

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).

23
 24
 25 ²Although there are some exceptions, none cover the activities in this case. *See, e.g.,* 11
 26 U.S.C. § 362(b)(3) (2011) (allowing mechanics' liens claimants to file postpetition notices as
 contemplated by 11 U.S.C. § 546(b) and allowing postpetition perfection of purchase money liens
 as contemplated by 11 U.S.C. § 547(c)(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 ³The date of the Assignment is after the effective date of §106.210.
 22

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.

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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.

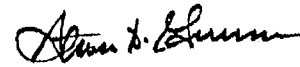
Federal law requires us to advise you that communication with our office could be interpreted as an attempt to collect a debt and that any information obtained will be used for that purpose.

Exhibit 16

Exhibit 16

RECEIVED MAY 29 2013

Electronically Filed
05/23/2013 02:51:34 PM


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
DOES 1 -10 inclusive,

Defendants

Case No.: A-12-661179-C

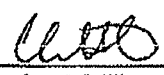
Dept.: XXXI

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

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

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

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

23 **B. Defendant's reference to a mediation is improper**

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

- 27 1. All documents and discussions presented during the mediation shall be
28 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
5 agreements, and appropriate sanctions pursuant to NRS Chapter 107, as
6 amended. . .

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

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

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

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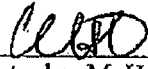
CONCLUSION

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

SR497CR-01
BIRMINGHAM

Nationstar Mortgage LLC
DETAIL TRANSACTION HISTORY

8/16/13 9:28:15
JOB DT: 8/16/13

Processing Options Selected:

1. ~~5243~~ - ~~5243~~ Loan Number Range
2. 000000 - 081613 Date Range
3. B Output Type
4. Select State
5. Escrow Group Code
6. Message Code
7. Investor
8. 0000000 Pool
9. Y Select only loans with Transactions
10. N Include liquidated loans

58497CR-02
BETTERMENT

Nationalstar Mortgage LLC
DETAIL TRANSACTION HISTORY

8/16/13 9:28:15
JOB DT: 8/16/13
PAGE: 1

LOAN# 66243 INV# 865 HO# 000001
BORER CATERINE KORIJOUE TYPE: 03-00 Conv/Deals
BORER ADDL INFORMATION
PROF: 6845 SWEET BECON STREET MAIL: 6845 SWEET BECON ST
LAS VEGAS NV 89149 LAS VEGAS NV 89149

TRANSACTION		DESCRIPTION		NEXT AFTER TRANS BALANCES		TOTAL		APPLIED		MISC. PMTS	
NR	DATE	CODE		DUE	PRINCIPAL	ESCR	AMOUNT	PRINCIPAL	INTEREST	ESCR	SUSPENSE/CD
186	8/01/13	6031	COUNTY TAX DISBURSED 12/09 269000.00				344.17	.00	.00	344.17	.00
			PAYEE 31NV001 #TAR 7318 N DUE 8/18/13								
			S/F WR REF# TAR 7318 NV								
187	8/01/13	1931	COUNTY TAX ADVANCE 12/09 269000.00				344.17	.00	.00	344.17	.00
			S/F WR REF# TAR 7318 NV								
186	7/18/13	2664	NON CASH FEE ADV 12/09 269000.00				30.82	.00	.00	.00	30.82-01
			S/F WC REF#								
185	7/18/13	1499	ZZZZF-Late Charges 12/09 269000.00				30.82	.00	.00	.00	30.82 01
			S/F REF#								
184	6/21/13	6050	HARARD STR DISBURSED 12/09 269000.00				2095.00	.00	.00	2095.00	.00
			PAYEE 50ASGRM #06212013IN DUE 6/18/13								
			S/F WR REF# 06212013IN								
183	6/21/13	1950	HARARD STR ADVANCE 12/09 269000.00				2095.00	.00	.00	2095.00	.00
			S/F WR REF# 06212013IN								
182	6/17/13	2664	NON CASH FEE ADV 12/09 269000.00				30.82	.00	.00	.00	30.82-01
			S/F WC REF#								
181	6/17/13	1499	ZZZZF-Late Charges 12/09 269000.00				30.82	.00	.00	.00	30.82 01
			S/F REF#								
180	5/20/13	6050	HARARD STR DISBURSED 12/09 269000.00				202.48	.00	.00	202.48	.00
			PAYEE 50ASGRM #06202013IN DUE 5/18/13								
			S/F WR REF# 05202013IN								
179	5/20/13	1950	HARARD STR ADVANCE 12/09 269000.00				202.48	.00	.00	202.48	.00
			S/F WR REF# 05202013IN								
178	5/16/13	2664	NON CASH FEE ADV 12/09 269000.00				32.22	.00	.00	.00	32.22-01
			S/F WC REF#								
177	5/16/13	1499	ZZZZF-Late Charges 12/09 269000.00				32.22	.00	.00	.00	32.22 01
			S/F REF#								
176	4/18/13	6050	HARARD STR DISBURSED 12/09 269000.00				202.52	.00	.00	202.52	.00
			PAYEE 50ASGRM #04182013IN DUE 4/18/13								
			S/F WR REF# 04182013IN								
175	4/18/13	1950	HARARD STR ADVANCE 12/09 269000.00				202.52	.00	.00	202.52	.00
			S/F WR REF# 04182013IN								
174	4/16/13	2664	NON CASH FEE ADV 12/09 269000.00				32.22	.00	.00	.00	32.22-01
			S/F WC REF#								
173	4/16/13	1499	ZZZZF-Late Charges 12/09 269000.00				32.22	.00	.00	.00	32.22 01
			S/F REF#								
172	3/19/13	6050	HARARD STR DISBURSED 12/09 269000.00				202.52	.00	.00	202.52	.00
			PAYEE 50ASGRM #03192013IN DUE 3/18/13								
			S/F WR REF# 03192013IN								
171	3/19/13	1950	HARARD STR ADVANCE 12/09 269000.00				202.52	.00	.00	202.52	.00
			S/F WR REF# 03192013IN								
170	3/18/13	1499	ZZZZF-Late Charges 12/09 269000.00				32.22	.00	.00	.00	32.22 01
			S/F REF#								
169	2/20/13	6050	HARARD STR DISBURSED 12/09 269000.00				202.52	.00	.00	202.52	.00

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National Mortgage LLC
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---TRANSACTION---				---DESCRIPTION---				NEXT -AFTER TRANS. BALANCES-				TOTAL				-----APPLIED-----			
NR	DATE	CODE	----	DE	PRINCIPAL	ESCR	OW	AMOUNT	PRINCIPAL	INTEREST	ESCR	SUSPENSE/CD	-----	-----	-----	-----	-----	-----	-----
LOAN# 243 CONTINUED																			
PAYER 50ASGM #022020131N DOE 2/18/13																			
168	2/20/13	1950	HAZARD SFR	ADVANCE	12/09	269000.00		202.52	202.52	.00	.00	.00	202.52	.00					
S/F NR REF# 022020131N																			
167	2/19/13	1499	ZZZZZ-Late	Charges	12/09	269000.00		.00	32.22	.00	.00	.00	.00	.00	.00	32.22	01		
S/F NR REF# 022020131N																			
166	2/14/13	6031	COUNTY TAX	DISBURSED	12/09	269000.00		.00	336.58	.00	.00	.00	336.58	.00					
PAYER 31NVO01 #1R 6107 N DOE 3/18/13																			
165	2/14/13	1931	COUNTY TAX	ADVANCE	12/09	269000.00		336.58	336.58	.00	.00	.00	336.58	.00					
S/F NR REF# 01R 6107 NV																			
164	1/28/13	6226	CORP ADV DISB		12/09	269000.00		.00	12.00	.00	.00	.00	12.00	.00	12.00-26				
PAYER 63ASRD #0001179499 DOE 1/22/13																			
163	1/18/13	6050	HAZARD SFR	DISBURSED	12/09	269000.00		.00	202.52	.00	.00	.00	202.52	.00					
PAYER 50ASGM #011820131N DOE 1/18/13																			
162	1/18/13	1950	HAZARD SFR	ADVANCE	12/09	269000.00		202.52	202.52	.00	.00	.00	202.52	.00					
S/F NR REF# 011820131N																			
161	1/16/13	1499	ZZZZZ-Late	Charges	12/09	269000.00		.00	32.22	.00	.00	.00	.00	.00	.00	32.22	01		
S/F NR REF# 011820131N																			
160	12/26/12	6031	COUNTY TAX	DISBURSED	12/09	269000.00		.00	336.58	.00	.00	.00	336.58	.00					
PAYER 31NVO01 #1R 5695 N DOE 1/18/13																			
159	12/26/12	1931	COUNTY TAX	ADVANCE	12/09	269000.00		336.58	336.58	.00	.00	.00	336.58	.00					
S/F NR REF# 01R 5695 NV																			
158	12/18/12	6050	HAZARD SFR	DISBURSED	12/09	269000.00		.00	202.52	.00	.00	.00	202.52	.00					
PAYER 50ASGM #112020121N DOE 12/18/12																			
157	12/18/12	1950	HAZARD SFR	ADVANCE	12/09	269000.00		202.52	202.52	.00	.00	.00	202.52	.00					
S/F NR REF# 112020121N																			
156	12/17/12	1499	ZZZZZ-Late	Charges	12/09	269000.00		.00	32.22	.00	.00	.00	.00	.00	.00	32.22	01		
S/F NR REF# 121820121N																			
155	11/20/12	6050	HAZARD SFR	DISBURSED	12/09	269000.00		.00	202.52	.00	.00	.00	202.52	.00					
PAYER 50ASGM #112020121N DOE 11/18/12																			
154	11/20/12	1950	HAZARD SFR	ADVANCE	12/09	269000.00		202.52	202.52	.00	.00	.00	202.52	.00					
S/F NR REF# 112020121N																			
153	11/16/12	1499	ZZZZZ-Late	Charges	12/09	269000.00		.00	33.63	.00	.00	.00	.00	.00	.00	33.63	01		
S/F NR REF# 112020121N																			
152	10/19/12	6226	CORP ADV DISB		12/09	269000.00		.00	15.00	.00	.00	.00	15.00-26						
PAYER 63MCSNM #0001158871																			
151	10/19/12	6050	HAZARD SFR	DISBURSED	12/09	269000.00		.00	202.52	.00	.00	.00	202.52	.00					
PAYER 50ASGM #101920121N DOE 10/18/12																			
150	10/19/12	1950	HAZARD SFR	ADVANCE	12/09	269000.00		202.52	202.52	.00	.00	.00	202.52	.00					
S/F NR REF# 101920121N																			
149	10/16/12	1499	ZZZZZ-Late	Charges	12/09	269000.00		.00	33.63	.00	.00	.00	.00	.00	.00	33.63	01		
S/F NR REF# 101920121N																			
148	9/17/12	1499	ZZZZZ-Late	Charges	12/09	269000.00		.00	33.63	.00	.00	.00	.00	.00	.00	33.63	01		

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DUE PRINCIPAL ESCROW AMOUNT
-----APPLIED-----
LOAN# 5243 CONTINUED

147	9/17/12	6031	COUNTY TAX	DISBURSED 12/09	269000.00	.00	336.58-	.00	336.58-	.00	
			REF#								
			PAYEE 31NVO01 #TAR 4898 N DUE 10/18/12								
146	9/17/12	1931	COUNTY TAX	ADVANCE	12/09	269000.00	336.58	.00	336.58	.00	
			REF#								
			PAYEE 31NVO01 #TAR 4898 N DUE 10/18/12								
145	9/11/12	1919	RECOVER ESCROW	ADVANCE	12/09	269000.00	.00	331.42-	.00	331.42-	.00
			REF#								
			PAYEE 31NVO01 #TAR 4898 N DUE 10/18/12								
144	9/11/12	1531	COUNTY TAX	DEPOSIT	12/09	269000.00	331.42	.00	331.42	.00	
			REF#								
			PAYEE 31NVO01 #TAR 4898 N DUE 10/18/12								
143	9/11/12	6226	CORP ADV DISB		12/09	269000.00	.00	12.00-	.00	.00	12.00-26
			REF#								
			PAYEE 63SABED #0001151070 DUE 9/10/12								
142	9/07/12	6050	HAZARD SFR	DISBURSED 12/09	269000.00	.00	827.88-	.00	827.88-	.00	
			REF#								
			PAYEE 50SGBM #090720121N DUE 9/18/12								
141	9/07/12	1950	HAZARD SFR	ADVANCE	12/09	269000.00	827.88	.00	827.88	.00	
			REF#								
			PAYEE 50SGBM #090720121N DUE 9/18/12								
140	8/16/12	1499	ZZZZZ-Late Charges		12/09	269000.00	.00	33.63	.00	.00	33.63 01
			REF#								
			PAYEE 63SABED #0001145114 DUE 8/06/12								
139	8/07/12	6226	CORP ADV DISB		12/09	269000.00	.00	12.00-	.00	.00	12.00-26
			REF#								
			PAYEE 63SABED #0001145114 DUE 8/06/12								
138	8/01/12	6031	COUNTY TAX	DISBURSED 12/09	269000.00	.00	668.65-	.00	668.65-	.00	
			REF#								
			PAYEE 31NVO01 #TAR 4286 N DUE 8/18/12								
137	8/01/12	1931	COUNTY TAX	ADVANCE	12/09	269000.00	668.65	.00	668.65	.00	
			REF#								
			PAYEE 31NVO01 #TAR 4286 N DUE 8/18/12								
136	7/16/12	1499	ZZZZZ-Late Charges		12/09	269000.00	.00	33.63	.00	.00	33.63 01
			REF#								
			PAYEE 63SABED #0001145114 DUE 8/06/12								
135	7/05/12	6226	CORP ADV DISB		12/09	269000.00	.00	1300.00-	.00	.00	1300.00-26
			REF#								
			PAYEE 61NCAET #0001140228 DUE 7/03/12								
134	7/05/12	6226	CORP ADV DISB		12/09	269000.00	.00	3.50-	.00	.00	3.50-26
			REF#								
			PAYEE 61NCAET #0001140228 DUE 7/03/12								
133	7/05/12	6226	CORP ADV DISB		12/09	269000.00	.00	3.50-	.00	.00	3.50-26
			REF#								
			PAYEE 61NCAET #0001140228 DUE 7/03/12								
132	7/05/12	6226	CORP ADV DISB		12/09	269000.00	.00	3.50-	.00	.00	3.50-26
			REF#								
			PAYEE 61NCAET #0001140228 DUE 7/03/12								
131	7/05/12	6226	CORP ADV DISB		12/09	269000.00	.00	3.50-	.00	.00	3.50-26
			REF#								
			PAYEE 61NCAET #0001140228 DUE 7/03/12								
130	7/05/12	6226	CORP ADV DISB		12/09	269000.00	.00	3.50-	.00	.00	3.50-26
			REF#								
			PAYEE 61NCAET #0001140228 DUE 7/03/12								
129	7/05/12	6226	CORP ADV DISB		12/09	269000.00	.00	3.50-	.00	.00	3.50-26
			REF#								
			PAYEE 61NCAET #0001140228 DUE 7/03/12								

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DUE PRINCIPAL ESCROW AMOUNT -----APPLIED-----
PRINCIPAL INTEREST ESCROW SPENSE/CD

LOAN# 6343 CONTINUED

128	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	5.96-	.00	.00	.00	5.96-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
127	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	5.96-	.00	.00	.00	5.96-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
126	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	5.96-	.00	.00	.00	5.96-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
125	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	243.02-	.00	.00	.00	243.02-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
124	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	7.50-	.00	.00	.00	7.50-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
123	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	3.50-	.00	.00	.00	3.50-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
122	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	921.00-	.00	.00	.00	921.00-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
121	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	278.10-	.00	.00	.00	278.10-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
120	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	120.00-	.00	.00	.00	120.00-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
119	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	175.00-	.00	.00	.00	175.00-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
118	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	21.00-	.00	.00	.00	21.00-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
117	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	25.00-	.00	.00	.00	25.00-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
116	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	3.00-	.00	.00	.00	3.00-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
115	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	7.50-	.00	.00	.00	7.50-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
114	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	120.00-	.00	.00	.00	120.00-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
113	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	150.00-	.00	.00	.00	150.00-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								
112	7/05/12	6226	CORP ADV DISS	12/09	269000.00	.00	120.00-	.00	.00	.00	120.00-26
			PAYEE 61MCACT #0001140228 DUE 7/03/12								
			S/F SC REF# 0001140228								

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LN#	DATE	CODE		DOE	PRINCIPAL	ESCRW	AMOUNT	PRINCIPAL	INTEREST	ESCRW	SUSPENSE/CD	AMOUNT	PRINCIPAL	INTEREST	ESCRW	SUSPENSE/CD	AMOUNT	PRINCIPAL	INTEREST	ESCRW	SUSPENSE/CD	AMOUNT	PRINCIPAL	INTEREST	ESCRW	SUSPENSE/CD
CONTINUED																										
111	7/05/12	6226	CORP ADV DISB	12/09	269000.00		331.42-	.00	.00	.00		331.42-	.00	.00	.00		331.42-	.00	.00	.00		331.42-	.00	.00	.00	.00
			PAYEE 61MCACT #0001140228	DOE	7/03/12																					
			S/F SC REF# 0001140228																							
110	7/05/12	6226	CORP ADV DISB	12/09	269000.00		3.50-	.00	.00	.00		3.50-	.00	.00	.00		3.50-	.00	.00	.00		3.50-	.00	.00	.00	.00
			PAYEE 61MCACT #0001140228	DOE	7/03/12																					
			S/F SC REF# 0001140228																							
109	7/05/12	6226	CORP ADV DISB	12/09	269000.00		3.50-	.00	.00	.00		3.50-	.00	.00	.00		3.50-	.00	.00	.00		3.50-	.00	.00	.00	.00
			PAYEE 61MCACT #0001140228	DOE	7/03/12																					
			S/F SC REF# 0001140228																							
108	7/05/12	6226	CORP ADV DISB	12/09	269000.00		50.00-	.00	.00	.00		50.00-	.00	.00	.00		50.00-	.00	.00	.00		50.00-	.00	.00	.00	.00
			PAYEE 61MCACT #0001140228	DOE	7/03/12																					
			S/F SC REF# 0001140228																							
107	7/05/12	6226	CORP ADV DISB	12/09	269000.00		120.00-	.00	.00	.00		120.00-	.00	.00	.00		120.00-	.00	.00	.00		120.00-	.00	.00	.00	.00
			PAYEE 61MCACT #0001140228	DOE	7/03/12																					
			S/F SC REF# 0001140228																							
106	7/05/12	6226	CORP ADV DISB	12/09	269000.00		175.00-	.00	.00	.00		175.00-	.00	.00	.00		175.00-	.00	.00	.00		175.00-	.00	.00	.00	.00
			PAYEE 61MCACT #0001140228	DOE	7/03/12																					
			S/F SC REF# 0001140228																							
105	7/05/12	6226	CORP ADV DISB	12/09	269000.00		70.00-	.00	.00	.00		70.00-	.00	.00	.00		70.00-	.00	.00	.00		70.00-	.00	.00	.00	.00
			PAYEE 61MCACT #0001140228	DOE	7/03/12																					
			S/F SC REF# 0001140228																							
104	6/21/12	6226	CORP ADV DISB	12/09	269000.00		12.00-	.00	.00	.00		12.00-	.00	.00	.00		12.00-	.00	.00	.00		12.00-	.00	.00	.00	.00
			PAYEE 63SARGD #0001138663	DOE	6/20/12																					
			S/F SC REF# 0001138663																							
103	6/18/12	1499	ZZZZF-Late Charges	12/09	269000.00		33.63	.00	.00	.00		33.63	.00	.00	.00		33.63	.00	.00	.00		33.63	.00	.00	.00	.00
			S/F SC REF# 0001138663																							
102	6/15/12	6226	CORP ADV DISB	12/09	269000.00		15.00-	.00	.00	.00		15.00-	.00	.00	.00		15.00-	.00	.00	.00		15.00-	.00	.00	.00	.00
			PAYEE 63SARGD #0001138016	DOE	6/14/12																					
			S/F SC REF# 0001138016																							
101	5/16/12	1499	ZZZZF-Late Charges	12/09	269000.00		30.82	.00	.00	.00		30.82	.00	.00	.00		30.82	.00	.00	.00		30.82	.00	.00	.00	.00
			S/F SC REF# 0001138016																							
100	5/11/12	6226	CORP ADV DISB	12/09	269000.00		12.00-	.00	.00	.00		12.00-	.00	.00	.00		12.00-	.00	.00	.00		12.00-	.00	.00	.00	.00
			PAYEE 63SARGD #0001134139	DOE	5/10/12																					
			S/F SC REF# 0001134139																							
99	4/23/12	2664	NON CASH FEE ADT	12/09	269000.00		32.23-	.00	.00	.00		32.23-	.00	.00	.00		32.23-	.00	.00	.00		32.23-	.00	.00	.00	.00
			S/F C REF#																							
98	4/23/12	2664	NON CASH FEE ADT	12/09	269000.00		32.23-	.00	.00	.00		32.23-	.00	.00	.00		32.23-	.00	.00	.00		32.23-	.00	.00	.00	.00
			S/F C REF#																							
97	3/20/12	6226	CORP ADV DISB	12/09	269000.00		12.00-	.00	.00	.00		12.00-	.00	.00	.00		12.00-	.00	.00	.00		12.00-	.00	.00	.00	.00
			PAYEE 63SARGD #0001127514	DOE	3/19/12																					
			S/F SC REF# 0001127514																							
96	2/24/12	6031	CORP ADV DISB	12/09	269000.00		371.33-	.00	.00	.00		371.33-	.00	.00	.00		371.33-	.00	.00	.00		371.33-	.00	.00	.00	.00
			PAYEE 31MVO01 #TAR 3113 NV	DOE	3/18/12																					
			S/F SC REF# 0001127514																							
95	2/24/12	1931	CORP ADV DISB	12/09	269000.00		371.33	.00	.00	.00		371.33	.00	.00	.00		371.33	.00	.00	.00		371.33	.00	.00	.00	.00
			S/F SC REF# 0001127514																							
94	1/17/12	1499	ZZZZF-Late Charges	12/09	269000.00		63.05	.00	.00	.00		63.05	.00	.00	.00		63.05	.00	.00	.00		63.05	.00	.00	.00	.00
			S/F SC REF#																							
93	12/16/11	1499	ZZZZF-Late Charges	12/09	269000.00		63.05	.00	.00	.00		63.05	.00	.00	.00		63.05	.00	.00	.00		63.05	.00	.00	.00	.00
			S/F SC REF#																							
92	12/16/11	6226	CORP ADV DISB	12/09	269000.00		360.00-	.00	.00	.00		360.00-	.00	.00	.00		360.00-	.00	.00	.00		360.00-	.00	.00	.00	.00

B2497CR-02		NATIONSTAR MORTGAGE LLC		8/16/13 9:28:15							
BETWEEN		DETAIL TRANSACTION HISTORY		JOB DT: 8/16/13							
---TRANSACTION----		NEXT - AFTER TRANS BALANCE--		PAGE: 6							
NR	DATE	CODE	DESCRIPTION-----	DUE	PRINCIPAL	ESTROM	TOTAL	-----APPLIED-----	-----MISC. PMTS		
LOAN#	5243	CONTINUED					AMOUNT	PRINCIPAL	INTEREST	ESTROM	SUSPENSE/CD
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
91	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	150.00-	.00	.00	150.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
90	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	150.00-	.00	.00	150.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
89	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	50.00-	.00	.00	50.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
88	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	50.00-	.00	.00	50.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
87	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	70.00-	.00	.00	70.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
86	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	70.00-	.00	.00	70.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
85	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	28.68-	.00	.00	28.68-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
84	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	4.78-	.00	.00	4.78-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
83	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	114.72-	.00	.00	114.72-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
82	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	114.72-	.00	.00	114.72-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
81	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	95.00-	.00	.00	95.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
80	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	95.00-	.00	.00	95.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
79	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	95.00-	.00	.00	95.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
78	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	10.00-	.00	.00	10.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
77	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	15.00-	.00	.00	15.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
76	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	15.00-	.00	.00	15.00-26
			PAYER 610QAL1 #000114408 DUE 12/15/11								
			S/F SC REF# 000114408								
75	12/16/11	6226	CORP ADV DISB	12/09	269000.00		.00	15.00-	.00	.00	15.00-26

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NATIONAL MORTGAGE LLC
DETAIL TRANSACTION HISTORY

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MISC. PWTS

---TRANSACTION---
NBR DATE CODE -----DESCRIPTION----- NEXT DATE PRINCIPAL ESCROW TOTAL AMOUNT -----APPLIED-----
LOAN# CONTINUED

74	12/16/11	6226	COMP ADV DISB	12/09	269000.00	.00	40.00-	.00	.00	40.00-26
			PAYEE 61000ALI #000114408							
			S/F SC REF# 000114408							
73	12/16/11	6226	COMP ADV DISB	12/09	269000.00	.00	41.00-	.00	.00	41.00-26
			PAYEE 61000ALI #000114408							
			S/F SC REF# 000114408							
72	12/16/11	6226	COMP ADV DISB	12/09	269000.00	.00	16.00-	.00	.00	16.00-26
			PAYEE 61000ALI #000114408							
			S/F SC REF# 000114408							
71	12/16/11	6226	COMP ADV DISB	12/09	269000.00	.00	91.00-	.00	.00	91.00-26
			PAYEE 61000ALI #000114408							
			S/F SC REF# 000114408							
70	12/16/11	6031	COUNTY TAX DISBURSED	12/09	269000.00	.00	371.33-	.00	371.33-	.00
			PAYEE 311W001 #TAR 2607 NV							
			S/F WR REF# TAX 2607 NV							
69	12/16/11	1931	COUNTY TAX ADVANCE	12/09	269000.00	371.33	371.33	.00	371.33	.00
			S/F WR REF# TAX 2607 NV							
68	11/30/11	6226	COMP ADV DISB	12/09	269000.00	.00	500.00-	.00	.00	500.00-26
			PAYEE 61000ALI #000114408							
			S/F SC REF# 000114408							
67	11/30/11	6226	COMP ADV DISB	12/09	269000.00	.00	33.00-	.00	.00	33.00-26
			PAYEE 61000ALI #000114408							
			S/F SC REF# 000114408							
66	11/16/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	30.82	.00	.00	30.82 01
			PAYEE 61000ALI #000114408							
			S/F SC REF# 000114408							
65	10/24/11	6226	COMP ADV DISB	12/09	269000.00	.00	150.00-	.00	.00	150.00-26
			PAYEE 61000ALI #000114408							
			S/F WR REF#							
64	10/24/11	6226	COMP ADV DISB	12/09	269000.00	.00	12.00-	.00	.00	12.00-26
			PAYEE 61000ALI #000114408							
			S/F WR REF#							
63	10/24/11	6226	COMP ADV DISB	12/09	269000.00	.00	95.00-	.00	.00	95.00-26
			PAYEE 61000ALI #000114408							
			S/F WR REF#							
62	10/17/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	30.82	.00	.00	30.82 01
			PAYEE 61000ALI #000114408							
			S/F WR REF#							
61	9/28/11	6226	COMP ADV DISB	12/09	269000.00	.00	12.00-	.00	.00	12.00-26
			PAYEE 61000ALI #000114408							
			S/F WR REF#							
60	9/20/11	6031	COUNTY TAX DISBURSED	12/09	269000.00	.00	371.33-	.00	371.33-	.00
			PAYEE 311W001 #TAR 1868 NV							
			S/F WR REF# TAX 1868 NV							
59	9/20/11	1931	COUNTY TAX ADVANCE	12/09	269000.00	371.33	371.33	.00	371.33	.00
			S/F WR REF# TAX 1868 NV							
58	9/16/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	30.82	.00	.00	30.82 01
			PAYEE 61000ALI #000114408							
			S/F SC REF#							
57	8/23/11	2676	COMP ADV NOCASH ADV	12/09	269000.00	.00	1539.96-	.00	.00	1539.96-26
			Effective date: 8/20/11							
			S/F AD REF#							

---TRANSACTION---				NATIONSTAR MORTGAGE LLC DETAIL TRANSACTION HISTORY				8/16/13 9:28:15 JOB DT: 8/16/13 PAGE: 8 MISC. ENTS			
LN#	DATE	CODE	DESCRIPTION	DEB	AFTER TRANS BALANCE- PRINCIPAL	ESCRW	TOTAL AMOUNT	-----APPLIED----- PRINCIPAL INTEREST	ESCRW	SUSPENSE/CD	
56	8/22/11	2676	CDP ADV NONCASH ADT	12/09	269000.00	.00	3567.00-	.00	.00	3567.00-26	999.99 01 30.44 01
	Effective Date: 8/20/11										
55	8/19/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	1030.43	.00	.00		
54	8/17/11	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
53	7/17/11	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
52	6/17/11	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
51	5/17/11	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
50	4/17/11	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
49	3/17/11	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
48	2/17/11	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
47	1/17/11	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
46	12/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
45	11/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
44	10/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
43	9/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
42	8/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
41	7/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
40	6/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
39	5/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
38	4/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
37	3/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
36	2/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
35	1/17/10	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
34	12/17/09	2664	NON CASH FEE ADT	12/09	269000.00	.00	63.05-	.00	.00	.00	63.05-01
33	8/17/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05 01
32	7/17/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05 01

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Nationstar Mortgage LLC
DETAIL TRANSACTION HISTORY

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NBR DATE CODE -----DESCRIPTION----- NEXT -ARTER TRANS BALANCES- TOTAL
DOE PRINCIPAL ESCROW AMOUNT
-----APPLIED-----
PRINCIPAL INTEREST ESCROW SUSPENSE/CD

LOAN# 5243 CONTINUED

31	6/17/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
30	5/17/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
29	4/17/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
28	3/17/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
27	2/17/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
26	1/17/11	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
25	12/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
24	11/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
23	10/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
22	9/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
21	8/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
20	7/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
19	6/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
18	5/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
17	4/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
16	3/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
15	2/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
14	1/17/10	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
13	12/17/09	1499	ZZZZF-Late Charges	12/09	269000.00	.00	63.05	.00	.00	.00	63.05	01
12	8/19/11	2643	ESCRON ADV	12/09	269000.00	.00	4486.73-	.00	4486.73-	.00	63.05	01
11	8/19/11	13	ESCRON ADVANCE	12/09	269000.00	.00	4486.73	.00	4486.73	.00	63.05	01
10	8/19/11	8103	NEW LOAN NOCASH	12/09	269000.00	.00	269000.00-	.00	269000.00-	.00	63.05	01
9	8/19/11	8103	NEW LOAN NOCASH	12/09	269000.00	.00	269000.00-	.00	269000.00-	.00	63.05	01
8	8/19/11	8103	NEW LOAN NOCASH	12/09	269000.00	.00	269000.00-	.00	269000.00-	.00	63.05	01
7	8/19/11	8103	NEW LOAN NOCASH	12/09	269000.00	.00	269000.00-	.00	269000.00-	.00	63.05	01
6	8/19/11	8103	NEW LOAN NOCASH	12/09	269000.00	.00	269000.00-	.00	269000.00-	.00	63.05	01
5	8/19/11	8103	NEW LOAN NOCASH	12/09	269000.00	.00	269000.00-	.00	269000.00-	.00	63.05	01
4	8/19/11	8103	NEW LOAN NOCASH	12/09	269000.00	.00	269000.00-	.00	269000.00-	.00	63.05	01
3	8/19/11	8103	NEW LOAN NOCASH	12/09	269000.00	.00	269000.00-	.00	269000.00-	.00	63.05	01
2	8/19/11	8103	NEW LOAN NOCASH	12/09	269000.00	.00	269000.00-	.00	269000.00-	.00	63.05	01
1	8/19/11	8103	NEW LOAN NOCASH	12/09	269000.00	.00	269000.00-	.00	269000.00-	.00	63.05	01

TOTALS * * *

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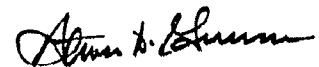
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Colette Thorne

From: Sandye Johnson
Sent: Monday, December 01, 2014 10:28 AM
To: Everybody
Subject: Holiday Luncheon

The Partners request your presence at our Holiday Luncheon on December 12th. It will be held at Lindo Michoacán located at 645 Carnegie Street, Henderson, NV 89052. The luncheon will be from 2pm to 5pm. Please plan on working over the noon hour as it will only be a 5.5 hour work day.

If you will not be attending, please let me know by Monday, December 8th. Thank you.



CLERK OF THE COURT

1 RSPN
2 ARIEL E. STERN, ESQ.
3 Nevada Bar No. 8276
4 ALLISON R. SCHMIDT, ESQ.
5 Nevada Bar No. 10743
6 AKERMAN SENTERFITT LLP
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12 Email: allison.schmidt@akerman.com

13 *Attorneys for Defendant*
14 *Nationstar Mortgage LLC*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 CATHERINE RODRIGUEZ,
18
19 Petitioner,

20 v.

21 NATIONSTAR MORTGAGE LLC.; METLIFE
22 HOME LOANS; and THE BANK OF NEW
23 YORK MELLON F/K/A THE BANK OF NEW
24 YORK AS TRUSTEE FOR THE HOLDERS OF
25 THE 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,

Defendants.

Case No.: A-13-685616-J
Dept.: XXV

**RESPONSE TO PETITION FOR
JUDICIAL REVIEW**

23 Nationstar Mortgage, LLC (Nationstar) responds to Catherine Rodriguez's Petition for
24 Judicial Review as follows:

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 This matter arises out of a foreclosure mediation that took place approximately *two years*
27 *ago*, pursuant to the amendments to Chapter 107 of the Nevada Revised Statutes. Rodriguez asks
28 the court to ignore a bright-line deadline on filing petitions for judicial review. The statutory scheme

{27004443;1}

AKERMAN SENTERFITT LLP
1160 TOWN CENTER DRIVE, SUITE 330
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1 and the foreclosure mediation rules that were in effect at the time of the mediation (as well as those
2 in effect now) do not provide for the relief Rodriguez seeks. The Court should deny her petition.

3 I.

4 STATEMENT OF FACTS

5 Rodriguez purchased the property located at 6845 Sweet Pecan Street, Las Vegas, NV in
6 April of 2005 for \$269,000. Pet. at 4:16-19. Rodriguez admits intentionally defaulting on her loan
7 in hopes of obtaining better terms. *Id.* at 4:25-26. Following her default, Rodriguez participated in
8 Nevada's foreclosure mediation program. Rodriguez had three separate mediations, on July 19,
9 2010; December 10, 2010; and October 6, 2011. *Id.* at p. 5-6. Rodriguez was represented by
10 counsel at each mediation. *Id.* Following the three mediations, Rodriguez did not cure her default,
11 despite being offered a modification in August 2010. See Pet., Ex. 7, at 0000026. The current
12 beneficiary of the deed of trust, Bank of New York-Mellon (BNY-Mellon) filed a judicial
13 foreclosure action on May 3, 2012. See Register of Actions, attached hereto as **Exhibit A**. The
14 judicial foreclosure action is still open; the court denied BNY-Mellon's motion for summary
15 judgment and permitted Rodriguez to conduct discovery. See Minutes, **Exhibit B**.

16 Rodriguez did not file a petition for judicial review until July 22, 2013, nearly two years after
17 the mediator's statement issued on the October 6, 2011 mediation. The untimely petition alleges an
18 endorsement presented at the October 6, 2011 mediation differed from the endorsement presented by
19 BNY-Mellon in the judicial foreclosure action. Pet. at 8:2-5. Rodriguez asserts, without basis, that
20 the endorsement produced at the mediation was fraudulent. *Id.* at p. 14.

21 II.

22 LEGAL ARGUMENT

23 A. The Petition is Untimely

24 The FMRs as they existed in October 2011 required a petition for judicial review be filed
25 within "30 days of the date that the party to mediation received the Mediator's Statement."¹ FMR
26

27 ¹ The rules have since been amended to require the Foreclosure Mediation Program Administrator to issue a notice to
28 homeowners stating whether a certificate will issue. Under the current rules, a petition must be filed within 30 days of
receipt of the notice. FMR 21(3) (as amended Dec. 2012)

21(2). The mediator served the Mediator Statement on October 11, 2012. *See* Pet., Ex. 11. Rodriguez was required to file her petition for judicial review by November 14, 2012.² Instead, Rodriguez waited more than 20 months after receiving the Mediator Statement to file her petition. *See* Pet., filed on July 22, 2013. This is not a case where a *pro se* petitioner missed the deadline by a couple of days; Rodriguez, who was and is represented by counsel, missed the filing deadline by nearly two years. Due to this failure, this court lacks jurisdiction.³

Rodriguez argues her petition is timely because she did not discover the endorsement issue until the hearing on BNY-Mellon motion for summary judgment in the judicial foreclosure action. Pet. at p. 11. The court should reject this argument, for two reasons. First, no authority supports Rodriguez's delayed discovery argument. The supreme court did not add a "delayed discovery" exception in any of the five rule amendments. No statute, regulation, rule, or case (published or otherwise) has a delayed discovery exception. Second, even assuming there was a "delayed discovery" exception to the petition deadline, the verified amended complaint for judicial foreclosure, which contains the second endorsement upon which Rodriguez bases her demand for sanctions, was filed on December 14, 2012. *See* Pet., Ex. 13. The petition was not filed until seven month later. Regardless of when this court considers the 30-period to begin, the petition is untimely.

B. Nationstar Does Not Seek to Utilize the FMR as "Both a Sword and a Shield"

Nationstar does not seek to use the rules as both a sword and a shield. BNY-Mellon sought, unsuccessfully, to bar the admissibility of the first endorsement in the judicial foreclosure. Pet., Ex. 16. The court denied BNY-Mellon's motion for summary judgment and permitted the parties to conduct discovery related to the documentary issues. *see* Ex. B.

Here, Nationstar seeks only to enforce the clear, longstanding rule that a petition for judicial review must be filed within 30 days of receipt of the mediator's statement. Nationstar has no interest in the outcome of the judicial foreclosure. *See* Ex. A. Subjectively carving out exceptions to the 30-

² This date assumes the standard three days for mailing.

³ The Nevada Supreme Court has held that the failure to timely file a petition for judicial review of an administrative proceeding is a jurisdictional defect, divesting the district court of jurisdiction over the matter. *See, e.g. SIIS v. Partlow-Hursh*, 101 Nev. 122, 125, 696 P.2d 462, 464 (1985)(workers compensation); *Crane v. Continental Telephone Co. of California*, 775 P.2d 705, 105 Nev. 399 (Nev., 1989)(Public Service Commission proceedings); and *Baxter v. State Labor Comm'r*, 281 P.3d 1154 (Nev., 2009)(petitions before the State Labor Commissioner).

1 day petition deadline would render the deadline useless. Once a mediation has concluded, a party to
2 the mediation should not be left to wonder whether it will be subject to judicial review years down
3 the road. Administrative proceedings require finality. Rodriguez's remedy to the perceived
4 documentary issue properly lies in the judicial foreclosure action. Rodriguez is not entitled to any
5 relief. The court should deny her petition.

6 **III.**

7 **CONCLUSION**

8 Rodriguez has remained in possession of the subject property for three and a half years
9 without payment and now seeks to recover additional funds *vis-à-vis* her untimely petition for
10 judicial review. Her failure to timely file the petition for judicial review divests this court of
11 jurisdiction over this matter. Nationstar requests the Court deny the petition for judicial review.

12 DATED this 30th day of August, 2013.

13 **AKERMAN SENTERFITT LLP**

14 /s/ Allison R. Schmidt, Esq.
15 ARIEL E. STERN, ESQ.
16 Nevada Bar No. 8276
17 ALLISON R. SCHMIDT, ESQ.
18 Nevada Bar No. 10743
19 1160 Town Center Drive, Suite 330
20 Las Vegas, Nevada 89144

21 *Attorneys for Defendant*
22 *Nationstar Mortgage LLC*
23
24
25
26
27
28

AKERMAN SENTERFITT LLP
1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-8572

CERTIFICATE OF SERVICE

HEREBY CERTIFY that on the 30th day of August, 2013 and pursuant to NRCP 5(b), I served and deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **RESPONSE TO PETITION FOR JUDICIAL REVIEW**, postage prepaid and addressed to:

VENICIA CONSIDINE, ESQ.
Legal Aid Center of Southern Nevada, Inc.
725 E. Charleston Blvd.
Las Vegas, NV 89104

TARA D. NEWBERRY, ESQ.
Connaghan Newberry Law Firm
7854 West Sahara Avenue
Las Vegas, NV 89117

Attorneys for Petitioner

KRISTIN A. SCHULER-HINTZ, ESQ.
McCarthy & Holthus, LLP
9510 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117

*Attorneys for Defendant
The Bank of New York Mellon
f/k/a The Bank of New York*

/s/ Adam Crawford
An employee of AKERMAN SENTERFITT LLP

EXHIBIT A

EXHIBIT A

{22983430;1}

CASE NO. A-12-661179-C

Case Type: Title to Property
Subtype: Foreclosure
Date Filed: 05/03/2012
Location: Department 31
Conversion Case Number: A661179

Lead Attorneys

Venicia G. Considine
Retained
702-388-1070(W)

Kristin A. Schuler-Hintz, ESQ
Retained
702-685-0329(W)

DISPOSITIONS

04/09/2013 Voluntary Dismissal (Judicial Officer: Kishner, Joanna S.)
Debtors: Republic Services (Defendant)
Creditors: The Bank of New York Mellon (Plaintiff)
Judgment: 04/09/2013, Docketed: 04/17/2013

05/03/2012	Case Opened
05/03/2012	Complaint <i>Complaint for Judicial Foreclosure and Deliciency Judgment of Deed of Trust</i>
05/03/2012	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
05/03/2012	Notice of Pendency of Action <i>Notice of Pendency of Action</i>
05/07/2012	Summons <i>Summons</i>
05/09/2012	Affidavit of Service <i>Affidavit of Service</i>
05/09/2012	Affidavit of Due Diligence <i>Affidavit of Due Diligence</i>
05/11/2012	Affidavit of Service <i>Affidavit of Service</i>
05/15/2012	Affidavit of Due Diligence <i>Affidavit of Due Diligence</i>
06/22/2012	Affidavit of Service <i>Affidavit of Service</i>
07/02/2012	Stipulation and Order <i>Stipulation and Order</i>
07/06/2012	Notice of Entry of Order <i>Notice of Entry of Order</i>
10/15/2012	Voluntary Dismissal <i>Voluntary Dismissal</i>
10/25/2012	Stipulation and Order for Dismissal With Prejudice <i>Stipulation and Order</i>
12/03/2012	Notice of intent <i>Notice of Intent to Default</i>
12/07/2012	Motion <i>Motion to Cancel Lis Pendens and Dismiss Complaint</i>
12/10/2012	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
12/14/2012	Amended Complaint <i>Verified Amended Complaint for Judicial Foreclosure and Deficiency Judgment of Deed of Trust</i>
12/18/2012	Amended Summons <i>Amended Summons</i>
01/08/2013	Notice <i>Notice to Withdraw Motion to Cancel Lis Pendens and Dismiss Plaintiff's First Complaint</i>
01/10/2013	CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated</i> <i>Defendant Catherine Rodriguez's Motion to Cancel Lis Pendens and Dismiss Complaint</i>

02/15/2013	Answer <i>Defendant's Answer and Affirmative Defenses to Plaintiff's Verified Amended Complaint for Judicial Foreclosure and Delinquency Judgment of Deed of Trust</i>
03/04/2013	Notice of Intent <i>Notice of Intent to Default</i>
04/09/2013	Voluntary Dismissal <i>Voluntary Dismissal</i>
04/29/2013	Affidavit in Support <i>Affidavit in Support of Motion</i>
04/29/2013	Memorandum of Costs and Disbursements <i>Memorandum of Costs and Disbursements</i>
04/29/2013	Motion for Summary Judgment <i>Motion for Summary Judgment</i>
05/17/2013	Opposition to Motion For Summary Judgment <i>Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i>
05/23/2013	Reply to Opposition <i>Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i>
06/18/2013	Motion for Summary Judgment (9:30 AM) (Judicial Officer Bonaventure, Joseph T.) <i>Plaintiff's Motion for Summary Judgment</i>
	<u>Parties Present</u>
	<u>Minutes</u>
	06/04/2013 Reset by Court to 06/18/2013
	Result: Denied Without Prejudice
07/31/2013	Order <i>Order Denying Plaintiff's Motion for Summary Judgment</i>
08/01/2013	Notice of Entry <i>Notice of Entry of Order Denying Plaintiff's Motion for Summary Judgment</i>
08/27/2013	Notice of Entry of Order <i>Notice of Entry of Order Denying Plaintiff's Motion for Summary Judgment</i>

FINANCIAL INFORMATION

	Defendant Rodriguez, Catherine		
	Total Financial Assessment		223.00
	Total Payments and Credits		223.00
	Balance Due as of 08/30/2013		0.00
12/10/2012	Transaction Assessment		223.00
12/10/2012	Wiznet	Receipt # 2012-151263-CCCLK	Rodriguez, Catherine (223.00)
	Plaintiff The Bank of New York Mellon		
	Total Financial Assessment		473.00
	Total Payments and Credits		473.00
	Balance Due as of 08/30/2013		0.00
05/03/2012	Transaction Assessment		270.00
05/03/2012	Wiznet	Receipt # 2012-57665-CCCLK	The Bank of New York Mellon (270.00)
05/04/2012	Transaction Assessment		3.00
05/04/2012	Payment (Window)	Receipt # 2012-58231-CCCLK	Natlonwide Legal (3.00)
04/30/2013	Transaction Assessment		200.00
04/30/2013	Wiznet	Receipt # 2013-53112-CCCLK	The Bank of New York Mellon (200.00)

EXHIBIT B

EXHIBIT B

{22983430;1}

CASE No. A-12-661179-C

అవగాహన

Conversion Case Number: A661179

Lead Attorneys

Venicia G. Considine
Retained
702-386-1070(W)

**Kristin A. Schuler-Hintz,
ESQ**
Retained
702-685-0329(W)

06/18/2013	Motion for Summary Judgment (9:30 AM) (Judicial Officer Bonaventure, Joseph T.) <i>Plaintiff's Motion for Summary Judgment</i>
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Minutes

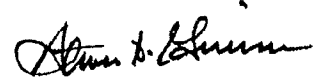
06/04/2013 9:00 AM

06/18/2013 9:30 AM

- Arguments by counsel. Court stated its findings and ORDERED, Plaintiff's Motion for Summary Judgment is DENIED WITHOUT PREJUDICE. Court will allow limited discovery, Plaintiff may then renew motion.

Parties Present

Return to Register of Actions


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Original

CATHERINE RODRIGUEZ,)
)
Petitioner,) Case No. A-13-685616-J
)
vs.) Dept No. XXV
)
NATIONSTAR MORTGAGE LLC,)
)
Respondent.)

BEFORE THE HONORABLE KATHLEEN DELANEY

SEPTEMBER 5, 2013, 9:00 A.M.

REPORTER'S TRANSCRIPT
OF
PROCEEDINGS

APPEARANCES:
(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

1 APPEARANCES:

2

3 For the Petitioner:

4

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and Nationstar Mortgage:

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<p>1 LAS VEGAS, CLARK COUNTY, NEVADA</p> <p>2 SEPTEMBER 5, 2013, 9:00 A.M.</p> <p>3 PROCEEDINGS</p> <p>4 * * *</p> <p>5 THE COURT: This is the time and date set for</p> <p>6 the Order to Show Cause in the Petition of Catherine</p> <p>7 Rodriguez versus Nationstar Mortgage. Also named in the</p> <p>8 Petition is Bank of New York Melon and MetLife Home</p> <p>9 Loans. This mediation actually took place back in 2011</p> <p>10 and there is some issue with regard to that in the</p> <p>11 timeliness of this Petition and, of course, we have the</p> <p>12 substantive arguments as well. And we have the added</p> <p>13 wrinkle that there's a judicial foreclosure proceeding</p> <p>14 also pending.</p> <p>15 Why don't we get appearances from counsel and</p> <p>16 who is present for our record and then we'll look at</p> <p>17 further argument.</p> <p>18 MS. NEWBERRY: Good morning, Your Honor. Tara</p> <p>19 Newberry on behalf of Ms. Rodriguez, along with</p> <p>20 co-counsel from Southern Nevada Legal Aid Center -</p> <p>21 MS. CONSIDINE: Venicia Considine.</p> <p>22 THE COURT: Good morning.</p> <p>23 MR. NAM: Inku Nam, on behalf of Bank of New</p> <p>24 York Melon.</p> <p>25 THE COURT: Thank you. And I do think that the</p> <p style="text-align: center;">3</p>	<p>1 have done that on occasion, as well, if counsel is not</p> <p>2 present and they might be somewhere in the courthouse.</p> <p>3 Sometimes their staff could track them down. So we will</p> <p>4 try that and see if staff can track them down and say</p> <p>5 that we are ready to have the matter called. But we will</p> <p>6 trail it to at least to the end of the calendar.</p> <p>7 MS. NEWBERRY: Fair enough, Your Honor.</p> <p>8 THE COURT: We will call you up again when we</p> <p>9 see counsel.</p> <p>10 * * *</p> <p>11 THE COURT: Calling the matter on page 6,</p> <p>12 Rodriguez versus Nationstar Mortgage.</p> <p>13 MS. NEWBERRY: Tara Newberry on behalf of</p> <p>14 Ms. Rodriguez.</p> <p>15 MS. CONSIDINE: Venicia Considine on behalf of</p> <p>16 Ms. Rodriguez.</p> <p>17 MR. NAM: Inku Nam on behalf of Bank of New York</p> <p>18 Melon.</p> <p>19 MS. SCHMIDT: Alison Schmidt on behalf of</p> <p>20 Nationstar Mortgage LLC. And my apologies to the Court</p> <p>21 and counsel for our calendaring error.</p> <p>22 THE COURT: That's all right. We know you were</p> <p>23 around. We were actually all in agreement to trail it</p> <p>24 assuming you were coming, but also out of an abundance of</p> <p>25 caution had staff reach out and contact your office to</p> <p style="text-align: center;">5</p>
<p>1 first issue that we need to address today, unless there's</p> <p>2 something else going on that the court needs to be made</p> <p>3 aware of.</p> <p>4 MS. NEWBERRY: Your Honor, I would say that I</p> <p>5 did see Alison Schmidt in the courthouse today; she does</p> <p>6 represent, I believe, Nationstar in this matter. There</p> <p>7 was a filing of a response on Friday, which I received</p> <p>8 yesterday in the mail, so I don't know if she checked in</p> <p>9 to the court.</p> <p>10 THE COURT: No. We have not had her check in</p> <p>11 yet this morning. We did get the response from - I did</p> <p>12 not know and should have asked before we got started if</p> <p>13 counsel was going to stand in for, and that has happened</p> <p>14 on occasion when we have had multiple parties.</p> <p>15 MR. NAM: I am only representing Bank of New</p> <p>16 York Melon today.</p> <p>17 THE COURT: All right. Do you think we need to</p> <p>18 trail it?</p> <p>19 MS. NEWBERRY: I know Ms. Schmidt from a along</p> <p>20 time ago. I can't imagine that she would miss, so I</p> <p>21 would prefer that we trail it just to give her that</p> <p>22 opportunity to be here.</p> <p>23 THE COURT: It is ten after ten; calendar starts</p> <p>24 at nine. We could also - I'll have my clerk send a note</p> <p>25 to my JEA to try to reach out to Ms. Schmidt, because we</p> <p style="text-align: center;">4</p>	<p>1 make sure that you knew.</p> <p>2 MS. SCHMIDT: I appreciate that. Thank you.</p> <p>3 THE COURT: We had received the pleadings. The</p> <p>4 Court had sort of oriented everybody to what the Court</p> <p>5 was looking at, first and foremost, to the procedure</p> <p>6 issue that was raised to whether or not the Petition was</p> <p>7 timely in that it does relate to a mediation that took</p> <p>8 place in October of 2011.</p> <p>9 And the argument that was made by the petitioner</p> <p>10 is that it is timely because the first that the</p> <p>11 petitioner could have or would have been aware that there</p> <p>12 was different documentation being offered by the entity</p> <p>13 seeking to foreclose was at the time that the Motion for</p> <p>14 Summary Judgment took place in the judicial foreclosure</p> <p>15 action, and within 30 days of that date is when this was</p> <p>16 filed.</p> <p>17 Now, I double checked the dates and I am just</p> <p>18 going to throw them out there to make sure that we are at</p> <p>19 least on the same page as we proceed with the argument on</p> <p>20 this aspect of the case that the Motion for Summary</p> <p>21 Judgment hearing took place on June 18th and the Petition</p> <p>22 appears to have been filed on July 22nd. So it does</p> <p>23 technically seem to be outside the 30-day window even if</p> <p>24 you go to the latest date argued by the petitioner as far</p> <p>25 as when it became aware of the need to file this</p> <p style="text-align: center;">6</p>

<p>1 Petition.</p> <p>2 Now, the Court certainly has the discretion and</p> <p>3 has exercised it in appropriate circumstances to not have</p> <p>4 that act as a procedural bar. Of course, there is some</p> <p>5 argument being made in one of the responses, and I forget</p> <p>6 which, that really the date in which the petitioner</p> <p>7 should have been aware of these other documents was when</p> <p>8 the Amended Complaint was filed back in December of 2012.</p> <p>9 So I guess I just want to get for the record the</p> <p>10 input on whether or not you believe this was timely. If</p> <p>11 it was timely, what your good cause argument would be for</p> <p>12 why it wasn't timely and should not be a procedural bar.</p> <p>13 MS. NEWBERRY: Thank you, Your Honor.</p> <p>14 First, we did file on July 18th. There was a</p> <p>15 problem with the filing because of this being a joint</p> <p>16 representation between the Legal Aid Center of Southern</p> <p>17 Nevada and my office. My office filed on the 18th, which</p> <p>18 would have been within 30 days of the hearing on Motion</p> <p>19 for Summary Judgment that Your Honor discussed. The</p> <p>20 clerk rejected it because it was not filed with the SOLA,</p> <p>21 which is required by the court so their office had to go</p> <p>22 in and fix it. So that's the difference between the 18th</p> <p>23 and 22nd was it was a clerk issue. The motion was filed.</p> <p>24 It was actually served on McCarthy Holthus when we</p> <p>25 actually filed it believing that it was going to be</p> <p style="text-align: right;">7</p>	<p>1 So we filed a Motion to Dismiss because we</p> <p>2 didn't think Bank of New York Melon was the proper party.</p> <p>3 They then, rather than responding to the Motion to</p> <p>4 Dismiss with an opposition, amended the Complaint. When</p> <p>5 they amended the Complaint, and I have a copy of the</p> <p>6 courtesy copy that was sent to me by McCarthy Holthus, it</p> <p>7 shows the endorsement with a white text box covering up</p> <p>8 that endorsement to Nationstar that we had originally</p> <p>9 received. And I have it for you to look at today and</p> <p>10 compare the exact ones that I was given that I retained.</p> <p>11 So even at the time that Amended Complaint was</p> <p>12 filed, because of this whiteout box that's laying over</p> <p>13 it, we still didn't know who fabricated the document.</p> <p>14 Was it Bank of New York Melon; were they the ones that</p> <p>15 whited this out and were now trying to pretend to be the</p> <p>16 lender with the right to foreclose. Or Nationstar back</p> <p>17 at the time of the mediation were they the ones that put</p> <p>18 their name on the endorsement without any authorization</p> <p>19 to do so.</p> <p>20 Without having that original in our hand, all we</p> <p>21 have is two copies of a note with different entities</p> <p>22 claiming to be the note holder, which is why when the</p> <p>23 Motion for Summary Judgment occurred, McCarthy Holthus</p> <p>24 shows up with the original note. Wet ink. Our client's</p> <p>25 signature on it. We examined it. The client examined</p> <p style="text-align: right;">9</p>
<p>1 accepted by the court.</p> <p>2 THE COURT: Okay.</p> <p>3 MS. NEWBERRY: That is the issue with regards to</p> <p>4 the couple of days. So I do believe there is a good</p> <p>5 cause to make that allowance since this was a clerical</p> <p>6 issue with regard to accepting the filing without the</p> <p>7 SOLA. It was our understanding we could file the</p> <p>8 Petition and then file the SOLA once we had the case</p> <p>9 number. The clerk then rejected the filing stating that</p> <p>10 it had to be filed together. So that was the issue with</p> <p>11 regard to the filing.</p> <p>12 As far as the hearing, let me take you back to</p> <p>13 when the judicial foreclosure was originated to explain</p> <p>14 the time standard with regards to our revelation that</p> <p>15 this document was in fact forged.</p> <p>16 THE COURT: Okay.</p> <p>17 MS. NEWBERRY: When the case was filed there was</p> <p>18 no endorsement on the note, and there was a Motion to</p> <p>19 Dismiss that we filed because this was a lack of</p> <p>20 standing. Bank of New York Melon had filed a judicial</p> <p>21 foreclosure, and it was our last understanding that</p> <p>22 Nationstar, based on the mediation, had not only taken</p> <p>23 over the servicing of the loan but they also had been</p> <p>24 transferring the note because that's the note that we</p> <p>25 had.</p> <p style="text-align: right;">8</p>	<p>1 it. It looked like the original. And sure enough, there</p> <p>2 was never an endorsement by Nationstar on that note.</p> <p>3 So at the time of the hearing on the 18th is the</p> <p>4 first moment that we had absolute proof that the document</p> <p>5 that was offered at the mediation was not a true copy of</p> <p>6 the original, nor was it in any manner Nationstar's right</p> <p>7 to hold that note as an owner.</p> <p>8 So it's counsel's argument that we should have</p> <p>9 known in December. Well, we still had another copy of</p> <p>10 the note. And until we actually have the original I do</p> <p>11 not see how we were possibly put on valid notice that</p> <p>12 there was a forged instrument.</p> <p>13 The other issue that I have is in neither of</p> <p>14 their responses to the Petition did they deny that the</p> <p>15 document was forged. It's simply too late. You can't</p> <p>16 bring this to the court.</p> <p>17 If I had filed a Petition for Judicial Review</p> <p>18 back in October of 2011 asking Your Honor to find them in</p> <p>19 bad faith for a forged document what proof would I have</p> <p>20 had? I was in violation of Rule 11. I would have signed</p> <p>21 a document based on a supposition and a guess. I had no</p> <p>22 proof. I was not put on adequate notice.</p> <p>23 And like Your Honor said in hearings earlier</p> <p>24 today, the counsel that appeared at the mediation at</p> <p>25 their word under the judicial canon that their</p> <p style="text-align: right;">10</p>

1 representations are truthful and accurate. I did the
2 same thing. I had to look at the opposing counsel at
3 that mediation and take in good faith that that document
4 was true. We were told about a month before the original
5 mediation day that the servicing had transferred from
6 MetLife to Nationstar and that they were having problems
7 getting all the documents together. No problem.
8 Continued the mediation. Gave them an additional three
9 weeks to come up with the document. They showed up at
10 mediation with this endorsement saying that Nationstar
11 now owned the loan.

12 I'm sure you have heard many cases and many
13 instances where that has happened and when counsel says,
14 Look, we have had some problem with getting the
15 certification. But Nationstar is the servicer,
16 Nationstar owns the note. Mr. Mark (phonetic) who
17 appeared on behalf of Nationstar telephonically,
18 confirmed that representation. We had no reason to
19 believe that anybody else should be sitting at mediation
20 than Nationstar.

21 So how could we have filed a Petition for
22 Judicial Review claiming that that endorsement had been
23 fraudulently presented when we didn't have any facts that
24 support that, nor were we on notice that that was even a
25 possibility. Even when a complaint was filed we still

11

1 didn't have confirmation. And I would like to offer this
2 to Your Honor to review for yourself the two note
3 endorsements that we were given.

4 THE COURT: Please.

5 MS. NEWBERRY: This is what was attached to the
6 Amended Complaint. And that is what was sent to us. And
7 then this is what was provided at mediation.

8 THE COURT: All right. Thank you, Counsel.

9 Because this part of the argument is related to
10 the procedural issue of timeliness and whether there is a
11 particular bar, let me hear from counsel.

12 MR. NAM: Your Honor, we do stand our on brief,
13 this PJR was brought untimely. We have heard argument
14 today as far as discovery of a certain breach and
15 whatnot. We are not contesting that here today. We are
16 not here to argue that matter. Those issues which are
17 being determined in the judicial proceeding right now we
18 are approaching discovery on that particular matter and I
19 believe that is the -- in our respect I believe that is
20 the proper forum to discuss that.

21 THE COURT: Counsel, would you agree it is
22 possible to have parallel tracks that you could have a
23 Petition for Judicial Review on mediation and proceed
24 here with whether or not there was mediation in good
25 faith, et cetera, and authority, et cetera, and still

12

1 have a judicial foreclosure proceeding pending
2 separately.

3 I mean, your argument seems to be can't have
4 both. But we see that situation occur all the time. Or
5 if not a judicial foreclosure, some type of an action to
6 stop a nonjudicial foreclosure that's filed in the
7 regular course in a civil pleading that it goes to
8 whatever judge is assigned to the civil case versus this
9 matter pending here. So are you suggesting that we can't
10 have both?

11 MR. NAM: I am not suggesting that. I believe
12 that is best left to the determination of this court
13 whether or not that should proceed. We're just urging
14 this court as a matter of judicial efficiency if we are
15 approaching discovery in the judicial matter if we could
16 go ahead and conclude that versus finding out if there
17 are further facts that may come to support this
18 particular proceeding. We do believe that this is an
19 untimely brought PJR, especially given the mediator's
20 statement that dates back to 2011, which states that
21 homeowner's attorney believed that there was some
22 insufficient production of whether there's authority
23 document at that time. We were surprised why that was
24 not moved upon and it wasn't moved upon until the
25 judicial matter was brought.

13

1 THE COURT: Counsel, did you have something to
2 add?

3 MS. SCHMIDT: I did just want to add a few
4 things. We obviously agree with the assertion that this
5 is an untimely Petition. Counsel has argued that the
6 very first time they had concrete proof that something
7 was amiss was at the hearing. I would disagree with
8 that. And I don't think that's the standard for delayed
9 discovery. And there is no case law or statutory law
10 supporting delayed discovery rule, but even if there
11 were, it is not when you're on notice, when you have the
12 smoking gun or the bloody glove in your possession. It's
13 when you are on notice when fraud might have occurred or
14 something might have occurred. And that was when the
15 Amended Verified Complaint was filed.

16 It had the endorsement upon which they base this
17 Petition attached to it. That was in December. It was
18 served upon the counsel who is present here today. Their
19 counsel who was also present at mediation, they should
20 have said, Hey, endorsement A is different from
21 endorsement B and acted upon that right away. And now
22 we're two years out of the gate.

23 As we stated in our brief it is our position
24 that the 30-day timeline of the jurisdictional deadline,
25 as the supreme court has never reached that issue in the

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<p>1 foreclosure mediation program context, but in any other 2 Petition for Judicial Review of an administrative 3 proceeding it has always been held to the jurisdictional 4 bar. We're outside of that window no matter when we 5 start the time clock. Whether we start it when they 6 first had notice of the second endorsement or whether you 7 start it when the mediator's statement was delivered, 8 which is what the rules state.</p> <p>9 There has been five amendments to these rules. 10 They have never added a delayed discovery type of thing. 11 And it's our position that their remedies lie within the 12 judicial foreclosure action where there is transference, 13 there is discovery and they can assert the fraud claims 14 if they want.</p> <p>15 And the Motion for Summary Judgment as the 16 record reflects was denied and discovery was allowed with 17 respect to this issue. So they have their remedy there. 18 And it doesn't make sense in terms of judicial efficiency 19 or any type of certainty within this program to allow 20 petitions to be filed years after a mediation. There is 21 just no authority that supports that and it just doesn't 22 make sense. So that's our position.</p> <p>23 THE COURT: All right. Thank you. 24 MS. NEWBERRY: I do have a response, Your Honor. 25 THE COURT: You may.</p> <p style="text-align: right;">15</p>	<p>1 ability to force BJ Cooly (phonetic) who signed, 2 allegedly signed, this document at one point. We don't 3 have the ability to explore discovery. So they are using 4 both of these cases to nullify their fraudulent conduct.</p> <p>5 I don't think when the legislature decided on 6 the 30-day time period that in that calculation they had 7 to factor in subversive forged fraudulent actions by the 8 lender. And there is not an ability for the homeowner's 9 side to delve into the authenticity of the signatures or 10 to force the original. We allowed them to bring 11 certified copies. We allowed them to provide a copy of 12 the original for efficiency under the presumption that 13 they're telling the truth.</p> <p>14 I think it is a rarity, especially in this 15 scenario, a rarity that a homeowner or a homeowner's 16 attorney would be in this type of situation where they 17 actually could discover and prove that a fraud occurred. 18 Not being able to foreclose after the mediation based on 19 what's in the mediator's statement, in my opinion, at 20 that time with the facts and information I had, I believe 21 that to be an appropriate sanction.</p> <p>22 Why would I waste the Court's resources to come 23 in and hammer home that they're not allowed to foreclose. 24 I think it would be an absolute waste of the Court's 25 time, resources, as well as the bank's resources. And</p> <p style="text-align: right;">17</p>
<p>1 MS. NEWBERRY: First, it is convenient for them 2 to point back to the judicial foreclosure that's pending, 3 however, their main summary argument in that motion is 4 that we're not allowed to mention the mediation. We are 5 not allowed to mention any of these documents. We can't 6 bring up the fact that this forged document was presented 7 at mediation because the proper forum was in front of you 8 on a Petition for Judicial Review.</p> <p>9 Based on their argument in their own motion or 10 their reply to opposition in the Motion for Summary 11 Judgment we determined we would file a Petition for 12 Judicial Review in order for Your Honor to make that 13 ruling.</p> <p>14 If this document was presented at mediation and 15 was falsified, there was no way for us to know that until 16 the hearing where we were actually able to touch the 17 original. Because what's been happening is Nationstar 18 now as the servicer and Bank of New York Melon is 19 claiming to have a right to foreclose are pointing 20 fingers at each other.</p> <p>21 And in sense of the mediation, we dealt with 22 Nationstar and in the judicial foreclosure, the only 23 party in that action is plaintiff's side, Bank of New 24 York Melon. So we have no ability to force deposition of 25 Mr. Marks, who participated in the mediation. We have no</p> <p style="text-align: right;">16</p>	<p>1 every time they have to appear in court they charge my 2 client for it with regards to the arrearages. So for 3 homeowner's counsel to file a Petition for Judicial 4 Review after every single mediation would waste the 5 court's time.</p> <p>6 Based on what I knew at that time, based on what 7 my client knew at that time, Nationstar was the proper 8 party. They were the beneficiary and the servicer based 9 on the documents and the representation. I had no idea 10 that that wasn't true until we went to the Motion for 11 Summary Judgment hearing and I got to see the original. 12 That's when I knew that Nationstar had forged that 13 document.</p> <p>14 What could have come out at the Motion for 15 Summary Judgment is they could have brought the original 16 with the Nationstar endorsement and then Bank of New York 17 Melon would have to explain why they had filed the case 18 with this endorsement with Nationstar on it.</p> <p>19 So as I showed Your Honor, there is this 20 whiteout text box. I don't know who committed the fraud 21 until I had the original in my hand. So I don't believe 22 this Petition is untimely. I think it is timely and I 23 think because this court is supposed to make a 24 determination not only based on the rules but on the 25 matter of the facts that are presented, this is an</p> <p style="text-align: right;">18</p>

<p>1 exception to the 30 days from the date of mediation 2 statement because we had no basis to file a PJR until we 3 absolutely had the document in hand showing they 4 committed this fraud at mediation.</p> <p>5 If Your Honor doesn't address this and says that 6 it is untimely, then they are free to file forged 7 documents whenever they want and have no repercussions 8 because it is going to take more than 30 days for anyone 9 to figure it out or prove it.</p> <p>10 This is, to me, looking at the documents on a 11 whole, it's clearly fraud. This is the only argument 12 they have to go with, which is untimely because they 13 can't explain how this happened. There is no explanation 14 for it other than we tried to fudge the documents to pass 15 muster with the mediator and now we got caught with our 16 hands in the cookie jar. What's the court going to do 17 about it? Hopefully we get out on a procedural argument.</p> <p>18 I understand their position. I think it's a 19 matter of equity. Your Honor should entertain the 20 Petition for Judicial Review. I believe an evidentiary 21 hearing is necessary and I believe that all of the 22 parties that were present at the mediation; BJ Cooley, who 23 signed the endorsement; Daniel Marks, and Lindsey 24 Bennett, who was representing the servicer at the time of 25 the mediation, should all be called upon to testify for</p> <p style="text-align: right;">19</p>	<p>1 Summary Judgment hearing date to be the appropriate date 2 upon which it was understood that there was a basis to 3 file a Petition for Judicial Review and against whom.</p> <p>4 And that it appears from representations of 5 counsel that that was filed in a timely fashion and that 6 the clerical error shouldn't have technically made it 7 untimely. Ultimately, there is still evidence that it 8 was filed within 30 days as required.</p> <p>9 So the Court is first and foremost finding that 10 it was meant to file in 30 days that it makes it not 11 untimely. To the extent that, technically, because of 12 the clerk's rejection of the filing it was untimely by a 13 few days that that is certainly excusable in the 14 circumstances. And that ultimately there is good cause 15 for the filing when it occurred. So there is no 16 procedural or jurisdictional bar to the Court proceeding 17 substantively with regard to this Petition.</p> <p>18 There has already been a lot of argument made my 19 Ms. Newberry with regard to the nature of the document 20 that was filed or utilized at the time of the mediation 21 and what that means and how that should impact this 22 Court's determination through it's authority to proceed 23 by the party who is seeking to proceed at the time of the 24 mediation, namely, Nationstar.</p> <p>25 And I think at this time I would like to hear</p> <p style="text-align: right;">21</p>
<p>1 an evidentiary hearing in order for us to discover fully 2 what the sanctions should be and who is ultimately 3 responsible.</p> <p>4 THE COURT: Thank you, Ms. Newberry.</p> <p>5 Couple of things. A lot of things were flying 6 around here, notably discovery rule. I don't necessarily 7 disagree with that that's ever been built into the rules. 8 No, it could be a jurisdictional bar. Lots of arguments 9 being thrown out.</p> <p>10 This is how the Court looks at this matter; the 11 rules do contemplate that a Petition for Judicial Review 12 would be filed within 30 days of the mediation statement. 13 No doubt. The Court, however, has on occasion and 14 believes that it is supported by a supreme court decision 15 to exercise its discretion to not effectuate a procedural 16 bar to proceeding with the Petition for Judicial Review 17 that may have been filed untimely when there is good 18 cause shown for the reason for that.</p> <p>19 And, of course, we always know that the 20 overarching mandate of our supreme court has been that 21 matters should proceed on their merits whenever possible. 22 With that said, I do not find that this Petition is 23 untimely anyway.</p> <p>24 I do believe that what has been offered by 25 counsel that it is appropriate to consider the Motion for</p> <p style="text-align: right;">20</p>	<p>1 from counsel any substantive argument that they would 2 like to make, and then I will get final word from 3 Ms. Newberry.</p> <p>4 MR. NAM: I just wanted to go ahead and clarify 5 that the position that my client took in the MSJ in the 6 judicial proceeding that the PJR was an appropriate forum 7 for any determination on that note. It was denied and 8 the parties were urged to seek discovery immediately. We 9 are approaching discovery. I just wanted to clarify 10 that.</p> <p>11 THE COURT: Sorry, that I did not give you a 12 chance to do that, Counsel. I saw you kind of stand up 13 and then sit back down. And typically I do call for 14 additional discussion. And, fair enough, I am not 15 holding it against anybody that a certain argument was 16 made in a certain forum and different argument or what 17 appeared to be contrary argument being made here. I am 18 just dealing with what I have here.</p> <p>19 And from what I have here, I do not believe in 20 any way, shape or form that the judicial foreclosure 21 proceedings is necessary to only be the one that goes 22 forward. If there is any basis to necessarily 23 consolidate the matters, if that's what is effectively 24 being asked, but certainly not that this matter needs to 25 be dismissed for judicial economy or otherwise. This</p> <p style="text-align: right;">22</p>

<p>1 matter is this matter and it will proceed.</p> <p>2 The question then to be answered was is there</p> <p>3 any kind of procedural bar that would preclude the</p> <p>4 petitioner from going forward substantively, as I made my</p> <p>5 findings that there is not a procedural bar. I do not</p> <p>6 find the matter to be untimely. And to the extent that,</p> <p>7 again, the actual electronic filing date is a couple of</p> <p>8 days outside the 30-day window that that is, again, a</p> <p>9 clerical issue that was not the responsibility of the</p> <p>10 petitioner and certainly should not act as any kind of a</p> <p>11 procedural bar. And the efforts to comply were made and,</p> <p>12 again, outside the control of the petitioner. We do not</p> <p>13 see any prejudice from any handling of this going forward</p> <p>14 in that sense.</p> <p>15 I appreciate the arguments were made that there</p> <p>16 was much more than a few days, when it should have been</p> <p>17 known there was some significant time in the past. I</p> <p>18 find compelling the argument that the first time it was</p> <p>19 understood what had occurred and who perhaps had done it</p> <p>20 was in that Motion for Summary Judgment hearing, and</p> <p>21 therefore, that's why I am finding this matter to be</p> <p>22 timely. To the extent that it can be determined to be</p> <p>23 untimely, that was excused.</p> <p>24 So substantively now, do you have any specific</p> <p>25 argument that you wish to make to add to your response to</p> <p style="text-align: right;">23</p>	<p>1 counterintuitive from my point of view to forge one thing</p> <p>2 when you have other deficiencies that are going to</p> <p>3 prevent you from getting a certificate.</p> <p>4 There's also many other possible explanations as</p> <p>5 to why the endorsements are different. When our clients</p> <p>6 transfer a loan file we transfer the originals and</p> <p>7 everything over to the beneficiary. If an allonge was</p> <p>8 lost that would necessitate a new endorsement.</p> <p>9 Edelstein allowed lenders to cure a slip between a note</p> <p>10 and deed of trust. Bank of New York Mellon is the deed of</p> <p>11 trust, beneficiary. If they want to get an endorsement,</p> <p>12 the easiest way to do it would be to get it from the</p> <p>13 original lender to Bank of New York Mellon, which it</p> <p>14 appears is what occurred here.</p> <p>15 I don't know what happened to the original</p> <p>16 endorsement that was presented by Nationstar. As I said,</p> <p>17 there is nothing to be gained by my client forging a</p> <p>18 document like that. I think there is many other</p> <p>19 explanations possible other than forgery as to why this</p> <p>20 occurred. And as a practical matter it didn't have any</p> <p>21 bearing on the outcome of the mediation.</p> <p>22 So if Your Honor is concerned that a fraud</p> <p>23 occurred then we can certainly have some discovery with</p> <p>24 respect to that. I know they are also doing discovery in</p> <p>25 a judicial foreclosure action.</p> <p style="text-align: right;">25</p>
<p>1 the Petition?</p> <p>2 MS. SCHMIDT: Was Your Honor looking for</p> <p>3 substantive argument with respect to the endorsement or</p> <p>4 whether a fraud occurred?</p> <p>5 THE COURT: The basis for the Petition. The</p> <p>6 substantive basis for the Petition.</p> <p>7 MS. SCHMIDT: Just from our point of view, we</p> <p>8 were a past beneficiary. Bank of New York Mellon is now</p> <p>9 the beneficiary. We do not have a dog in the fight with</p> <p>10 judicial foreclosure. If they can foreclose, good for</p> <p>11 them, but it does not have any bearing on us.</p> <p>12 It seems counterintuitive that my client would</p> <p>13 fraudulently forge an endorsement when they didn't have</p> <p>14 any of the other documents that they needed. Why forge</p> <p>15 an endorsement when you are not going to get a</p> <p>16 certificate. It doesn't make sense.</p> <p>17 THE COURT: So are you conceding then on the</p> <p>18 part of your client that they were not at the mediation</p> <p>19 with proof of authority, and such that the mediation</p> <p>20 obviously was not appropriate under the rules and that</p> <p>21 there should be sanctions in some determination of the</p> <p>22 court at this time?</p> <p>23 MS. SCHMIDT: I do not concede that. I am just</p> <p>24 noting from the mediator's statement that there were</p> <p>25 other document deficiencies, so it makes it</p> <p style="text-align: right;">24</p>	<p>1 But I did want to separate us because we are not</p> <p>2 just the bank. We are Nationstar and Bank of New York</p> <p>3 Mellon. We're past beneficiary. The current beneficiary,</p> <p>4 whether they can foreclose isn't our issue. So this will</p> <p>5 just go back to what happened to the Nationstar</p> <p>6 endorsement after the loan was transferred, which we</p> <p>7 don't even know.</p> <p>8 THE COURT: Okay. Counsel, did you want to add</p> <p>9 anything? I appreciate that we focused on Nationstar as</p> <p>10 the participant at the mediation. Do you have anything</p> <p>11 for the record that you want to add before I hear from</p> <p>12 Ms. Newberry?</p> <p>13 MR. NAM: I have nothing further to add.</p> <p>14 THE COURT: Thank you, Counsel.</p> <p>15 Ms. Newberry.</p> <p>16 MS. NEWBERRY: Thank you, Your Honor.</p> <p>17 First off, let me give the timeline of what</p> <p>18 happened in this file. This was a First Horizon</p> <p>19 servicing and origination. When it went from First</p> <p>20 Horizon it was securitized allegedly and put into a trust</p> <p>21 that First Bank of Tennessee was the master servicer for.</p> <p>22 Servicing eventually from First Horizon went to MetLife.</p> <p>23 Then the servicing went from MetLife -- or while it was</p> <p>24 still with First Horizon is when the bankruptcy case was</p> <p>25 filed. Then it went to MetLife, and while it was with</p> <p style="text-align: right;">26</p>

<p>1 MetLife there was an assignment from MERS to Bank of New 2 York Melon, the beneficiary of deed of trust.</p> <p>3 So Bank of New York Melon on paper as of May of 4 2010 was the beneficiary. MetLife continued to do the 5 servicing. They go through two mediations, can't comply 6 with the rules. Third mediation I get an e-mail a couple 7 weeks before saying, Hey, this file is not with MetLife 8 anymore. It all just went to Nationstar. So I'm 9 expecting not only the endorsement that they show, but an 10 assignment from Bank of New York Melon to Nationstar.</p> <p>11 Practically speaking, it's rare that it comes 12 out of the securitized trust but the banks continuously 13 represent that all of these documents are truthful and 14 everything that they are saying is correct. We have to 15 take them at face value. So to say that Bank of New York 16 Melon didn't come in as a beneficiary until after 17 Nationstar is not true. They were as of 2010 according 18 to their own assignment they recorded.</p> <p>19 Nationstar never was a beneficiary according to 20 it the original note. It was endorsed in blank. If that 21 original note had ever had an endorsement from Nationstar 22 there would be an endorsement from Nationstar back to 23 Bank of New York Melon. That is not on the original 24 note.</p> <p>25 What is on the original note and it was in my</p> <p style="text-align: right;">27</p>	<p>1 theory, yes, they are liable because Nationstar was the 2 servicer the whole time and were the beneficiary. They 3 delegated their authority for their servicer. Their 4 servicer appeared on their behalf at mediation and fudged 5 the document.</p> <p>6 And rather than have them come forward and say, 7 Well, we're just the servicer. Bank of New York Melon is 8 really the true party in interest here, they didn't say 9 that. They gave an alternative theory, which is, Here, 10 it's been endorsed to us. We just don't have the 11 assignment yet.</p> <p>12 So with regards to the mediation program, if in 13 fact, Bank of New York Melon had been the beneficiary 14 since that assignment in 2010, if that's the true case 15 and Nationstar was the servicer they are both on the hook 16 here today with regards to the conduct that happened at 17 mediation. Agency theory ties Nationstar's Bank of New 18 York Melon from the point that they took over the 19 servicing of the loan.</p> <p>20 THE COURT: Okay. I'm assuming counsel will 21 want to respond.</p> <p>22 Ms. Considine, you stood up. Did you want to 23 make any comments?</p> <p>24 MS. CONSIDINE: No. I was just agreeing with 25 everything. I think in the larger spectrum of this is if</p> <p style="text-align: right;">29</p>
<p>1 hand and counsel from McCarthy Holthus presented it at 2 the hearing with this endorsement (indicating) without 3 the Nationstar on it. Okay. It was in blank. BJ 4 Cooley. There's one endorsement on the back of that 5 original note. Myself and Ms. Considine, as well as 6 Ms. Rodriguez looked at it.</p> <p>7 So we're here today to talk about why did 8 Nationstar fill its name in on an endorsement and provide 9 it at the mediation trying to pretend to be the servicer 10 and the beneficiary when that simply wasn't true.</p> <p>11 THE COURT: Counsel, let me jump in and just try 12 to make sure I understand where you are going with the 13 thought process. So assuming everything pans out as you 14 have just argued it through the evidence and whatever 15 testimony, and there is no credible dispute to any of 16 that. If Nationstar was never the beneficiary and 17 Nationstar is really not the entity then whatever relief 18 could be attained against Nationstar isn't really going 19 to have any impact on your client, is it?</p> <p>20 MS. NEWBERRY: Well --</p> <p>21 THE COURT: Don't you need relief against Bank 22 of New York Melon?</p> <p>23 MR. NEWBERRY: Well, the judicial foreclosure 24 proceeding is going forward as counsel indicated, and we 25 are conducting discovery in that matter. On an agency</p> <p style="text-align: right;">28</p>	<p>1 this was a pattern and practice of Nationstar throughout 2 the mediation, this is something that we would like a 3 sanction against Nationstar for in order to stop this 4 behavior and make sure that it is not repeated if it has 5 been repeated in any other mediations.</p> <p>6 THE COURT: I am assuming counsel would like to 7 respond to the assertion that agency theory would be 8 applicable as both entities would be -- amenable is not 9 the right word I'm looking for but I can't come up with a 10 better one right now -- as to any decision this court 11 would make, and ultimately that sanctions should be 12 imposed against both.</p> <p>13 MS. SCHMIDT: Your Honor, I would like to 14 respond to that and I apologize for using the term 15 beneficiary when it was in fact a servicer from my 16 information. And obviously the rules allow us as a 17 servicer to appear at a mediation. But you can't on one 18 hand say, We need to keep these people in because they 19 were the beneficiary represented at the mediation but we 20 want sanctions against both of them. I don't see how the 21 agency -- there's just no liability for -- I'm sorry. 22 There is nothing to suggest that Nationstar had anything 23 to gain out of this.</p> <p>24 As a servicer working for a beneficiary the 25 program contemplates Petition for Judicial Review against</p> <p style="text-align: right;">30</p>

1 the beneficiary. The beneficiary is the one with the
2 ability to foreclose. If it's going to be this court's
3 ruling that they can't foreclose based on whatever
4 occurred at the mediation, that ruling would have nothing
5 to do to with Nationstar.

6 And I think that with respect to the fraud,
7 there would certainly need to be some degree of discovery
8 with that. Like I said, when we sent our files out we
9 don't know what happens to them. And obviously this is
10 something that happened two years ago, so it is
11 questionable as to what evidence we would even be able to
12 find with what happened to that endorsement. Or if the
13 endorsement is incorrect why shouldn't they be allowed to
14 correct it.

15 Nationstar is not a beneficiary, then perhaps
16 the endorsement was incorrect. Perhaps they obtained the
17 endorsement from the original and decided, Oh, we're just
18 the servicer we need to correct this. And there are just
19 so many explanations for it. So they are painting it as
20 this smoking gun and this is a fraud. We don't have any
21 evidence of that. We have two different documents. No
22 one knows who did what.

23 I can't tell on my copy that there was a
24 whiteout box. If there is, then I'm unaware of that.
25 I'm unaware of who whited out what. But it's not just

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1 fraud. You can't just say there's two different
2 documents, this is a fraud. There are so many different
3 explanations for that. And we would be happy to do
4 discovery into that.

5 And you know if Your Honor feels it would be
6 helpful to have Nationstar staying in this then I would
7 agree, but I think the sanctions would have to lie
8 against the beneficiary and they would work that out
9 through their serving contract.

10 THE COURT: Counsel, your client just got thrown
11 under the bus to pay sanctions.

12 MR. NAM: As far as agency, I don't think I can
13 speak to that today. I think as to both agency and to
14 how the endorsement appeared in two different forms, I
15 believe that discovery is needed to determine that
16 properly. That's what we had suggested earlier and this
17 court denied that we follow the judicial proceeding. If
18 you feel we do need to make a determination, I would ask
19 that we have some time to conduct proper discovery.

20 THE COURT: I am going to set an evidentiary
21 hearing in this matter and I am not going to allow for
22 discovery in this case because I don't think it's
23 necessary for a couple of reasons. I am not going to
24 order discovery because there's nothing in the rule to
25 contemplate it. What I do is set evidentiary hearings

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1 and you get your evidence together and you come in and
2 present it. But since there is already a judicial
3 foreclosure proceeding happening in discovery I did not
4 know why we would need to have or take any additional
5 discovery in this matter period. And, again, I don't
6 order it anyway. So no discovery will be permitted in
7 this matter.

8 But I will give you the date for the evidentiary
9 hearing, and I hope this works for everybody; October
10 11th is a Friday. It is a day that I have available and
11 I would give whatever time is necessary to it. If that
12 date does not work, we'll have to find another one, but
13 there really isn't much to work with.

14 MS. NEWBERRY: I am out of the state that day.
15 THE COURT: Okay.

16 MR. NAM: Your Honor, does the Court mind to
17 maybe schedule that a little further out to allow for
18 some time for discovery in the other proceeding. It
19 might — whatever is determined in that discovery may be
20 helpful for all the parties.

21 THE COURT: I'm just trying to find a date. I
22 have a November 1st. Here's my problem: If I try to put
23 it on Monday through Thursday in the afternoon it just
24 messes up my trial schedule. If I can put it on a Friday
25 in the morning then I still have the ability to schedule

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1 trial if I need to. Does November 1st work for
2 everybody?

3 MS. NEWBERRY: Your Honor, what time of day
4 would it be set? My client works until 2:00 p.m. on
5 Fridays.

6 THE COURT: I have to set it in the morning.
7 MR. NAM: We are available for November 1st.
8 MS. SCHMIDT: I am available November 1st as
9 well.

10 THE COURT: I'm not going to start something in
11 the afternoon and not be able to potentially finish it.
12 Before we get into any additional questions, it
13 will be on Friday, November 1st at 9:30 for the
14 evidentiary hearing.

15 Let me tell you for me the scope of the
16 evidentiary hearing is. We have representations that
17 were made at the time of the — well, as you said there
18 were documents that were not produced at the time. There
19 were documents that were produced at the time. The Court
20 ultimately wants evidence on what occasioned with how
21 this mediation went forward, who was there, what their
22 actual capacity was, what documentation they had, what
23 documentation they presented.

24 Bottom line is we want to get to the bottom of
25 what happened at this mediation. Why did we have certain

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1 documents there that have raised questions. What is the
2 actual status -- we have been back and forth today with
3 servicers, beneficiary. Bottom line is an evidentiary
4 hearing, to me, is to get to the truth. What were the
5 circumstances of the status of who was the beneficiary of
6 the deed of trust, the note, the circumstances of time
7 the foreclosure was sought and mediation took place, and
8 ultimately to determine authority for the time of
9 mediation and/or bad faith at the time of mediation and
10 what appropriate sanctions should be occurring.

11 So to the extent that implicates both Nationstar
12 and Bank of New York Mellon, there has been an issue
13 raised today that maybe agency is an issue. Prior to
14 that November 1st evidentiary hearing, again, I cannot
15 tell you what evidence to put on, I can only tell you
16 that you are going to need to put some evidence on.

17 You have some very compelling argument that
18 there was a fraud attempted to be perpetrated on the
19 program at the time of that mediation. If you have a way
20 to dispute that and you can clarify who was who and who
21 was what and why certain documentations were presented,
22 great. If you can't, that's going to be a potential
23 problem.

24 But the legal issue of agency and whether or not
25 the court would be appropriate, and if it does find lack

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1 of authority and/or bad faith and imposed sanctions
2 whether it could do it to both or just one. I think that
3 needs to be briefed. And I would like to have that brief
4 prior to the November 1st hearing date.

5 And so what I would like to do is I will give
6 each side an opportunity to file a brief and I will give
7 each side an opportunity to respond to the others' brief.
8 But we'll kind of do it on the same day rather than one
9 goes first and the other follows up.

10 So I would like to, if possible, have any
11 briefing on the agency issue by Friday, October 4th,
12 close of business. And then I would like any responsive
13 pleading by close of business on Friday, October 18. And
14 then I will take a look at those and go through
15 everything and I'll be ready for the evidentiary hearing.

16 And my intent always at the evidentiary hearing
17 is that will be the culmination of our proceedings and we
18 will take evidence and the Court will ultimately make a
19 determination from there.

20 MS. SCHMIDT: Your Honor, I have one question
21 with respect to what's on the table here. Are we just
22 looking at the authority and agency and potential fraud
23 issue, which is what they did not discover until June.
24 Or what I'm concerned about is that they're going to say,
25 Well, they didn't have a BPO, which was disclosed in the

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1 mediator's statement, and they could have filed a
2 Petition on years ago.

3 THE COURT: The evidentiary hearing is
4 ultimately, from the 30,000-foot view, what happened at
5 mediation. Everything that is being alleged that did or
6 didn't happen at mediation, that may or may not give rise
7 to the finding of lack of authority and/or bad faith and
8 impose sanctions is fair game, and that is coming up at
9 the time of the evidentiary hearing.

10 We're going to hear argument on it; we're going
11 to take whatever evidence needs to be brought in. If
12 there's really no dispute that we didn't bring the
13 documents or any kind of BPO, then, fine. It's always a
14 hybrid. There's some factual information that's being
15 provided at the time of the evidentiary hearing. There's
16 going to be some legal argument.

17 If you think their legal argument that the BPO
18 was sufficient under the current case law was sound, make
19 that argument. You do not necessarily have to put on the
20 evidence with regard to that. But it's all part and
21 parcel of what the Court is going to be reviewing. So
22 whatever you think you need to put on to convince the
23 Court that your position is the prevailing position, have
24 at it. And same for Ms. Newberry and Ms. Considine.

25 MR. NAM: Your Honor, to clarify the parties

37

1 that are going to the evidentiary hearing is it all the
2 parties that were in attendance of --

3 THE COURT: That is up to you, Counsel. I am
4 not telling you certain persons has to be here. I am
5 telling you, if you want to defend this Petition and you
6 want to show the Court what the actual status of the
7 actual parties really were at the time, what document was
8 presented and why, where it came from, anything that you
9 think will help explain to the Court why it is other than
10 what Ms. Newberry has argued today what occurred at the
11 time of that mediation, you put on whatever evidence you
12 see fit.

13 I am not going to mandate certain witnesses that
14 I want to see at this point because it is not up to me to
15 determine what evidence you can or should put on. You
16 put on whatever evidence you can get in this time frame,
17 which I think is ample to help substantiate your position
18 as to who was who and what was what. And if there were
19 other explanations, for why these documents looked the
20 way the did and represented the way they were, we'll hear
21 it and we'll weigh it and we'll see.

22 And Ms. Newberry is obviously going to have some
23 questions and perhaps her own evidence that she is going
24 to put forward and we'll deal with it at the time.

25 MR. NAM: Thank you, Your Honor.

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1 MS. NEWBERRY: Thank you, Your Honor.
2 (Proceedings were concluded.)
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1 REPORTER'S CERTIFICATE
2
3 STATE OF NEVADA }
4 COUNTY OF CLARK } ss.
5
6 I, BRENDA SCHROEDER, a certified court reporter
7 in and for the State of Nevada, do hereby certify that
8 the foregoing and attached pages 1-40, inclusive,
9 comprise a true and accurate transcript of the
10 proceedings reported by me in the matter of CATHERINE
11 RODRIGUEZ, Petitioner, versus NATIONSTAR MORTGAGE LLC,
12 Respondent, Case No. AG95616, on September 5, 2013.
13
14
15
16 Dated this 15th day of November, 2013.
17
18 Brenda Schroeder
19 BRENDA SCHROEDER, CCR NO. 867
20
21
22
23
24
25

40


CLERK OF THE COURT

Kristin A. Schuler-Hintz, Esq., SBN 7171
McCarthy & Holthus, LLP
9510 W. Sahara Ave., Suite 110
Las Vegas, NV 89117
Phone 855-809-3977
Fax (866) 339-5691
Email NVJud@McCarthyHolthus.com

**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
DOES 1 -10 inclusive,

Defendants.

Case No. A-12-661179-C

Dept. No. XXXI

MOTION TO AMEND COMPLAINT

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 to allow Plaintiff to amend its complaint. This Motion is brought
pursuant to NRCP 15.

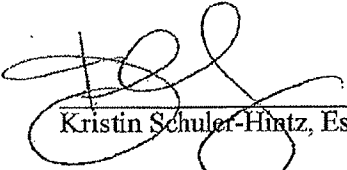
MCCARTHY & HOLTHUS, LLP
ATTORNEYS AT LAW
9510 WEST SAHARA AVENUE, SUITE 110
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NV-11-478461-JUD

MCCAR & HOLTHUS, LLP
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TELEPHONE 855-409-3977/Facsimile (866) 339-5691
Email NVJud@McCathyHolthus.com

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.

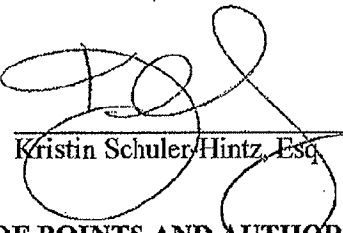
5 Dated: September 5, 2013


Kristin Schuler-Hintz, Esq.

NOTICE OF HEARING ON MOTION

8 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Amend
9 Complaint on for Hearing in Department XXXI on the 8 day of Oct., 2013
10 at the hour of 9:00 am, or as soon thereafter as may be heard.

11 Dated: September 5, 2013


Kristin Schuler-Hintz, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

17 **I. FACTUAL BACKGROUND**

18 Plaintiff filed this action on May 3, 2012. Plaintiff filed an amended complaint on
19 December 14, 2012 and Defendant Rodriguez filed an answer on February 15, 2013. Plaintiff
20 filed a Motion for Summary Judgment on April 28, 2013. Defendant filed an opposition and
21 Court denied the motion at a hearing on June 18, 2013. The parties are presently attempting to
22 coordinate a 16.1 hearing and to proceed with discovery and a scheduling

23 Plaintiff desires at this time to further amend the Complaint in order to make it abundantly
24 clear that no personal liability is being sought in this action against Rodriguez given her previous
25 bankruptcy discharge. A copy of the proposed Second Amended Complaint is attached hereto.

NV-11-478461-JUD

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II. LEGAL STANDARD

FRCP 15(a) states in pertinent part: "a party may amend the party's pleading only by leave of court or by written consent of the adverse party, and leave shall be freely give when justice so requires." In ruling on a motion to amend, the Court should consider several factors including: (1) the existence of bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether the plaintiff has previously amended the complaint. *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990).

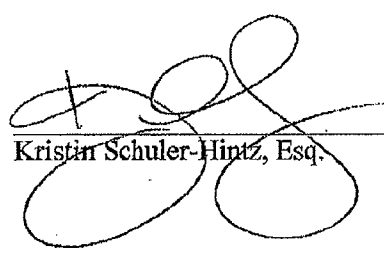
III. LEGAL ARGUMENT

Here, there is no bad faith and the filing of the Second Amended Complaint will not cause undue delay or prejudice to the opposing party.

CONCLUSION

For the foregoing reasons Plaintiff requests that the Court grant the Motion to Amend.

Dated: September 5, 2013



Kristin Schuler-Hintz, Esq.

MCCAK / & HOLTHUS, LLP
ATTORNEYS AT LAW
9519 WEST SAHARA AVENUE, SUITE 110
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CERTIFICATE OF SERVICE

On September 5, 2013 I served the foregoing documents described as **MOTION TO AMEND COMPLAINT**, 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:

Via US Mail

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

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

/s/Christina Reeves

**An Employee of McCarthy &
Holthus, LLP**

NV-11-478461-JUD

1 Kristin A. Schuler-Hintz, Esq., SBN 7171
2 McCarthy & Holthus, LLP
3 9510 W. Sahara Ave., Suite 200
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
18 F/K/A THE BANK OF NEW YORK AS
19 TRUSTEE FOR THE HOLDERS OF THE
20 CERTIFICATES, FIRST HORIZON
21 MORTGAGE PASS-THROUGH
22 CERTIFICATES SERIES FHAMS 2005-AA5,
23 BY FIRST HORIZON HOME LOANS, A
24 DIVISION OF FIRST TENNESSEE BANK
25 NATIONAL MASTER SERVICER, IN ITS
26 CAPACITY AS AGENT FOR THE TRUSTEE
27 UNDER THE POOLING AND SERVICING
28 AGREEMENT

Plaintiff

v.

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

Defendants.

) Case No. A-12-661179-C

) Dept. No. XXXI

) **PROPOSED SECOND AMENDED**
) **COMPLAINT**

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

1 POOLING AND SERVICING AGREEMENT, filing this Second Amended Complaint against
2 Defendants for (1) Judicial Foreclosure on a 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 (Trustor), has defaulted under the terms of the Note and Deed of Trust by having failed
26 and 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. Plaintiff is informed and believes that Trustor has previously received a discharge in a
2 chapter 7 bankruptcy proceeding. Nothing contained herein is intended in any way to be an
3 attempt to enforce any personal liability against Trustor. Plaintiff seeks only to foreclose on its
4 security interest and for a judgment against the Property for all principal, interest, fees and costs
5 which have accrued under the Note and Deed of Trust.

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

10 15. Pursuant to the terms of the Note and Deed of Trust and the acceleration letter attached
11 hereto as Exhibit "2", 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, has declared all sums immediately due and
17 payable and accelerated all sums due in order to enforce its interest against the security only.

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

24 17. 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

1 AND SERVICING AGREEMENT is entitled to an award of its attorney's fees and costs pursuant
2 to the terms of the Note and Deed of Trust, including post-judgment attorney's fees and costs,
3 against the property.

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

19 19. 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 decree or judgment of the court directing a sale
25 of the encumbered property and application of the proceeds of sale as provided in NRS 40.462.

26 20. 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 is entitled to a judgment permitting it to bid all or part of its
4 judgment at sale.

5 Wherefore, Plaintiff prays for judgment as follows:

6 A. Judgment, against the property, for the minimum sum of \$269,0000 to be enforced
7 by foreclosure of the property commonly known as 6845 Sweet Pecan Street, Las Vegas,
8 Nevada 89149, plus judgment against the property for:

- 9 (1) all pre- and post-filing costs and attorney's fees;
10 (2) interest from December 1, 2009 until paid in full;
11 (3) pre- and post-judgment interest on all advances, costs and attorney's fees from the
12 date each was due until paid in full; and
13 (4) for costs incurred herein, including post-judgment costs, for attorney's fees,
14 including post-judgment attorney's fees, pursuant to the terms of the Note and Deed of
15 Trust.

16 B. Against Defendants, Catherine Rodriguez, and Republic Services, Does I-X
17 inclusive and Roes 1-10 inclusive, individually and collectively, jointly and severally as
18 follows:

- 19 (1) That the sum prayed for is a lien against the 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
23 a decree 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,
26 or any of them, be foreclosed of and forever barred from any and all right, title, claim,
27 interest, or lien in or to the Property or with respect thereto, except such rights of
28 redemption as they may have by law;

1 (5) No personal money judgment or deficiency judgment is being sought
2 against Catherine Rodriguez, and Republic Services.

3 C That THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW
4 YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST
5 HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-
6 AA5, BY FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE
7 BANK NATIONAL MASTER SERVICER, IN ITS CAPACITY AS AGENT FOR THE
8 TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT is entitled at its
9 discretion to the appointment of a receiver to protect the Property from neglect and waste
10 during the pendency of this action and to collect any rents to which any Defendants would
11 be entitled;

12 D For any other further relief as this court deems just and proper.

13 Dated: September 5, 2013

Respectfully submitted,

MCCARTHY & HOLTHUS, LLP

14
15
16
17 By:

Proposed
Kristin A. Schuler-Hintz (NSB# 7171)

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

269,000.00 by: (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, 2005, 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

2003-838N (02/0)

Form 8520 1/01

UMP MORTGAGE FORMS - (000)521-7001

Page 1 of 4

Initials:



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 2.250 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:

Form 3520 1/01
HOLD

REDACTED

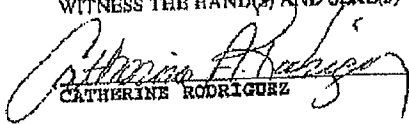
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales 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. Cooley, 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 P.O. 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. \$ 2,260.94. 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:
FHLC - POST CLOSING MAIL ROOM

1555 W. WALNUT HILL LN. #200 MC 5712
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 Pas: 23

51160035826M

[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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Initials: *CAE*

VMP Mortgage Solutions (800)521-7294

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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]
[Name of Recording Jurisdiction]:
of CLARK

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

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.

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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 satisfaction 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

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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.

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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

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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

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

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6A(NV) (0307)

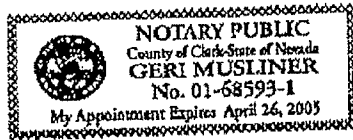
STATE OF NEVADA
COUNTY OF CLARK

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

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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: APR



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

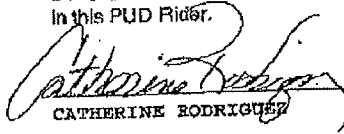
7R (0411)

Initials: CAP

Page 2 of 3

Form 2150 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 (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-836R (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 & 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
836H (0402)

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
VMP-838R (0402)

**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:

MellLife Home Loans a division of MetLife
Bank NA
4000 Horizon Way
Foreclosure Dept. #6206
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: DKG Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Space above this line for recorder's use

APN: 125-20-212-037

TG # NV-10-351856-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 ~~via~~ The Bank of New York, as Trustee for the holders of the Certificates, First Horizon Mortgage Pass-Through Certificates Series FHMS 2005-AA6, 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. 20060427-0003843, 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



Wanda Collier
Assistant Secretary

State of Texas

County of Dallas

On 5-24-10 before me, Sherman 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 

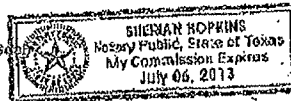


EXHIBIT “2”



03/20/2012

Sent Via Certified Mail
7376 7006 9295 8655 0713

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



GEN_NOT
Page 1 of 3

7376 7006 9295 8655 0713

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/hwy/sfh/hcc/loss.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.



QIN NOI
Page 3 of 3

7141 3006 9215 0555 0712

IN THE SUPREME COURT OF THE STATE 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.

Supreme Court Case No. 66761

Electronically Filed
May 14, 2015 02:46 p.m.
District Court Case No. A-13-685616
Tracie K. Lindeman
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court of the State of Nevada, in and for the
County of Clark, The Honorable Kathleen Delaney, District Judge District Court Case
No. A-13-685616-J

APPELLANTS APPENDIX – VOLUME XI

Gary E. Schnitzer, Esq., Bar No. 395
Tyler J. Watson, Esq., Bar No. 11735
Kravitz, Schnitzer & Johnson, Chtd.
8985 S. Eastern Ave., Ste. 200
Las Vegas, NV 89123
Tele: (702) 362-6666
Attorneys for Appellants

Table of Contents (Chronological)

VOLUME	DOCUMENT	PAGE NUMBER
XI.	File Stamped Petition for Judicial Review – Continuation from Volume VIII	2318 – 2433
XI.	Nationstar servicing records for Catherine Rodriguez, Loan #xxx5243	2434 – 2444
XI.	File Stamped Response to Petition for Judicial Review	2445 – 2454
XI.	Court Transcript from hearing on September 5, 2013 in Department XXV	2455 - 2466
XI.	Motion to Amend Complaint filed by Bank of New York Mellon in Judicial Foreclosure Case with exhibits	2467 - 2514

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DATED: May 13, 2015

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.



GARY E. SCHNITZER, ESQ.

Nevada Bar No. 395

TYLER J. WATSON, ESQ.

Nevada Bar No. 11735

8985 S. Eastern Ave., Ste. 200

Las Vegas, NV 89123

Attorneys for Appellants

Exhibit 13

Exhibit 13

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)	
26	CAPACITY AS AGENT FOR THE TRUSTEE)	ARBITRATION EXCEPTION CLAIMED:
27	UNDER THE POOLING AND SERVICING)	TITLE TO REAL ESTATE
28	AGREEMENT)	
	Plaintiff)	
	v.)	
	CATHERINE RODRIGUEZ; REPUBLIC)	
	SERVICES; DOES I-X; and ROES 1 -10)	
	inclusive,)	
	Defendants.)	

24 COMES NOW Plaintiff, THE BANK OF NEW YORK MELLON F/K/A THE BANK OF
25 NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST
26 HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHAMS 2005-AA5, BY
27 FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK NATIONAL
28 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
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

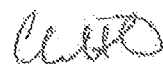
23 (10) For any other further relief as this court deems just and proper.

24 Dated: December 14, 2012

Respectfully submitted,

MCCARTHY & HOLTHUS, LLP

25 By:

26 
27 Kristin A. Schuler-Hintz (NSB# 7171)
28 Christopher M. Hunter (NSB# 8127)

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CERTIFICATE OF MAILING

I hereby certify that on the 14th day of December, 2012, a true and correct copy of the foregoing AMENDED COMPLAINT 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 Catherine Rodriguez

Fennemore Craig Jones Vargas
300 South Fourth Street
Suite 1400
Las Vegas, NV 89101
Attorney for Republic Services

/s/Courtney Lonardo
An Employee of McCarthy & Holthus, LLP

EXHIBIT "1"

(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.

NEVADA [State]

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

269,000.00 by: [Signature] (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.

(A) Time and Place of 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

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

(B) Amount of My Initial Monthly

(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

(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

14-00000 (0120) NBBB-421

Form 3520 1/01

VMP MORTGAGE FORMS - (800)521-7291

Page 1 of 4

1015 E. 102:



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 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

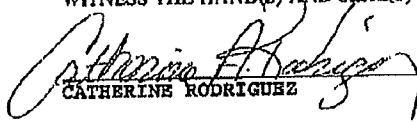
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales 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.


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

720050077114

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 STE 120
LAS VEGAS, NV 89128
Recording Requested By:
FIRST HORIZON HOME LOAN CORPORATION
4000 HORIZON WAY
IRVING, TX 75063

51162035826M [Space Above This Line For Recording Data]

DEED OF TRUST
MIN

REDACTED

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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VMP Mortgage Solutions (800)521-7291

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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

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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

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

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

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
6A(NV) (0307)

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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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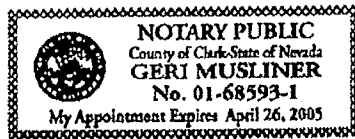
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Form 3029 1/01

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

VMP-6A(NV) (0307)

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Initials 

Form 3029 1/01

Order No. : 5116003562-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)

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Initials: CH

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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

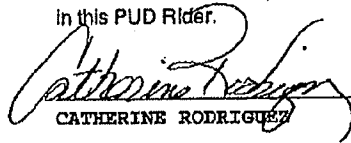
WV-7R (0411)

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Initials: CAR

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
VMM-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

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Initials: DAE

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(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.

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VMP-83BR (0402)

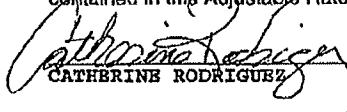
Page 2 of 3

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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
VMP-638R (0402)

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**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: \$26.00

08/16/2010 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 recorder's 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 4/21/2006 executed by CATHERINE RODRIGUEZ, AN UNMARRIED WOMAN, as Trustor(s) to OLD REPUBLIC TITLE, as Trustee and recorded as Instrument No. 20050427-0003843, on 4/27/2006, 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 

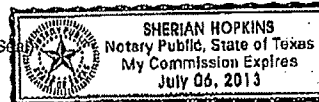


EXHIBIT "2"



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



GEN_NOI
Page 1 of 3

7196 9006 9295 8655 0711

Ex 13 Pg 0000043

2361

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.



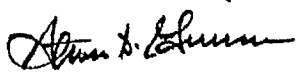
Exhibit 14

Exhibit 14

RECEIVED MAY 1 2013

Electronically Filed
04/29/2013 04:35:47 PM

Kristin A. Schuler-Hintz, Esq., SBN 7171
McCarthy & Holthus, LLP
9510 W. Sahara Ave., Suite 110
Las Vegas, NV 89117
Phone 855-809-3977
Fax (866) 339-5691
Email NVJud@McCarthyHolthus.com


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,

) Case No. A-12-661179-C

) Dept. No. XXXI

) MOTION FOR SUMMARY JUDGMENT

Plaintiff,

v.

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

Defendants.

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 NRC 56(b) based upon the assertion that there is no genuine issue of material fact.

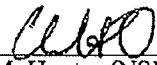
MCCARTHY & HOLTUS, LLP
ATTORNEYS AT LAW
9510 WEST SAHARA AVENUE, SUITE 110
LAS VEGAS, NV 89117
TELEPHONE 855-809-3977 Facsimile (866) 339-5691
Email NVJud@McCarthyHolthus.com

NV-11-478461-JUD

MCCARTHY & HOLTUS, LLP
ATTORNEYS AT LAW
9510 WEST SAHARA AVENUE, SUITE 110
LAS VEGAS, NV 89117
TELEPHONE 855-309-3977/Facsimile (866) 339-5591
Email NVJud@McCarthyHoltus.com

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.

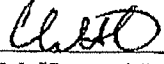
5 Dated: April 29, 2013

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.

NV-11-478461-JUD

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

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).

MCCARTHY & HOLTHUS, LLP
ATTORNEYS AT LAW
910 WEST SAHARA AVENUE, SUITE 110
LAS VEGAS, NV 89102
TELEPHONE 352-403-4371
FAX 352-403-4372
Email NV000@McCarthyHolthus.com

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,

NV-11-478461-JUD

MCCARTHY & HOLTHUIS, LLP
ATTORNEYS AT LAW
950 WEST SAHARA AVENUE, SUITE 110
LAS VEGAS, NV 89117
TELEPHONE 702-885-9777/FACSIMILE (866) 339-5691
Email: NVJung@McCarthyHolthuis.com

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:

NV-11-478461-JUD

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;

MCCARTHY & HOLTHUS, LLP
ATTORNEYS AT LAW
110 WEST SAHARA AVENUE, SUITE 110
LAS VEGAS, NV 89117
TELEPHONE 855-495-3977/facsimile (866) 339-5691
Email NVJad@McCarthyHolthus.com

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: CMH
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.

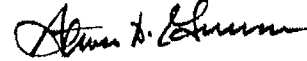
20 /s/Christina Reeves

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

NV-11-478461-JUD

Exhibit 15

Exhibit 15



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@lacsni.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

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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 (hereinafter, "Plaintiff"), has filed a Motion for Summary Judgment (hereinafter, the "Motion") alleging that "there is no genuine issue of material fact."⁽¹⁾ In her Opposition, Defendant will demonstrate that there are genuine issues of material fact as to (1) whether Plaintiff is entitled to enforce the Note and Deed of Trust and (2) whether Plaintiff has a valid security interest.

II. DEFENDANT'S STATEMENT OF UNDISPUTED AND DISPUTED FACTS

Defendant provides the following response to Plaintiff's "I. Factual Background"

⁽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.

7
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

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

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

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

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 Now, Bank of New York Mellon is attempting to judicially foreclose on Defendant because it
7 has been unable to receive a certificate of completion from the Foreclosure Mediation Program
8 as a direct result of an inability to show a proper chain of title, and an enforceable security
9 interest. Plaintiff is attempting to circumvent the pivotal foundation of litigation: standing.
10

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

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

23 See (Plaintiff's Affidavit: Exhibit J)

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 NRCP 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

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

DATED this 16th day of May 2013.

CONNAGHAN NEWBERRY

/s/Tara D. Newberry
TARA D. NEWBERRY, ESQ.
Nevada Bar No. 10696
7854 W. Sahara Ave.
Las Vegas, Nevada 89117
Attorney for Defendants

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CERTIFICATE OF SERVICE

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 & HOLTHUIS, LLP
Kristin A. Sehuler-Hintz, Esq.
9510 W. Sahara Ave., Suite 110
Las Vegas, NV 89117

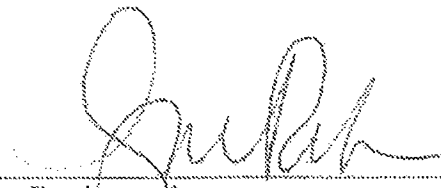

An Employee of
CONNAGHAN NEWBERRY LAW FIRM

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:**

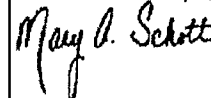
A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

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 61) (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.)	CO-DEBTOR H W J C	Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	DISPUTED UNLIQUIDATED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No. xxxxxxxxxx4520		HOME MORTGAGE				
FIRST HORIZON PO BOX 830148 Irving, TX 75063		REAL ESTATE				
		Value \$ Unknown			288,000.00	Unknown
Account No.						
		Value \$				
Account No.						
		Value \$				
Account No.						
		Value \$				
Subtotal (Total of this page)					288,000.00	0.00
Total (Report on Summary of Schedules)					288,000.00	0.00

Exhibit C

Exhibit C

Form 8
(10/05)United States Bankruptcy Court
District of NevadaIn 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 RodriguezCatherine 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

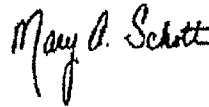
It appearing that the debtor is entitled to a discharge,

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.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 75068
www.fhhlc.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.fhlc.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.

LM183-004 TWX

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

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

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.

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

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

16 12. On August 11, 2010, before the deadline to accept the trial modification had
17 expired, Metlife Home Loans filed a Petition for Judicial Review Case No. A-10-622878-J
18 requesting a certificate of completion to foreclose on my property.
19

20 13. Judge Moseley denied Metlife's request and found in my favor at a hearing on
21 September 16, 2010. I was present at the hearing and heard the judge say that Metlife had acted in
22 bad faith and ordered that the Letter of Certification would not issue.
23

24 14. Sometime after March 21, 2011 another Breach and Election to sell was posted on
25 my property and I again elected to participate in the Foreclosure Mediation Program.
26

27 15. Another Nevada Foreclosure Mediation was held on October 6, 2011.
28

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

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

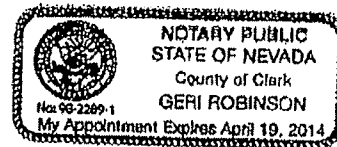


Exhibit K

Exhibit K

Exhibit L

Exhibit L