Compliance with this plan will give you the opportunity to save your home.

As per our discussion as of the date of this agreement, you will comply with all terms set forth in the Forbearance Type II agreement. Should you comply with the scheduled payments, First Horizon will re-consider you for further options prior to the last Balloon payment scheduled. We will convert the Special Forbearance Type II Plan to one of the following options:

1. Mortgage Modification: If you can make the payments on your loan, but you do not have enough money to bring your account current, First Horizon may be able to change one or more terms of your original loan to make the payments more affordable.
2. Partial Claim Advance: If your mortgage is HUD insured, you may qualify for an interest-free loan to bring your account current. The repayment of this loan may be delayed for several years.

While complying with the Loss Mitigation Special Forbearance Type II Plan, late fees will not be assessed. Should you be offered one of the above options, please be advised that any foreclosure cost and fees will be collected as part of the agreement. The options available to you will be reviewed in the ordered mentioned above.

Should you fail to comply: As we discussed, should you not be able to meet the requirements of the Special Forbearance Type II Plan, the following options are available to avoid foreclosure:

1. Sale: If you can no longer afford your home, First Horizon will work with you allow time to find a purchaser and pay off the total amount owed. You will be expected to obtain the services of a real estate professional who can aggressively market the property. This is subject to foreclosure timeframes and action.
2. Pre-Foreclosure Sale or Short Payoff: If the property's sales value is not enough to pay the loan in full, First Horizon may be able to accept less than the full amount owed. This option can also include a period of time to allow your real estate agent to market the property and find a qualified buyer. Monetary help may also be available to pay other lien holders and/or help toward paying your moving costs.
3. Deed-in-lieu: First Horizon may agree to allow you to voluntarily "give back" your property and forgive the debt. Although this option sounds like the easiest way out for you, generally, you must attempt to sell the home for its fair market value for at least 90 days before First Horizon will consider this option. Also, this option may not be available if you have liens such as judgments of other creditors, second mortgages, and IRS or State Tax liens.

MY/OUR SIGNATURE (S) BELOW ACKNOWLEDGES THAT I/WE HAVE READ AND AGREE WITH THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. I/WE HAVE RECEIVED HOMEOWNERSHIP COUNSELING FROM FIRST HORIZON HOME LOANS OR FROM A HOUSING AGENCY OF OUR CHOICE. I/WE FURTHER UNDERSTAND THAT WE MUST RE-QUALIFY FOR THE OPTIONS LISTED ABOVE UPON OUR COMPLIANCE WITH THE HUD SPECIAL FORBEARANCE TYPE II PLAN.

I/WE AGREE TO ABIDE BY THE AGREEMENT SET FORTH.

Mortgagor

Date

Co-Mortgagor

Date

Co-Mortgagor

Date

Co-Mortgagor

Date

Please sign, date and return the original agreement. Retain a copy for your records. The original agreement must be returned to the address below. It is recommended that you fax a copy first to 214-441-7390.

First Horizon Home Loans
Attn: Loss Mitigation Dept - CC 6207
4000 Horizon Way, Suite 100
Irving, Texas 75063

Accepted by First Horizon Home Loans

Loss Mitigation Specialist's Signature

Date

LM007-008 TWX

IN THE SUPREME COURT OF NEVADA

NATIONSTAR MORTGAGE, LLC;
AND THE BANK OF NEW YORK
MELLON F/K/A THE BANK OF NEW
YORK AS TRUSTEE FOR THE
HOLDERS OF THE CERTIFICATES,
FIRST HORIZON MORTGAGE PASS-
THROUGH CERTIFICATES SERIES
PHAMS 2005-AA5, BY FIRST
HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE
BANK NATIONAL MASTER
SERVICER, IN ITS CAPACITY AS
AGENT FOR THE TRUSTEE UNDER
THE POOLING AND SERVICING
AGREEMENT,

Appellants,

vs.

CATHERINE RODRIGUEZ,

Respondent.

Electronically Filed
Supreme Court No. 006113 2014 09:31 a.m.
District Court Case No. A685616
Tracie K. Lindeman
Clerk of Supreme Court

DOCKETING STATEMENT ITEM NO. 26 – DOCUMENTS 1 – 17

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