

1 *f; see also Arduini v. Hart*, 774 F.3d 622, 636 (9th Cir. 2014) (applying Nevada law on issue  
2 preclusion and concluding that insufficient showing of inadequate representation where plaintiffs in  
3 prior case “fully litigated the case through its dismissal . . . and then fully briefed and argued their  
4 appeal . . .”).

5 **E. Questions of Fact Bar Dismissal**

6 Accordingly, for these reasons, the Court should conclude that privity does not exist  
7 between the FID and Plaintiffs here. If the Court is inclined otherwise, however, the Court should  
8 not resolve this matter on a motion to dismiss because whether prior “representation has been  
9 inadequate is a *question of fact*.” *Restatement* § 42, Comment *f*; *see also Falcon v. Beverly Hills*  
10 *Mortgage Corp.*, 168 Ariz. 527, 531, 815 P.2d 896, 899-900 (Ariz. 1991) (“[D]ue diligence is a  
11 question of fact.”) Due process thus requires that the Court give Plaintiffs an opportunity to conduct  
12 discovery and present evidence on this factual issue before the Court concludes that the prior  
13 representation, if any, was adequate.

14 **F. Even If Issue Preclusion Were Available Here, the Court Should**  
15 **Exercise Its Discretion and Decline to Apply Issue Preclusion**

16 1. The FID Had Reasons Not to Appeal the Prior Erroneous *Quality Loan* Decision Because  
17 QLS Had By Then Capitulated and Obtained a Certificate from the FID, and the Nevada  
18 Legislature Had Amended the Statutes Favorably to the FID

19 In their motion papers, Defendants suggest that the FID “acquiesced in [the] result” in  
20 *Quality Loan* because FID chose not to appeal the decision and “has not pursued its licensing  
21 theory against any other foreclosure trustees.” Defs’ Motion to Dismiss, p. 5. As an initial matter,  
22 Defendants’ speculations as to the FID’s reasons for not appealing the *Quality Loan* decision are  
23 not properly before the Court at this stage (if any) and are *not* evidence. Similarly, Defendants’  
24 assertion that the FID has not gone after any other foreclosure trustees is improper because it is  
25 outside the pleadings, is not evidence, and is not supported by any evidence or allegations properly  
26 before the Court.

27 Moreover, as discussed above, the FID had its own good reasons not to appeal the *Quality*  
28 *Loan* decision in January 2013: QLS had by that time obtained a certificate as a foreign collection

Moreover, as discussed above, the FID had its own good reasons not to appeal the *Quality Loan* decision in January 2013: QLS had by that time obtained a certificate as a foreign collection agency from the FID! (See Plaintiffs' Ex. A.) Moreover, by that point, the Nevada legislature had amended the relevant statutes in ways that confirmed the position of the FID. See, e.g., NRS 107.028 (making clear that collection agencies licensed under Nevada law can serve as trustees of deeds of trust). Thus, the FID's failure to appeal, under the circumstances, does not in any way suggest that the FID agreed with the decision or believed it lacked solid grounds for appealing it. Rather, the FID's decision is explicable given that by point in time the FID had achieved its objectives (even if the FID had *not* satisfied the interests of Plaintiffs here by obtaining redress for past wrongdoing by QLS). Under such circumstances, the Court should, in an exercise of the discretion entrusted to it, decline to apply issue preclusion here.

2. The Factual Record Here Is Inadequate Because Plaintiffs Have Not Yet Had the Opportunity to Conduct Discovery

As explained above, Defendants have the burden of pleading and proving their affirmative defense of issue preclusion where, as here, the record itself does not show it applies. *Bower*, 125 Nev. at 481, 215 P.3d at 718. Moreover, whether issue preclusion applies is a mixed question of law and fact. *Redrock Valley Ranch*, 254 P.3d at 647; see also *Falcon*, 168 Ariz. at 531, 815 P.2d at 899-900 ("[D]ue diligence is a question of fact."). Defendants have not properly pled, let alone proven, issue preclusion as an affirmative defense. Moreover, Plaintiffs have not yet had the opportunity to conduct any discovery and present evidence on these questions of law and fact, especially as to the factual question of whether the prior representation, if any, by the FID was constitutionally adequate. Accordingly, if the Court is inclined at this time to consider issue preclusion in this case, the Court should decline to do so until after the issue has been properly presented to the Court and Plaintiffs have had an opportunity to discover and litigate the issue fully and fairly. Due process of law requires no less.

V. COLLECTION AGENCIES ACTING AS TRUSTEES ARE REQUIRED TO OBTAIN NEVADA LICENSES OR CERTIFICATES ESTABLISHING THEM AS

1 COLLECTION AGENCIES BEFORE ENGAGING IN NON-JUDICIAL FORECLOSURE  
2 ACTIVITIES

3 A. The Nevada foreclosure scheme is different from the federal debt collection statutes,  
4 and is not intended to occupy the entire field of Nevada regulation for all conduct that  
5 is in any way related to the foreclosure process

6 Defendants contend that under Nevada law the enforcement of a security interest does not  
7 make a non-judicial foreclosure trustee a collection agency, and they seek to justify the dismissal  
8 here based on cases interpreting the Federal Debt Collection Practices Act ("FDCPA"). Defendants'  
9 contentions fail for the following three reasons: (a) the Nevada debt collection scheme is distinct  
10 and quite different from the FDCPA; (b) according to the Nevada legislative history, conducting  
11 these various foreclosure activities constitutes debt collection in Nevada; and (c) the Nevada FID  
12 has already held that conducting foreclosure activities as specifically performed here by defendants  
13 constitutes debt collection on these facts.

14 B. The Nevada debt collections scheme is distinct from the FDCPA

15 Defendants rely on federal trial court decisions which have held that non-judicial  
16 foreclosures are not debt collection under the FDCPA, and similar state statutes. However, such  
17 reliance is erroneous because the Nevada scheme is materially different from the FDCPA.

18 The critical differences between the FDCPA and NRS chapter 649 are ascertainable from  
19 the stated purpose and scope of each statute. In enacting the FDCPA, Congress' limited purpose  
20 was only to eliminate abusive debt collection practices by debt collectors. See 15 U.S.C § 1692(e)  
21 ("It is the purpose of [the FDCPA] to eliminate abusive debt collection practices by debt collectors,  
22 to insure that those debt collectors who refrain from using abusive debt collection practices are not  
23 . . . disadvantaged, and . . . to protect consumers against debt collection abuses."). Quite differently,  
24 the Nevada legislature intended more stringent and comprehensive regulatory control over  
25 collection agencies through NRS chapter 649. In addition to addressing abusive debt collection  
26 activities, Nevada regulates who engages in debt collection activities and who may be qualified to  
27 engage in such activities, and imposes additional regulations on those who engage in such  
28 activities. See NRS 649.045(2) ("It is the purpose of this chapter to: (a) [b]ring licensed collection  
agencies and their personnel under more stringent public supervision; (b) [e]stablish a system of  
regulation to ensure that persons using the services of a collection agency are properly represented;

1 collection agencies to be licensed); NRS 649.085 (listing the qualifications to obtain a license);  
2 NRS 649.095 (listing the application requirements for a license); NRS 649.167 (requiring branch  
3 offices to obtain a permit from the Commissioner); NRS 649.295 (requiring the payment of a fee  
4 for a license).

5 The definitions of “debt collector” or “collection agency” stated in the FDCPA and NRS  
6 chapter 649 further indicate the differences in their schemes. In a limited fashion, Congress defined  
7 “debt collector” under the FDCPA as, “any person who uses any instrumentality of interstate  
8 commerce or the mails in any business the principal purpose of which is the collection of any debts,  
9 or who regularly collects or attempt to collect, directly or indirectly, debts owed or due or asserted  
10 to be owed or due another.” 15 U.S.C. § 1692a(6). In other words, the FDCPA only regulates any  
11 person who performs debt collection activities as the primary purpose of the business.

12 The Nevada statute defines collection agency much more broadly than the federal statute-----  
13 “all persons engaging, directly or indirectly, and as a primary or a secondary object, business or  
14 pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed  
15 or due or asserted to be owed or due to another.” NRS 649.020(1) (emphasis added). NRS chapter  
16 649 is not limited to the collection of debts being the primary purpose, and includes the soliciting of  
17 payments and obtaining in any manner the payment of a claim, even as a secondary object of their  
18 activity, and even if indirectly! Here, according to Plaintiffs’ allegations, Defendants’ own  
19 documents, and also Commissioner Burns’ decision, it is shown that, at an absolute minimum, debt  
20 collection was a secondary object of Defendants’ business activities. They can do both. *Reese*, 678  
21 F.3d 1211. The Plaintiffs’ allegations and Defendants’ own documents show that Defendants were  
22 soliciting and collecting payments owed to the lenders, etc. SAC, ¶ 23.

23 1. The Language of the Statutes Is Clear and Unambiguous

24 Defendants contend that NRS 649 and NRS 107 show that Defendants are not collection  
25 agencies and are not required to obtain licenses or certificates from the FID. Defendants are  
26 mistaken: proper interpretation of these statutes proves that Defendants violated Nevada law as  
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1 alleged in the SAC. As a preliminary matter, it is axiomatic that, in construing statutes, the “intent  
2 of the legislature is the controlling factor and that, if the statutes under consideration are clear on  
3 their face, we cannot go beyond them in determining legislative intent.” *White v. Warden, Nev.*  
4 *State Prison*, 96 Nev. 634, 636, 614 P.2d 536, 537 (1980). Thus, only if some ambiguity in NRS  
5 649 and NRS 107 existed—which Defendants have wholly failed to demonstrate—would the Court  
6 properly consider Defendants’ arguments regarding the legislative history of these statutes.

7       2. The Plain Language of NRS 649 Supports Plaintiffs Here

8       Proper review of the statutory scheme found in the plain language of NRS 649, however,  
9 supports Plaintiffs here. In pertinent part, NRS 649 broadly defines “collection agency” as meaning  
10 “all persons engaging, directly or indirectly, and as a primary or a secondary object, business or  
11 pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed  
12 or due or asserted to be owed or due to another.” NRS 649.020(1). The statute then expressly  
13 provides for several *limited* exceptions to this broad definition: for instance, banks, nonprofit  
14 cooperative associations, and “[a]ttorneys and counselors at law licensed to practice in this State, so  
15 long as they are retained by their clients to collect or to solicit or obtain payment of such clients’  
16 claims in the usual course of the practice of their profession” are *not* deemed to collection agencies  
17 for purposes of NRS 649 *unless* “they are conducting collection agencies.” NRS 649.020(2). Thus,  
18 the Nevada legislature in crafting NRS 649.020 sought to *broadly* define “collection agency” while  
19 expressly carving out several limited exceptions to that definition. Notably, Defendants have *not*  
20 sought to avail themselves of any of these exceptions, suggesting that even Defendants concede  
21 they do not apply to them.

22       Given this clear statutory scheme, Defendants’ reading of NRS 649.020 is misleading at  
23 best. Despite Defendants’ illogical suggestions to the contrary, the Nevada legislature would *not*  
24 have “explicitly identified” or stated that a trustee’s enforcement of a security interest through non-  
25 judicial foreclosure was a collection agency because doing so would undermine the broadly  
26 inclusive statutory scheme; rather, the Nevada legislature surely would have expressly *excepted*  
27 such activity from the definition of collection agency only *if* the Nevada legislature did not intend  
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1 for such conduct to fall within the statute. The Nevada legislature, however, did no such thing.  
2 Indeed, the statute's treatment of community managers, relied on by Defendants, supports  
3 Plaintiffs' reading of the statute: the *limited* exception for certain types of community managers  
4 found in NRS 649.020 makes clear that a community manager who does *not* "perform[] or offer[]  
5 to perform any act associated with the foreclosure of a lien" is *not* deemed to be a collection agency  
6 under Nevada law while a community manager who does so qualifies as a collection agency. *See*  
7 NRS 649.020(3)(a)-(b).

8 As Defendants rightly point out, it is a maxim of statutory construction that generally the  
9 "expression of one thing [in a statute] is the exclusion of another." *See* Def.'s MTD, p. 11 (citing  
10 *Cramer v. State Dep't of Motor Vehicles*, 126 Nev. Adv. Rep. 38, 240 P.3d 8, 12 (2010);  
11 *O'Callaghan v. Eighth Judicial Dist. Court of the State of Nevada*, 89 Nev. 33, 35, 505 P.2d 1215,  
12 1216 (1973); *State v. Boerlin*, 38 Nev. 39, 45, 144 P. 738 740 (1914)). Defendants wrongly believe  
13 this maxim assists them here. However, the expression by the Nevada legislature in NRS  
14 649.020(2) of certain enumerated exceptions to the definition of collection agency necessarily  
15 excludes any other unenumerated exceptions—such as the very exception Defendants seek to carve  
16 out here for collection agencies carrying out non-judicial foreclosures in order to collect debts.

17 **C. The Relevant Legislative History of NRS 649 Also Supports Plaintiffs**

18 Defendants' contentions also disregard the applicable legislative history of NRS Chapter  
19 649, which shows Nevada's intent in 2005 to consider the non-judicial foreclosure services and  
20 activities undertaken by Defendants as debt collection activities. *See* Minutes of the Subcommittee  
21 of the Senate Committee on Commerce and Labor, 73rd Session, April 12, 2005, p. 3 ("[I]f you  
22 have a full-service management company, and some of the large ones are full-service, and you are  
23 offering to file liens, record notices of default and go through the foreclosure process, . . . *you have*  
24 *to meet the same licensing and the same qualifications as the actual foreclosure service that are out*  
25 *there.*") (emphasis added); Minutes of the Subcommittee of the Senate Committee on Commerce  
26 and Labor, 73rd Session, April 12, 2005, p. 4 ("[I]f you are a management company or . . .  
27 community manager who is going to be collecting . . . then you are going to be governed under  
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1 language of NRS 649 is plain, the legislative history helps to show that Nevada never intended to  
2 exempt collection agencies from otherwise applicable licensing requirements when carrying out  
3 non-judicial foreclosures as part of their debt collection activities.

4 **D. The Plain Language and Relevant Legislative History of NRS 107 Support Plaintiffs**

5 Defendants' reading of the plain language of NRS 107.028 is equally mistaken. As an initial  
6 matter, although Defendants make much of the language and legislative history of NRS 107.028,  
7 they fail to make clear that this provision was added to NRS 107 in May and June 2011 and only  
8 went into effect on October 1, 2011—thus, NRS 107.028 only was enacted and took effect *after*  
9 most of the misconduct by Defendants that is alleged by Plaintiffs in their SAC.

10 Defendants, whether intentionally or inadvertently, also misdirect the Court in their  
11 characterization of Plaintiffs' allegations in the SAC. Plaintiffs do *not* contend that *all* trustees  
12 under a deed of trust necessarily qualify as collection agencies pursuant to NRS 649.020. Rather,  
13 Plaintiffs allege that *these* Defendants by their alleged, specific activities were in fact collection  
14 agencies under Nevada law, and carried out the misconduct complained of in the SAC without the  
15 licenses or certificates from the FID required by Nevada law. *See* SAC, ¶¶ 1-20, 23, 34-38, 42-45,  
16 49. These Defendants are not insulated from liability for their misconduct as unlicensed collection  
17 agencies by the fact that they may have carried out a tiny portion of those activities acting as  
18 trustees under deeds of trust.

19 **1. The Plain Language of NRS 107.028 Favors Plaintiffs Here**

20 The plain language of NRS 107.028, relied on by Defendants, supports Plaintiffs here. The  
21 Nevada legislature, by expressly identifying the ten persons (including entities) that may serve as  
22 trustees under a deed of trust, clarified and made clear that persons qualifying as licensed collection  
23 agencies under NRS 649 could be such trustees. NRS 107.028(1)(i). (It seems significant that  
24 Defendants, while contending they are *not* collection agencies, fail to state which entity among the  
25 ten express categories listed in NRS 107.028 they are, if *not* the collection agency category!) Under  
26 NRS 107.028, collection agencies as defined by NRS 649 can serve as trustees of deeds of trust;  
27 thus, while not all trustees under deeds of trust are licensed collection agencies, some of them—  
28 such as Defendants here—will be. There is absolutely nothing, however, to suggest that the Nevada

1 legislature intended thereby to insulate collection agencies from the licensing requirements found in  
2 NRS 649 (as Defendants seemingly would have it).

3 2. The Legislative History of NRS 107.028 Is Consistent with Plaintiffs' Interpretation Here

4 Although Defendants have not identified any ambiguity in the plain language of NRS 107.028,  
5 they seek to bolster their arguments by turning to what they take to be its legislative history. NRS  
6 107.028 was originally enacted in May 2011 as part of Assembly Bill No. 284, which, in pertinent  
7 part, stated that the "trustee under a deed of trust must be:"

8 (a) An attorney licensed to practice law in this State;

9 (b) A title insurer or title agent authorized to do business in this State pursuant to chapter 692A  
10 of NRS; or

11 (c) A person licensed pursuant to chapter 669 of NRS [governing trust companies] or a person  
12 exempt from the provisions of chapter 669 of NRS pursuant to paragraph (a) or (h) of  
13 subsection 1 of NRS 669.080.

14 (emphasis added.)

15 Thus, as originally drafted, NRS 107.028 would have limited those who could serve as  
16 trustees under deeds of trust to (1) Nevada attorneys, (2) title insurers or title agents, or (3) trust  
17 companies licensed by Nevada or otherwise exempt from licensing by Nevada law. In June  
18 2011, the Nevada legislature amended NRS 107.028 through Assembly Bill No. 273, which, in  
19 pertinent part, added seven other categories, including collection agencies under NRS 649, to NRS  
20 107.028(1)'s list of those who could serve as trustees under deeds of trust in Nevada. (Assembly  
21 Bill No. 273 also made NRS 107.028 effective October 1, 2011, rather than July 1, 2011 as  
22 originally drafted.)

23 Although Defendants quote from a portion of the Nevada legislature's Journal of the Senate,  
24 the remarks by Senator Wiener on A.B. No. 273 are worth quoting more fully. On May 30, 2011,  
25 Senator Wiener explained that the pertinent portions of A.B. No. 273 "revises Section 6 of  
26 Assembly Bill No. 284 that requires the trustee under a deed of trust to be an attorney licensed in  
27 Nevada, a title insurer or title agent authorized to do business in Nevada, or person licensed as a  
28 trust company or otherwise exempt from the requirements to be a licensed trust company in this  
State." Nevada State Legislature, *Journal of the Senate* (5/30/11) at 4284. Thus, in Senator  
Wiener's view:

1 State.” Nevada State Legislature, *Journal of the Senate* (5/30/11) at 4284. Thus, in Senator  
2 Wiener’s view:

3 Amendment No. 824 [of Assembly Bill No. 273] expands those provisions in Assembly Bill  
4 No. 284 so that a trustee under a deed of trust may be a domestic or foreign entity which  
5 holds a current state business license or certain persons who are *exempt from having to*  
6 *obtain a license as a trust company but are authorized to be a trustee under a deed of trust.*  
7 They include a person who does business relating to banks, savings and loan associations, or  
8 thrift companies, a person appointed as a fiduciary, a trustee of a trust that is holding real  
9 property for the purpose of facilitation real estate transaction [*sic*] or a registered agent,  
10 *collection agency or escrow agency.*

11 *Id.*

12 Senator Roberson then clarified that “the purpose of this amendment is to clean up some things that  
13 were missed on Assembly Bill No. 284” by “clarify[ing] who can act as a trustee under a deed of  
14 trust for a residential property.” *Id.* He went on:

15 There was a concern that there were certain small, family owned businesses in this State that  
16 would have been put out of business by Assembly Bill No. 284. We want to make certain  
17 this does not happen. This clarifies Assembly Bill No. 284 so we do not put businesses out  
18 of business.

19 *Id.*

20 Taken in their proper context and in light of the full legislative history of NRS 107.028,  
21 Senators Wiener and Roberson’s remarks make clear that the Nevada legislature was concerned that  
22 certain companies might be put out of business because they were not licensed as attorneys, title  
23 insurers or title agents, or licensed as trust companies or otherwise exempt from licensing in  
24 Nevada as trust companies. The Nevada legislature therefore expressly exempted several additional  
25 categories, including licensed collection agencies. Senators Wiener and Roberson’s remarks make  
26 clear that they were concerned about the requirement that certain businesses might be harmed by  
27 too strict a requirement that they be licensed *as trust companies*. There is nothing to suggest,  
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1 however, that the Nevada legislature meant to exempt these categories of persons or entities from  
2 complying with their *other* licensing obligations under Nevada law: specifically, as it relates to  
3 collection agencies, from the requirement that they be licensed or certified by the FID as collection  
4 agencies pursuant to NRS 649.

5  
6 **VI. DEFENDANTS SHOULD BE BOUND AT THIS 12(b)(5) STAGE TO THEIR**  
7 **ADMISSIONS THAT THEY WERE DEBT COLLECTORS SEEKING TO COLLECT ON**  
8 **A DEBT; THE “MINI-MIRANDA” ARGUMENT IS MERITLESS**

9 As alleged in the SAC, Defendants represented to Plaintiffs in the notices of default Defendants  
10 publicly recorded in the course of the non-judicial foreclosure proceedings Defendants carried out  
11 that Defendants were “ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION  
12 OBTAINED WILL BE USED FOR THAT PURPOSE” (or words substantially to that effect). *See,*  
13 *e.g.,* SAC, ¶¶ 1-4, 6-15, 23(f)-(g). At least some of the Defendants represented to at least some of  
14 the Plaintiffs that the Defendants were “DEBT COLLECTOR[S] ATTEMPTING TO COLLECT A  
15 DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.” *See,*  
16 *e.g.,* SAC, ¶¶ 6-9, 11-13. Defendants now, however, seek to avoid the consequences of these  
17 admissions and representations by contending that these unambiguous statements did not in fact  
18 mean Defendants were debt collectors attempting to collect a debt! The Court should reject  
19 Defendants’ argument and bind Defendants at this stage of the case to their admissions that they  
20 were debt collectors seeking to collect on a debt in notices Defendants sent to Plaintiffs.

21 As discussed throughout this brief, the FDCPA and Nevada statutes on debt collection are  
22 not the same or even similar. The two have separate and distinct definitions or tests of the meaning  
23 of debt collector. *Cf.* 15 U.S.C. 1692a(6) (“The term ‘debt collector’ means any person who uses  
24 any instrumentality of interstate commerce or the mails in any business the principal purpose of  
25 which is the collection of any debts, or who regularly collects or attempts to collect, directly or  
26 indirectly, debts owed or due or asserted to be owed or due another.”), *with* NRS  
27 649.020(1) (“collection agency” means “all persons engaging, directly or indirectly, and as a  
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1 primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining  
2 in any manner the payment of a claim owed or due or asserted to be owed or due to another.”).

3 It has long been recognized that the same debt collection activity may violate state statutes  
4 and regulations on debt collection even while it does not violate the FDCPA. *See, e.g., Wade*, 87  
5 F.3d at 1100-1101 (no violation of FDCPA but Idaho debt collection licensed statute likely  
6 violated). Moreover, the very cases relied on by Defendants show that Defendants are mistaken in  
7 asserting that Defendants’ admissions and representations (so-called “mini-Miranda warnings”) are  
8 immaterial to whether they are collection agencies under Nevada law. *See also Gburek*, 614 F.3d at  
9 386 n. 3 (reversing dismissal in a class action and noting that mini-Miranda warning “does not  
10 automatically trigger the protections of the FDCPA, just as the absence of such language does not  
11 have *dispositive* significance.”) (emphasis added); *Yeager v. Ocwen Loan Servicing, LLC*, 2015  
12 U.S. Dist. LEXIS 94149, at \*25-27 n.19 (M.D. Ala. July 15, 2015) (denying motion to dismiss and  
13 adopting *Tocco v. Real Time Resolutions, Inc.*, 48 F. Supp. 3d 535 (S.D.N.Y. Aug. 13, 2014)  
14 approach and rejecting argument that mini-Miranda language was immaterial to whether defendant  
15 was a debt collector under the FDCPA as alleged); *Crippen v. Stites*, 346 B.R. 115 (E.D. Bkr. Pa.  
16 July 25, 2006) (denying motion to dismiss where allegations, including defendant’s use of mini-  
17 Miranda warning, “sufficiently plead[]” defendant is a “‘debt collector’ as defined under the  
18 FDCPA”); *Estes v. Love, Beal & Nixon, P.C.*, 2015 U.S. Dist. LEXIS 96715 (N.D. Okl. July 24,  
19 2015) (denying summary judgment on FDCPA claim in part because mini-Miranda warning in  
20 connection with other evidence supported inference that defendant was a debt collector under the  
21 FDCPA). In *Crippen*, the court noted that “[s]ignificantly for present purposes, this [mini-Miranda]  
22 warning is generally required *only* of ‘debt collectors.’” *Crippen*, 346 B.R. at 120 (emphasis in  
23 original). The court concluded that it was “reasonable to infer [from the defendant’s decision to use  
24 the warning] that [the defendant] is a ‘debt collector’” under the FDCPA. *Id.* The *Crippen* court,  
25 denying the motion to dismiss, therefore ruled that the complaint adequately pled that the defendant  
26 was a debt collector. *Id.*

1 As a preliminary matter, Defendants' cases considered the significance of such admissions  
2 under the FDCPA; they neither address nor compel any conclusion as to whether those parties were  
3 debt collectors under state statutes such as Nevada has adopted. *See Boosahda v. Providence Dane*  
4 *LLC*, 462 Fed. Appx. 331, 334 (4th Cir. 2012); *Hightower-Henne v. Gelman*, 2012 U.S. Dist.  
5 LEXIS 4514, at \*21-26 (D. Colo. Jan. 12, 2012); *New-Howard v. JPMorgan Chase Bank N.A.*,  
6 2013 U.S. Dist. LEXIS 164882, at \*25-26 (E.D. Pa. Nov. 20, 2013). Moreover, in *Boosahda*, on  
7 which Defendants rely, the court was "tasked solely with deciding whether the district court erred  
8 in concluding that Boosahda failed to show that the debt incurred on . . . credit cards was consumer  
9 debt—as opposed to commercial or business debt—for FDCPA purposes." *Boosahda*, 462 Fed.  
10 Appx. at 334. It was undisputed that the Defendant was a debt collector under the FDCPA. *Id.* at  
11 333. The *Boosahda* court did not deem the use of mini-Miranda warnings irrelevant; rather, the  
12 court noted that their use did not, alone, establish an FDCPA claim. *Id.* at 334. More important to  
13 the actual issue in *Boosahda*, the court concluded that the warning did not establish that the debt  
14 was a *consumer* rather than a *commercial* debt. *Id.*

15 The decisions in *Hightower-Henne* and *New-Howard* are equally favorable to Plaintiffs  
16 here. Indeed, the court in *Hightower-Henne* recognized that the use of mini-Miranda warnings is  
17 not irrelevant, but rather is "'some' evidence to be considered in the debt collector determination,  
18 [even if] it is not particularly persuasive *standing alone*." *Hightower-Henne*, 2012 U.S. Dist.  
19 LEXIS 4514, at \*21-23 (emphasis added). The fact that the court, taking into account all the  
20 circumstances presented, concluded that the defendant ultimately was not a debt collector under the  
21 FDCPA does not render the use of mini-Miranda warnings immaterial. *Id.* at 21-26. Similarly, in  
22 *New-Howard*, the court did not treat the use of mini-Miranda warnings as irrelevant to whether the  
23 defendant was a debt collector under the FDCPA. *New-Howard*, 2013 U.S. Dist. LEXIS 164882, at  
24 \*21-26. Rather, the court concluded that the defendant was not a debt collector under the FDCPA  
25 because the fact that mini-Miranda warnings were used was *outweighed* by countervailing evidence  
26 that the defendant was not a debt collector under the FDCPA. *Id.* at \*25-26. Moreover, even as the  
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1 court reached that determination, it declined to grant summary judgment in the defendant's favor on  
2 the plaintiffs' unfair trade practices claim under Pennsylvania state law. *Id.* at \*21.

3  
4 **VII. NO GROUNDS OTHERWISE EXIST TO JUSTIFY DISMISSAL UNDER 12(b)(5)**

5 **A. Plaintiffs' Claims for Statutory Consumer "Fraud" Are Properly Pled,**  
6 **According to Law**

7 As an initial matter, Plaintiffs have not pled common law fraud in the SAC. The elements of  
8 common law fraud, including misrepresentation and reliance, are thus irrelevant. As a matter of  
9 law, by statutory definition, unlicensed collection activity is deemed a consumer "fraud" as it is a  
10 defined deceptive trade practice. *See* NRS 41.600 and NRS 598.0923(1).

11 Plaintiffs allege that Defendants violated Nevada's Deceptive Trade Practices Act  
12 ("DTPA") NRS 598.0923(1). NRS 598.0923(1) states that a defendant is guilty of a deceptive trade  
13 practice where he/she knowingly "conducts the business or occupation without all required state,  
14 county or city licenses." Plaintiffs' deceptive trade practice claim is based on the fact that  
15 Defendants conducted collection agency businesses without obtaining Nevada licenses<sup>10</sup> for debt  
16 collection agency activity. Consumer "fraud" is defined by NRS 41.600(2) and includes a deceptive  
17 trade practice as defined in NRS 598.0915 to 598.0925. The elements of such a claim include: 1) an  
18 act of consumer fraud by the defendant; 2) which caused; 3) damage to a plaintiff. *Picus v. Wal-*  
19 *Mart Stores, Inc.*, 256 F.R.D. 651, 658 (D. Nev. 2009). Accordingly, Plaintiffs must only allege an  
20 act of consumer fraud by Defendants which caused damage to Plaintiffs. This burden has been met.

21 Plaintiffs also allege that Defendants knowingly conducted business as a collection agency  
22 without first obtaining all required state, county or city licenses. In the SAC, Plaintiffs allege a  
23 pattern of conduct by Defendants that includes such items as sending debt-related notices, demands,  
24 collection communications, collecting money to apply to Plaintiffs' accounts, and/or foreclosing on  
25 Nevadans, all without obtaining a license as collection agencies from the Nevada FID. *See* SAC, ¶¶  
26 23, 34. Plaintiffs further allege that Defendants intentionally (i.e., with knowledge) committed these  
acts. *Id.* at ¶ 40. Plaintiffs also allege that, as a result of Defendants' actions, Plaintiffs suffered

27 <sup>10</sup> There is nothing to suggest NRS 598.0923(1) would not apply equally to certificates of  
28 registration as foreign collection agencies, which are a form of license.

1 general and/or special damages. SAC, ¶¶ 34, 38. The requirements for alleging causation and  
2 damages are thus met. See SAC, ¶¶ 32-40 and Prayer for Relief.

3 **B. Defendant “Knowingly” Committed an Act of Statutory Fraud, as a Matter of Law**  
4 **(Alternatively, Plaintiffs Can Add the Word “Knowingly” to the Second Amended**  
5 **Complaint)**

6 Defendants mistakenly try to alter Plaintiffs’ burden by claiming that it must be shown that  
7 Defendants conducted business knowing that their conduct amounted to a violation. This is not  
8 what NRS 598.0923 states. Plaintiffs must only allege that Defendants knowingly conducted  
9 business, which has been done.

10 Defendants “knowingly” argument is exceptionally weak for multiple reasons. First,  
11 Plaintiffs could easily add an allegation to the SAC that all Defendants acted “knowingly,” but it  
12 should not be necessary. All Defendants clearly “knew” that they were conducting business as  
13 collection agencies, and surely they had service contracts with the lenders specifically for that  
14 purpose. If Defendants claim that such items were not done knowingly, then it must be that  
15 Defendants claim that they unknowingly sent an untold number of Notices of Default and Notices  
16 of Trustee’s Sale to Nevadans and foreclosed on hundreds, if not thousands, of homeowners.

17 Defendants presumably are claiming that they were ignorant of the Nevada law which  
18 required that they hold a license. The classic rule is true and applies here as a matter of law:  
19 ignorance of the law is not a defense. See NRS 281A.115, and NRS 624.024.<sup>11</sup> Moreover, these  
20 Defendants were far from ignorant. For example, QLS received a cease and desist order for exactly  
21 the same misconduct described herein on October 15, 2010. RJN, ¶ 4, Ex. D. The order was issued  
22 by the State of Nevada, Department of Business and Industry, Financial Institutions Division. A  
23 high probability exists that discovery will reveal that all Defendants received notices from the State  
24 of Nevada to this effect years ago. Judge Williams’ order in *Quality Loan* early 2013 was well after

25 <sup>11</sup> In order to construe the proper definition of the word “knowingly,” as used in NRS 598.0923, we  
26 should look to the definition assigned to that term by the Nevada legislature in NRS 281A.115 and  
27 NRS 624.024, both of which provide the following definition: “‘Knowingly’ imports a knowledge  
28 that the facts exist which constitute the act or omission, and does not require knowledge of the  
prohibition against the act or omission. Knowledge of any particular fact may be inferred from the  
knowledge of such other facts as should put an ordinary prudent person upon inquiry.”

1 the misconduct alleged in the SAC occurred and thus could not insulate Defendants as they suggest.  
2 Notice to the Defendants is also apparent, and beyond dispute, by simple reference to the record of  
3 lawsuits in this Court and the federal courts for a period of many years, many of which cases are  
4 cited in their moving papers. The federal circuit court decisions under the FDCPA date back to  
5 1998!

6 **C. Causation and Damages**

7 Causation and damages have been pled in several respects, and these allegations must be  
8 taken as true for purposes of determining a 12(b)(5) motion. Defendants' assertions to the contrary  
9 are premised on a misreading of Plaintiffs' SAC and its allegations: Plaintiffs do not allege that  
10 they suffered damages only from Defendants' recordation of notices of default, notices of sale,  
11 and/or foreclosure on their homes. Plaintiffs properly allege that they suffered damages because of  
12 Defendants' failure to obtain licenses as required by Nevada law and illegal debt collection  
13 activities, including but not limited to periodically receiving payments from Plaintiffs prior to  
14 foreclosure. For example, paragraph 23 of the Second Amended Complaint makes clear that  
15 Plaintiff suffered damages by means of incurring the obligation for the amount of illicit payments  
16 received by Defendants, through the mechanism of increasing Plaintiffs' debts to the third-party  
17 lenders which engaged the services of the collection agencies. *See also* SAC, ¶ 44. Similarly,  
18 paragraph two of the Prayer for Relief in the SAC calls for the "disgorgement of any amounts paid  
19 to Defendants for their respective illegal and improper debt collection activities." These damages  
20 were caused—at least in part—by Defendants' failure to obtain licenses, especially as Plaintiffs  
21 would have had valid grounds for contesting any payment of such increased fees to unlicensed  
22 collection agencies violating Nevada law.

23 In contrast, in *Goldberg v. Central Credit Mgmt, Inc.*, 2012 U.S. Dist. LEXIS 171885, at  
24 \*10-11 (D. Nev. 2012), dismissal of the plaintiff's Nevada DTPA claim was seemingly proper  
25 because the plaintiff, who only sought damages for emotional distress, had not adequately pled that  
26 any emotional distress suffered was caused by the defendant's failure to be licensed to collect debt  
27 in Nevada. Notably, the plaintiff there—unlike the Plaintiffs here—did not allege that he had paid  
28

1 any money to the unlicensed defendant there. *Id.* In contrast, Plaintiffs' alleged damages go far  
2 beyond mere emotional distress and include the incurring of actual monetary damages through  
3 payments to Defendants that might not otherwise have been required given Defendants' failure to  
4 comply with Nevada law.

5 Accordingly, Plaintiffs sufficiently allege claims for violation of Nevada's DTPA. If  
6 Plaintiffs' allegations are insufficient, they should be given the opportunity to amend their pleading  
7 to bolster any seemingly deficient allegations.

8 **D. Plaintiffs Have Adequately Pled Unjust Enrichment**

9 Under Nevada law, unjust enrichment occurs whenever "a person has and retains a benefit  
10 which in equity and good conscience belongs to another." *Leasepartners Corp. v. The Robert L.*  
11 *Brooks Trust Dated Nov. 12, 1975*, 113 Nev. 747, 756, 942 P.2d 182, 187 (1997) (internal quotation  
12 marks omitted). "An action based on a theory of unjust enrichment is not available when there is an  
13 express, written contract, because no agreement can be implied when there is an express  
14 agreement." *Id.*

15 The SAC specifically alleges that Plaintiffs had no contracts with these Defendants, which acted  
16 against Plaintiffs as collection agents (and received compensation for their illegal acts). SAC, ¶ 41.  
17 Discovery will show definitively that collection agency service contracts exist between these  
18 Defendants and their client lenders and/or loan servicing entities. Defendants received payment for  
19 their unlicensed collection agency activities pursuant to those contracts, and were thus unjustly  
20 enriched by payment for illicit acts. *See* SAC, ¶ 44. The estimated amount is perhaps \$80 million.  
21 Paragraph 2 of the Prayer for Relief in the SAC specifically prays "for disgorgement of any  
22 amounts paid to defendants for their respective illegal and improper debt collection activities," and  
23 paragraph 1 of the Prayer requests collective compensatory and consequential damages. Paragraph  
24 44 of the SAC makes clear that Plaintiffs were damaged by means which include the fact that their  
25 debts were increased by the dollar amount of the illegal payments received by Defendants (from the  
26 lenders with whom they contracted to conduct illegal collection agency activities). In addition,  
27 paragraph 44 of the SAC provides as follows:

28 Defendants received substantial payments for their respective illegal and improper



1 collection agency activities. In each and every transaction wherein defendants  
2 engaged in their unlawful conduct, defendants gained an advantage to the  
3 detriment of plaintiffs. As a direct and proximate result of defendants' deceptive  
4 trade practices, each defendant was unjustly enriched by virtue of the fact that it  
5 received a fee which it was not legally entitled to receive and/or retain under  
6 Nevada State law. Acceptance and retention by the defendants of such benefits  
under the circumstances would be inequitable, and defendants should not be  
entitled to retain these illicit benefits to the detriment of plaintiffs. Each defendant  
should be disgorged of any and all benefits obtained by virtue of their deceptive  
trade practices.

7 **E. The Deeds of Trust Are Irrelevant**

8 Defendants' reliance on any deeds of trust between Plaintiffs and non-parties is misplaced.  
9 Defendants were unjustly enriched by their receipt of money, including from Plaintiffs, for  
10 conducting unlicensed collection agency activities which are illegal under Nevada law. *See* SAC, ¶  
11 23(h) ("When defendants received money from plaintiff class members . . ."), ¶¶ 41-47. Neither any  
12 deed of trust, nor any contract between private parties, can authorize or otherwise justify the  
13 commission of illegal acts, and receipt of illicit compensation therefore. The issue is not any  
14 remedy of non-judicial foreclosure that may be referenced in a deed of trust. The distinct, governing  
15 issue here concerns debt collection agency activities described in the SAC that are illegal acts under  
16 applicable Nevada law.

17 To the extent that Defendants suggest that some provision in deeds of trust allows them to  
18 conduct illegal, unlicensed debt collection agency activities in direct contravention of Nevada law,  
19 such provision is void as a matter of public policy. According to law, where the subject contract is  
20 unenforceable, the cause of action for unjust enrichment is valid. Under governing Nevada Supreme  
21 Court authority, the deed of trust cannot authorize Defendants to commit illegal acts, and any such  
22 contract stipulation is unenforceable such that Plaintiffs' unjust enrichment cause of action must be  
23 sustained. *See Magill v. Lewis*, 74 Nev. 381, 333 P.2d 717 (1958); *Loomis v. Lange Financial*  
24 *Corp.*, 109 Nev. 1121, 865 P.2d 1161 (1993). As a matter of strong Nevada public policy,  
25 Defendants cannot be allowed to enrich themselves with perhaps as much as \$80 million dollars in  
26 fees for conducting illegal acts against Plaintiffs, i.e., unlicensed collection agency activities. *See*  
27 *Loomis, supra*; *see also Webb v. Clark County School Dist.*, 125 Nev. 611, 218 P.3d 1239 (2009);  
28

1 *Vincent v. Santa Cruz*, 98 Nev. 338, 647 P.2d 379 (1982).

2 Moreover, the deeds of trust do not insulate Defendants from liability here because any such  
3 deeds of trust were between Plaintiffs and non-parties. As alleged by Plaintiffs, Defendants were  
4 *not* parties to these agreements and their illegal activities were not authorized by them.

5 *LeasePartners* is illuminating in this regard. There, many related contracts existed between and  
6 among the entities involved in the transactions at issue, but *no* written contract existed between  
7 LeasePartners and the Brooks Trust. *LeasePartners*, 113 Nev. at 756. Summary judgment was  
8 therefore reversed, as a claim for unjust enrichment was not barred. *Id.* Here, similarly, there is no  
9 contract between Plaintiffs and the Defendants, even if written contracts may have existed between  
10 Plaintiffs and non-parties and Defendants and non-parties. *See also Davis v. Citibank, N.A.*, 2015  
11 U.S. Dist. LEXIS 26172, at \*4-10 (applying Nevada law and concluding that unjust enrichment  
12 claim adequately pled even in light of written contract because claim “not based on terms contained  
13 within the parties’ explicit written agreement”).

14 The cases relied on by Defendants here do not show that Plaintiffs’ unjust enrichment  
15 claims fail. In one, the plaintiff’s wrongful foreclosure action and claim for unjust enrichment  
16 against his creditor failed because the “rights and obligations of the parties are dictated by express  
17 contracts [between them]—the first mortgage note and deed of trust.” *Garand v. JPMorgan Chase*  
18 *Bank*, 532 Fed. Appx. 693, 696 (2013). Notably, there was no allegation—as here—of fees paid to  
19 the trustee that foreclosed pursuant to the deed of trust, or of illegal debt collection activities by the  
20 trustee prior to foreclosure. *Id.* Whether a written contract existed between the plaintiff and the  
21 trustee were not at issue (as here). Similarly, in another case cited by Defendants, the plaintiffs’  
22 claims for unjust enrichment failed because those claims were predicated on a theory that the  
23 plaintiffs were “‘targeted for and lured’ into their mortgages” and those mortgages were express,  
24 written agreements between the mortgagors and the plaintiffs. *Goodwin v. Exec. Trustee Servs.,*  
25 *LLC*, 680 F. Supp. 2d. 1244, 1255 (D. Nev. 2010). As noted in *Davis*, however, the *Goodwin*  
26 plaintiffs “pointed to no extrinsic agreement or arrangement outside their mortgages, and their  
27 claims failed because the mortgages themselves were express, written contracts.” *Davis*, 2015 U.S.  
28

1 Dist. LEXIS 26172, at \*7 (footnote omitted). Here, however, Plaintiffs have alleged payment of  
2 fees that are not governed by any mortgages or deeds of trust and any such agreements do not  
3 govern their dealings with Defendants, which were not parties to those agreements. Similarly, in  
4 *Parker v. Greenpoint Mortg. Funding Inc.*, 2011 U.S. Dist. LEXIS 78037 (D. Nev. July 15, 2011),  
5 the court concluded that the plaintiff's unjust enrichment claim against alleged "predatory" lenders  
6 failed because there was an express, written contract between the plaintiff and the defendant  
7 lenders. The case is thus easily distinguishable from the case at hand, where no such written  
8 agreement exists between Plaintiffs and Defendants. Finally, in *Unionamerica Mortg. & Equity*  
9 *Trust v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981), there were insufficient facts to  
10 suggest that the defendant had been unjustly enriched. Here, in contrast, there are, as described  
11 above, ample allegations that Defendants were unjustly enriched at Plaintiffs' expense, including  
12 through payments by Plaintiffs to Defendants. See SAC, ¶¶ 41-47.

13 Accordingly, the Court should rule that Plaintiffs' unjust enrichment claim is adequately  
14 pled and deny Defendants' motion to dismiss.

15 **F. Plaintiffs Kuhn, Gill, and Kallen Adequately Plead Elder Abuse**

16 **a. Defendants Rely on Wrong Pleading Standard**

17 As an initial matter, Defendants' arguments regarding Plaintiffs' elder abuse claims are  
18 defective to the extent that they are premised on an improper pleading standard of plausibility. See  
19 Defs' Motion to Dismiss, at 23-25. Under Nevada law, Plaintiffs need not allege facts sufficient to  
20 make their claims of elder abuse *plausible*; rather, the test is whether it "appears *beyond a doubt*  
21 that [Plaintiffs] could prove no set of facts, which, if true, would entitle [them] to relief." *Buzz Stew,*  
22 *LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (emphasis added).

23 **b. Elder Abuse Has Been Adequately Pled**

24 To plead a cause of action for elder abuse under Nevada law, it must be alleged that a  
25 person over 60 either suffers personal injury or death caused by abuse or neglect, or suffers a loss of  
26 money or property caused by exploitation. NRS 41.1395. "Abuse" is defined as "willful and  
27 unjustified": (1) "[i]nfliction of pain, injury or mental anguish;" or (2) "[d]eprivation of food,  
28

1 shelter, clothing or services which are necessary to maintain the physical or mental health of an  
2 older person or a vulnerable person.” NRS 41.1395(4)(a).

3 In addition, NRS 598.0977 allows a private civil action by an “elderly person” who suffers  
4 damage or injury as a result of a deceptive trade practice to recover the actual damages suffered by  
5 the elderly person, punitive damages, if appropriate, and reasonable attorney’s fees. An “elderly  
6 person” is a person who is 60 years of age or older. NRS 598.0933.

7 Here, Plaintiffs Kuhn, Gill, and Kallen allege the following in the SAC to support their  
8 cause of action for elder abuse:

- 9 1. They were each aged 60 or older. SAC, ¶ 50.
- 10 2. The unlicensed and illegal debt collection activities of Defendants Meridian and  
11 CRC constitute abuse against an elderly person as defined by NRS 41.1395 and NRS  
12 200.5092, as such actions inflicted pain, injury or mental anguish on an older person  
13 as well as deprived an older person of shelter necessary to maintain their physical or  
14 mental health. SAC, ¶ 51. The unlawful debt collection activities included debt-  
15 related notices, demands, collection communications, and/or foreclosure sale and  
16 processes as well as illegal receipt of money to Defendants from Plaintiffs as  
17 payment on Plaintiffs’ outstanding debt. SAC, ¶¶ 21, 23, 49.
- 18 3. The abuse committed by Defendants was willful, wanton, malicious and oppressive  
19 and done in conscious disregard of Plaintiffs Kuhn, Gill, and Kallen’s interests and  
20 rights. SAC ¶ 54.
- 21 4. Defendants Meridian and CRC’s actions were done while each did not either hold  
22 the requisite licenses to pursue collection agency activities or register as a foreign  
23 collection agent or agency with the Nevada FID. Because Defendants Meridian and  
24 CRC lacked the requisite license, their respective actions were not justified. SAC ¶  
25 49.
- 26 5. The abuses committed by Meridian and CRC caused Plaintiffs Kuhn, Gill, and  
27 Kallen damages. SAC, ¶ 52.

28 As such, despite Defendants’ assertions to the contrary, Plaintiffs Kuhn, Gill and Kuhn have  
alleged the facts needed to support their cause of action for elder abuse. Plaintiffs have *not* alleged  
the recording of a notice of default or sale as the *only* misconduct by Defendants. See SAC, ¶¶ 21,  
23, 49. Moreover, unlawful deprivation of money—which is alleged throughout the SAC—does  
establish that Plaintiffs Kuhn, Gill, and Kallen were willfully and unjustifiably deprived of food,  
shelter, or services necessary for the maintenance of their physical and mental health: after all, each  
time Defendants unlawfully deprived these Plaintiffs of money, they necessarily had less money to  
pay for food, shelter, and other services needed for maintenance of their physical and mental health.

1 *See also Jung v. BAC Home Loans Servicing, LP*, 2011 U.S. Dist. LEXIS 64802, at \*11-12 (D.  
2 Nev. June 17, 2011) (denying motion to dismiss Nevada elder abuse claim on ground that claim  
3 adequately pled and sufficient notice given to defendant).

4 Defendants attempt to avoid the consequences of their misconduct as alleged by Plaintiffs  
5 by suggesting that the only thing complained of by Plaintiffs is the “act of initiating foreclosure  
6 pursuant to a deed of trust.” Defs’ Motion to Dismiss, at 25. As shown above and throughout this  
7 brief, however, Plaintiffs allege far more than that. Construing Plaintiffs’ allegations liberally and  
8 accepting their factual allegations as true—as the Court must on a 12(b)(5) motion—the Court  
9 should deny Defendants’ motion to dismiss on the ground that Plaintiffs Kuhn, Gill, and Kallen  
10 have adequately pled their claim for elder abuse. *See Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672;  
11 *see also Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (“this  
12 court accepts the plaintiffs’ factual allegations as true, but the allegations must be legally sufficient  
13 to constitute the elements of the claim asserted”). If the Court has any doubt as to the sufficiency of  
14 Plaintiffs’ allegations of elder abuse, the Court should grant Plaintiffs leave to amend accordingly.

#### 15 VIII. CONCLUSION

16 For the reasons stated above, the motion should be denied in its entirety.

17  
18 Dated: January 18, 2016

LAW OFFICE OF NICHOLAS A. BOYLAN, A.P.C.

19  
20 By: /s/ Nicholas A. Boylan  
21 Nicholas A. Boylan, Esq.  
22 Attorney for Plaintiffs  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I, hereby certify that on January 18, 2016, I served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**, on counsel by e-mail transmission to the persons listed below, pursuant to EDCR 8.05(a):

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JEFFREY BENKO, a Nevada resident;  
CAMILO MARTINEZ, a California  
resident;  
ANA MARTINEZ, a California resident;  
FRANK SCINTA, a Nevada resident;  
JACQUELINE SCINTA, a Nevada  
resident; SUSAN HJORTH, a Nevada  
resident; RAYMOND SANSOTA, a Ohio  
resident; FRANCINE SANSOTA, a Ohio  
resident;  
SANDRA KUHN, a Nevada resident;  
JESUS GOMEZ, a Nevada resident;  
SILVIA GOMEZ, a Nevada resident;  
DONNA HERRERA, a Nevada resident;  
ANTOINETTE GILL, a Nevada resident;  
JESSE HENNIGAN, a Nevada resident;  
KIM MOORE, a Nevada resident;  
THOMAS MOORE, a Nevada resident;  
SUSAN KALLEN, a Nevada resident;  
ROBERT MANDARICH, a Nevada  
resident, JAMES NICO, a Nevada resident

CASE NO: A-11-649857-C

Honorable Susan W. Scann  
Dept. 29

**PLAINTIFFS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT  
OF THEIR OPPOSITION TO  
DEFENDANTS' JOINT MOTION  
TO DISMISS PLAINTIFFS'  
SECOND AMENDED COMPLAINT**

**CLASS ACTIONS**

**ARBITRATION EXEMPTION  
CLAIMED:  
Pursuant to NAR 3(A)-**

1 and PATRICIA TAGLIAMONTE, a  
2 Nevada resident

3 Plaintiffs,

4 v.

5 QUALITY LOAN SERVICE  
6 CORPORATION, a California  
7 Corporation; APPLETON PROPERTIES,  
8 LLC, a Nevada Limited Liability  
9 Company; MTC FINANCIAL, INC. dba  
10 TRUSTEE CORPS, a California  
11 Corporation; MERIDIAN  
12 FORECLOSURE SERVICE, a California  
13 and Nevada Corporation dba MTDS, Inc.,  
14 dba MERIDIAN TRUST DEED  
15 SERVICE; NATIONAL DEFAULT  
16 SERVICING CORPORATION, a Arizona  
17 Corporation; CALIFORNIA  
18 RECONVEYANCE COMPANY, a  
19 California Corporation; and DOES 1  
20 through 100, inclusive,

21 Defendants.

1. Action Concerning Title to Real Property;
2. Class Action; and
3. Action Seeking Equitable and/or Extraordinary Relief

Jury Trial Demanded

Hearing Date: February 22, 2016  
Time: 10:00 a.m.

22 Pursuant to NRS 47.130 *et seq.*, Plaintiffs respectfully request that this Court,  
23 and any department to which this hearing is assigned, take judicial notice of the  
24 following official records, which have been certified as true and correct copies by the  
25 Nevada Department of Business and Industry, Financial Institutions Division  
26 ("FID"), and the Findings of Fact, Conclusions of Law and Final Decision of  
27 Commissioner George E. Burns of the FID in *Quality Loan Service Corporation v.*  
28 *State of Nevada*, 2013 WL 6911859 (Nev. Dist. Ct. Jan. 3, 2013). True and correct  
copies of these documents are attached as Exhibits A, B, C, and D hereto. These  
documents are referred to in the accompanying Plaintiffs' Opposition to Defendants'  
Joint Motion to Dismiss Plaintiffs' Second Amended Complaint:

1. Attached as Exhibit A is a true and correct copy of a certificate of foreign  
collection agency obtained by Defendant Quality Loan Service Corporation

1 (“QLS”) from the FID. This document has been certified by the FID to be a  
2 true and exact copy of the original. This document shows, among other  
3 things, that QLS obtained this certificate effective February 16, 2011.  
4 Pursuant to NRS 47.130, the Court may take judicial notice of facts  
5 “generally known within the territorial jurisdiction of the trial court” or “[c]  
6 apable of accurate and ready determination by resort to sources whose  
7 accuracy cannot reasonably be questioned, so that the fact is not subject to  
8 reasonable dispute.” The facts found in the attached certified copy of an  
9 FID record are not subject to reasonable dispute because they are capable of  
10 accurate and ready determination by resort to these sources, whose  
11 accuracy cannot reasonably be questioned here.

12 2. Attached as Exhibit B is a true and correct copy of a certificate of foreign  
13 collection agency obtained by QLS from the FID. This document has been  
14 certified by the FID to be a true and exact copy of the original. This  
15 document shows, among other things, that QLS obtained this certificate  
16 effective September 28, 2012, and that the certificate will expire unless  
17 renewed on June 30, 2016. Pursuant to NRS 47.130, the Court may take  
18 judicial notice of facts “generally known within the territorial jurisdiction of  
19 the trial court” or “[c] apable of accurate and ready determination by resort  
20 to sources whose accuracy cannot reasonably be questioned, so that the fact  
21 is not subject to reasonable dispute.” The facts found in the attached  
22 certified copy of an FID record are not subject to reasonable dispute  
23 because they are capable of accurate and ready determination by resort to  
24 these sources, whose accuracy cannot reasonably be questioned here.

25 3. Attached as Exhibit C is a true and correct copy of a license as a collection  
26 agency obtained by Defendant MTC Financial, Inc. (“MTC”) from the FID.  
27 This document has been certified by the FID to be a true and exact copy of  
28

1 the original. This document shows, among other things, that MTC obtained  
2 its license effective April 19, 2012, and that the license will expire unless  
3 renewed on June 30, 2016. Pursuant to NRS 47.130, the Court may take  
4 judicial notice of facts “generally known within the territorial jurisdiction of  
5 the trial court” or “[c]apable of accurate and ready determination by resort  
6 to sources whose accuracy cannot reasonably be questioned, so that the fact  
7 is not subject to reasonable dispute.” The facts found in the attached  
8 certified copies of FID records are not subject to reasonable dispute because  
9 they are capable of accurate and ready determination by resort to these  
10 sources, whose accuracy cannot reasonably be questioned here.

- 11 4. Attached as Exhibit D is a true and correct copy of the Findings of Fact,  
12 Conclusions of Law and Final Decision of Commissioner George E. Burns  
13 of the FID in *Quality Loan Service Corporation v. State of Nevada*, 2013  
14 WL 6911859 (Nev. Dist. Ct. Jan. 3, 2013). Pursuant to NRS 47.130, the  
15 Court may take judicial notice of facts “generally known within the  
16 territorial jurisdiction of the trial court” or “[c]apable of accurate and ready  
17 determination by resort to sources whose accuracy cannot reasonably be  
18 questioned, so that the fact is not subject to reasonable dispute.” “It is a  
19 general rule that courts should not take judicial notice of their records in  
20 another and different case, even though the cases are connected, but this  
21 rule is not so inflexible in its application that under no circumstances can  
22 judicial notice be invoked to take cognizance of the record in another case.”  
23 *Occhiuto v. Occhiuto*, 97 Nev. 143, 625 P.2d 568 ( 1981). Although, as  
24 explained at length in Plaintiffs’ accompanying Opposition to Defendants’  
25 Joint Motion to Dismiss Plaintiffs’ Second Amended Complaint, Plaintiffs  
26 object to the Court taking notice of Judge Williams’ decision in *Quality*  
27 *Loan Service Corporation v. State of Nevada*, 2013 WL 6911859 (Nev.  
28

1 Dist. Ct. Jan. 3, 2013), this Court should also take judicial notice of  
2 Commissioner Burns' decision in that proceeding if the Court intends to  
3 take judicial notice of Judge Williams' decision at all. The facts found in  
4 the attached copy of Commissioner Burns' decision are not subject to  
5 reasonable dispute because they are capable of accurate and ready  
6 determination by resort to these sources, whose accuracy cannot reasonably  
7 be questioned here.

8 Plaintiffs therefore respectfully request that the Court take judicial notice of  
9 the attached exhibits and the matters of fact contained therein.  
10

11 Dated: January 18, 2016

Law Office of Nicholas A. Boylan, A.P.C.

12  
13 By: /s/ Nicholas A. Boylan  
14 Nicholas A. Boylan, Esq.  
15 Attorney for Plaintiffs  
16  
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**EXHIBIT "A"**

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Domain 1 - Department of Business and Industry

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<b>License</b>				<a href="#">Licensee</a>
Fed Tax #	Lic Type	FCA - Certificate of Foreign Reg	Expires On 06/30/2014	<a href="#">History</a>
File # 505	Name	QUALITY LOAN SERVICE CORPORATION	Extended To	<input checked="" type="checkbox"/>
License # FCA10398	Rank	FCA - 849_FCA	Renewed On 06/18/2013	<a href="#">Notes</a>
Entity # 8200	Lic Status	Closed		<a href="#">Notes History</a>
<b>Address</b>				<a href="#">Back</a>
Street # 2141		Street 5TH AVE		
Line 2				
Line 3				
City SAN DIEGO		State CA	Zip 92101	
Routing				
<b>Other</b>				
1st License Date 02/16/2011	Rank Date 02/16/2011	Certificate # 1266		
Method I-S-1020	Status Date 07/07/2014	Certificate Date 08/18/2013		
Fee Exempt No	Birth Date	Renewal Sent		
<b>Select</b>				
Action	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			
<b>Modifiers</b>				
Type	Code	Description	Effective Date	
No items found.				

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**EXHIBIT “B”**

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License Search	Entity Search	Modify License Standing	Maintain License CE Control
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Domain 1 - Department of Business and Industry

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<b>License</b>				<b>Licensee</b>	
Fed Tax #	Lic Type	FCA - Certificate of Foreign Reg	Expires On	08/30/2016	
File # 647	Name	QUALITY LOAN SERVICE CORPORATION	Extended To	<input checked="" type="checkbox"/>	
License # FCA10504	Rank	FCA - 649_FCA	Renewed On	07/01/2016	
Entity # 6200	Lic Status	Active			
<b>Address</b>					
Street # 411	Street IVY ST				
Line 2					
Line 3					
City	SAN DIEGO	State	CA	Zip	92101
Routing					
<b>Other</b>					
1st License Date	08/28/2012	Rank Date	08/28/2012	Certificate #	2080
Method	I-S-1020	Status Date	09/28/2012	Certificate Date	07/01/2016
Fee Exempt	No	Birth Date		Renewal Sent	
<b>Select</b>					
Action	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
<b>Modifiers</b>					
Type	Code	Description	Effective Date		
No items found.					

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**EXHIBIT "C"**

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Domain 1 - Department of Business and Industry

Logged in as: myoun

[VR Home](#) > [Case Search](#) > [Maintain Case](#) > [Entity Comprehensive View](#) > [License Home](#)**License**

Fed Tax #                      Lic Type 649M - Collection Agency      Expires On 06/30/2016  
File # 622                      Name MTC FINANCIAL INC      Extended To  
License # CAD11063      Rank 649M - 649\_CA      Renewed On 07/13/2015  
Entity # 5417      Lic Status Active

**Address**

Street # 17100      Street GILLETTE AVE

Line 2

Line 3

City IRVINE

State CA

Zip 92614

Routing

**Other**

1st License Date 04/19/2012      Rank Date 04/19/2012      Certificate # 2732  
Method I-S-1020      Status Date 04/19/2012      Certificate Date 07/13/2015  
Fee Exempt No      Birth Date      Renewal Sent

**Select**Action ☐ ☒ ☐ ☐**Modifiers**

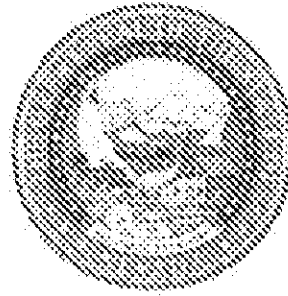
Type	Code	Description	Effective Date
No items found.			

[Licensee](#)[History](#)[Notes](#)[Notes History](#)[Back](#)[Get Adobe Reader.](#)CERTIFIED TO BE A TRUE AND  
EXACT COPY OF THE ORIGINALNAME Placy YoungTITLE Exec. DirectorDATE 1/2/16

**EXHIBIT "D"**



STATE OF NEVADA



DEPARTMENT OF BUSINESS AND INDUSTRY  
FINANCIAL INSTITUTIONS DIVISION

In Re: )  
 )  
Quality Loan Service Corporation, ) FINDINGS OF FACT, CONCLUSIONS  
 ) OF LAW AND FINAL DECISION  
Respondent. )

The above-captioned matter was presented to the undersigned, George E. Burns, Commissioner, Financial Institutions Division, State of Nevada (hereinafter "Commissioner") for hearing. The hearing convened at approximately 10:00 a.m. on December 13, 2010.

The Financial Institutions Division, State of Nevada (hereinafter "Division") was represented by Daniel D. Ebihara, Deputy Attorney General. On behalf of the Division, Mr. Ebihara submitted a prehearing statement, a Supplemental Prehearing Statement and Exhibits A – O. Exhibits A – O were all entered into evidence. Sandra Mincer, Acting Deputy Commissioner of the Division, Randolph Barton and Geoffrey Lynn Giles, Esq. appeared and testified on behalf of the Division. Quality Loan Service Corporation (hereinafter "Respondent") was represented by Paul E. Larsen, Esq. of Lionel, Sawyer & Collins and Kristen Schuler-Hintz, Esq., Thomas J. Holthus, Esq. and Kevin McCarthy, Esq. all of McCarthy & Holthus, LLP. David Owen appeared and testified on behalf of Respondent. Respondent submitted a Request for Expedited Hearing, a Prehearing Statement and Exhibits 1 – 19 (including Rule 16.1 Disclosures from Second Judicial District Court Case #CV-09-1845). Exhibit 14 was omitted because it was duplicative. Exhibits 8 - 9 and 12 - 19 were

1 entered into evidence<sup>1</sup>. Though Exhibits 1 – 7 and 10 - 11 are court decisions and not  
2 evidence, the parties agreed that they would be marked as exhibits with the understanding  
3 that they are courtesy copies for the Hearing Officer. Finally, Donna M. Osborn, Esq., of  
4 Wright, Finlay & Zak, LLP, representing the United Trustee Association, observed the hearing.

#### 5 6 JURISDICTION

7 1. The business of collecting claims for others or of soliciting the right to collect or  
8 receive payment for another of any claim in the State of Nevada is governed by Chapter 649  
9 of the Nevada Revised Statutes (hereinafter "NRS") and Chapter 649 of the Nevada  
10 Administrative Code (hereinafter "NAC"). The Division has primary jurisdiction for the  
11 licensing and regulation of persons operating and/or engaging in collection services. NRS  
12 649.026.

13 2. Pursuant to Chapter 649 of the NRS and Chapter 233B of the NRS, this matter  
14 is properly before the Commissioner.

15 3. Pursuant to the authority vested by Chapter 649 of the NRS, the Commissioner  
16 hereby makes the following Findings of Fact, Conclusions of Law, and Decision.

#### 17 18 FINDINGS OF FACT

19  
20 1. Respondent uses the following business address: Quality Loan Service Corp., 2141  
21 5<sup>th</sup> Avenue, San Diego, CA 92101. *Exhibit F; Exhibit G; Exhibit J.*

22 2. On or about June 18, 2010, a complaint was submitted to the Division regarding  
23 Respondent.

24 3. Respondent is not licensed by the Division as a collection agency.  
25

26  
27 <sup>1</sup> Exhibit 15 was also provided in a redacted version and the redacted version will be retained by the Division as  
28 the official record. Should this matter become a District Court case, the redacted version of Exhibit 15 will be the  
Exhibit 15 in the record filed by the Division.

1           4. Respondent claims it is not required to be licensed by the Division as a collection  
2 agency.

3           5. Respondent is not acting as a "community manager." See NRS 116.023 (defining  
4 "community manager" as "a person who provides for or otherwise engages in the  
5 management of a common-interest community or the management of an association of a  
6 condominium hotel").

7           6. Respondent is the replacement trustee regarding a deed of trust or is an agent of the  
8 trustee or beneficiary. *Exhibit F*, p. 31 (stating that Respondent is "either the original trustee,  
9 the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a  
10 Deed of Trust).

11           7. In this case, Respondent was acting on behalf of a lender.

12           8. According to *Exhibit F*, upon default, the lender, i.e. beneficiary, declares all sums  
13 secured by the deed of trust due and payable and elects to have the trust property sold to  
14 satisfy the defaulted loan.

15           9. The lender also declares that the loan is in default in the referrals that they send to  
16 Respondent. Tr. 12/13/10, p. 124, ln. 25 to p. 125, ln. 1.

17           10. The borrowers know that, unless they can remit the payoff amount, the property will  
18 be sold to satisfy the debt. *Exhibit F*.

19           11. Respondent initially solicits and obtains the opportunity to act as trustee or agent of  
20 the beneficiary or trustee with regard to the deed of trust and does so with regard to properties  
21 located in the State of Nevada and owned by Nevada residents. *Exhibit F*.

22           12. The facts also show that Respondent solicits and obtains the right to solicit and  
23 obtain payments/payoff amounts on behalf of lenders. See *Exhibits L, M & N*.

24           13. A notice issued by Respondent, dated September 1, 2009, states, "THIS IS AN  
25 ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED  
26 FOR THAT PURPOSE." *Exhibit L*.

1           14. The notice also provides a payoff amount and states, "Please submit your  
2 cashier's check, payable to Quality Loan Service Corp., *directly to this office*. Attn: Accounting  
3 / Disbursement Dept.[.] Quality Loan Service Corp.[.] 2141 5<sup>th</sup> Ave., San Diego, CA 92101."

4 *Exhibit L.*

5           15. The Debt Validation Notice issued by Respondent states, "WE ARE ATTEMPTING  
6 TO COLLECT A DEBT, AND ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT  
7 PURPOSE." *Exhibit M.*

8           16. Respondent issued Wire Instructions containing instructions for defaulting  
9 borrowers with regard to making payment to Respondent via wire funds transfer. *Exhibit N.*

10           17. When being questioned about what Respondent does with money received from  
11 borrowers who are being foreclosed upon, Mr. David Owen stated, "We send the entire  
12 amount received, if received by our office, to the lender." Tr. 12/13/10, p. 119, ln. 6-7.

13           18. Testimony also established that when a property is sold at auction, the successful  
14 bidder pays the full amount of the sale price at the time of the sale and the money goes to  
15 Respondent and from Respondent to the lender. Tr. 12/13/10, p. 129, ln. 4 – 13.

16           19. NRS 107.030(7) states, in pertinent part:

17                   That the trustee, upon such sale, shall make (without warranty),  
18 execute and, after due payment made, deliver to purchaser or  
19 purchasers, his, her or their heirs or assigns, a deed or deeds of  
20 the premises so sold which shall convey to the purchaser all the  
21 title of the grantor in the trust premises, and shall apply the  
22 proceeds of the sale thereof in payment, firstly, of the expenses of  
23 such sale . . . and in payment, secondly, of the obligation or debts  
24 secured, and interest thereon then remaining unpaid, and the  
25 amount of all other moneys with interest thereon herein agreed or  
26 provided to be paid by grantor; and the balance or surplus of such  
27 proceeds of sale it shall pay to grantor, his or her heirs, executors,  
28 administrators or assigns.

25           20. The defaulted loan is an obligation for the payment of money or its equivalent that  
26 is past due. NRS 649.010; see also *Memmolt v. Onewest Bank, FSB*, Slip Copy, 2011 WL

1 1560985, p. 11 (D. Or.) (concluding that the loans remained debts even after the lender  
2 elected to pursue non-judicial foreclosure).

3 21. Respondent solicits the right to solicit and obtain payments on behalf of others and  
4 solicits and obtains payments. *Exhibits F, G, L, M & N; Tr. 12/13/10, p. 119* ("We send the  
5 entire amount received, if received by our office, to the lender.").

6 22. The documentary evidence showing that payments are to be sent to Respondent  
7 and Mr. Owen's testimony that Respondent receives payments support that Respondent was  
8 soliciting and obtaining payments on behalf of others and outweighs any evidence offered to  
9 show the contrary. *Exhibits F, G, L, M & N; Tr. 12/13/10, p. 119* ("We send the entire amount  
10 received, if received by our office, to the lender.").

11 23. Whether the payment is received by Respondent before or after a foreclosure sale,  
12 Respondent is collecting, soliciting or obtaining the payment of a claim owed or due or  
13 asserted to be owed or due to another, i.e. collecting debts. *See Memmott v. Onewest Bank,*  
14 *FSB, Slip Copy, 2011 WL 1560985, p. 11 (D. Or.)* (concluding that the loans remained debts  
15 even after the lender elected to pursue non-judicial foreclosure).

16 24. Because the substantial evidence in this case establishes that Respondent is  
17 collecting claims for others, the debt collection notices referenced in paragraphs 12 and 14  
18 were of less consideration.

19 25. Any Finding of Fact hereinafter construed to constitute a Conclusion of Law is  
20 hereby adopted as such to the same extent as if originally so denominated.

#### 21 22 CONCLUSIONS OF LAW

23  
24 1. Pursuant to NRS 649.020(1), "[c]ollection agency" is defined as "all persons  
25 engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in  
26 the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due  
27 or asserted to be owed or due to another."

1           2. Pursuant to NRS 649.010, "[c]laim" is defined as "any obligation for the payment of  
2 money or its equivalent that is past due."

3           3. Upon issuance of the Notice of Breach and Default and of the Election to Cause Sale  
4 of Real Property, the lender declares that there are amounts past due, declares the loan in  
5 default and declares all amounts secured by the real property due and payable. *Exhibit F.*  
6 The lenders also declare the loans to be in default in the referrals that they send to  
7 Respondent. Tr. 12/13/10, p. 124, ln. 25 to p. 125, ln. 1. Consequently, all amounts secured  
8 by the real property constitute a claim. NRS 649.010.

9           4. Pursuant to NRS 107.020, transfers in trust are made "to secure the performance of  
10 an obligation or the payment of any debt."

11           5. Pursuant to NRS 107.025, "foreclosure may be had by the exercise of a power of  
12 sale in accordance with the provisions of this chapter."

13           6. "Trustee" is defined as "[o]ne who holds legal title to property 'in trust' for the benefit  
14 of another person (beneficiary) and who must carry out specific duties with regard to the  
15 property. The trustee owes a fiduciary duty to the beneficiary." Black's Law Dictionary, 1514  
16 (6<sup>th</sup> Ed. 1990) (citation omitted).

17           7. "Deed of Trust" is defined as "[a]n instrument in use in some states, taking the place  
18 and serving the uses of a mortgage, by which the legal title to real property is placed in one or  
19 more trustees, to secure the repayment of a sum of money or the performance of other  
20 conditions. Though differing in form from a mortgage, it is essentially a security." Black's Law  
21 Dictionary, 414 (6<sup>th</sup> Ed. 1990) (citation omitted).

22           8. The term "security" is "usually applied to an obligation, pledge, mortgage, deposit,  
23 lien, etc., given by a debtor in order to assure the payment or performance of his debt, by  
24 furnishing the creditor with a resource to be used in case of failure in the principal obligation.  
25 Collateral given by a debtor to secure a loan." Black's Law Dictionary, 1355 (6<sup>th</sup> Ed. 1990).

1       9. The term "loan" includes, "the creation of debt by the lender's payment of or  
2 agreement to pay money to the debtor or to a third party for the account of the debtor . . . ."  
3 Black's Law Dictionary, 936 (6<sup>th</sup> Ed. 1990).

4       10. "Payment" means "[a] discharge in money or its equivalent of an obligation or debt  
5 owing by one person to another, and is made by debtor's delivery to creditor of money or  
6 some other valuable thing, and creditor's receipt thereof, for purpose of extinguishing a debt."  
7 Black's Law Dictionary, 1129 (6<sup>th</sup> Ed. 1990) (citation omitted). In this case, the borrowers' real  
8 property is pledged as payment of the amounts owed to the lenders in the event of default. *Id.*  
9 Though the borrowers are not delivering the property to the lenders directly, because non-  
10 judicial foreclosure is required to terminate the right of redemption and facilitate the sale,  
11 pursuant to the deed of trust and NRS 107.080(1) the lender has the right to receive payment  
12 for the debt via a foreclosure sale, i.e. the borrower has agreed that the debt can be paid  
13 through such means. *Id.*; see NRS 107.080 (allowing payment to be made up to five days  
14 before the sale); see NRS 107.030(7) (indicating that the trustee will apply the proceeds in  
15 payment of secured debts). When Respondent obtains payments, in any manner, from  
16 borrowers for debts owed to others it is acting as a collection agency. NRS 649.020(1).

17       11. "Solicit" means, "to try to obtain." Black's Law Dictionary, 1392 (6<sup>th</sup> Ed. 1990).

18       12. "Obtain" means, "to acquire, in any way." Black's Law Dictionary, 1078 (6<sup>th</sup> Ed.  
19 1990).

20       13. Pursuant to the plain language of NRS 649.020(1), Respondent, through its  
21 business practices, constitutes a collection agency because it engages "in the collection of or  
22 in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be  
23 owed or due to another" by soliciting the right to obtain or receive payments owed to lenders  
24 and attempting to obtain such payments from borrowers and obtaining payments which are  
25 later forwarded to the lenders. *Exhibits F, G, L, M & N*; see *White v. Warden, Nevada State*  
26 *Prison*, 96 Nev. 634, 636, 614 P.2d 536 (1980) ("Of course, we recognize that the intent of the  
27 legislature is the controlling factor and that, if the statutes under consideration are clear on  
28



1 their face, we cannot go beyond them in determining legislative intent."); see *Brown v. Davis*,  
2 1 Nev. 409, 1 (1865) ("The rule is cardinal and universal that if the law is plain and  
3 unambiguous, there is no room for construction or interpretation"); see 1964 Nev. Op. Att'y.  
4 Gen. No. 189, p. 1 (concluding, "[i]t is the opinion of this office that a company which indirectly  
5 solicits the payment of debts by requesting the debtor to forward payment to the creditor, and  
6 uses cards which threaten loss of credit, at the same time collecting a fee from the creditor, is  
7 a collection agency within the definition of Nevada Statutes and should therefore be bonded  
8 and pay a license fee."); see 1999 Nev. Op. Att'y. Gen. No. 38, p. 2-4 (comparing the  
9 procedures of lien foreclosures to those of non-judicial foreclosures of deeds of trust and  
10 stating, "[s]ince the purpose of the lien foreclosures is to enforce a creditor's rights with  
11 respect to a financial obligation that is 'past due,' we believe one exclusively engaged in the  
12 processing of such foreclosures is attempting to collect a debt as its 'primary or a secondary  
13 object, business or pursuit.' NRS 649.020(1).") The opinion concludes, "[s]ince such a  
14 company is not exempted from the definition of a collection agency, it must obtain a collection  
15 agency license prior to engaging in that activity.").

16 14. NRS 649.075(1) reads as follows:

17 1. Except as otherwise provided in this section, a person shall not  
18 conduct within this State a collection agency or engage within this  
19 State in the business of collecting claims for others, or of soliciting  
20 the right to collect or receive payment for another of any claim, or  
21 advertise, or solicit, either in print, by letter, in person or otherwise,  
22 the right to collect or receive payment for another of any claim, or  
23 seek to make collection or obtain payment of any claim on behalf  
24 of another without having first applied for and obtained a license  
from the Commissioner.

25 2. A person is not required to obtain a license if the person holds a  
26 certificate of registration as a foreign collection agency issued by  
27 the Commissioner pursuant to NRS 649.171.

28 15. Respondent violated NRS 649.075 because through its business activities  
Respondent solicited the right to collect or receive payment of claims for others and sought to  
obtain payment of claims on behalf of others and obtained payments without having first

1 applied for and obtained a license, or a certificate of registration as a foreign collection  
2 agency, from the Commissioner. NRS 649.075.

3 16. Respondent is conducting a "collection agency," as that term is defined in NRS  
4 649.020(1), within the State of Nevada and it is not licensed as a collection agency in the  
5 State of Nevada.

6 17. NRS 649.390 states:

7 1. The Commissioner shall conduct an investigation if he or she  
8 receives a verified complaint from any person that sets forth  
9 reason to believe that an unlicensed person is engaging in an  
activity for which a license is required pursuant to this chapter.

10 2. If the Commissioner determines that an unlicensed person is  
engaging in an activity for which a license is required pursuant to  
11 this chapter, the Commissioner shall issue and serve on the  
12 person an order to cease and desist from engaging in the activity  
until such time as the person obtains a license from the  
Commissioner.

13 3. If a person upon whom an order to cease and desist is served  
14 does not comply with the order within 30 days after service, the  
Commissioner shall, after notice and opportunity for a hearing:

15 (a) Impose upon the person an administrative fine of \$10,000;  
or

16 (b) Enter into a written consent agreement with the person  
17 pursuant to which the person agrees to cease and desist from all  
unlicensed activity in this State relating to the collection of debts,  
18 and impose upon the person an administrative fine of not less than  
\$5,000 and not more than \$10,000.

19 The imposition of an administrative fine pursuant to this subsection  
is a final decision for the purposes of judicial review.

20 ...

21 5. A person's liability for an administrative fine is in addition to any  
other penalty provided in this chapter.

22 By stipulation dated January 14, 2011, the parties agreed to stay the Cease and Desist Order  
23 until 30 days after the issuance of this decision. Therefore, a fine cannot be imposed pursuant  
24 to NRS 649.390.

25 18. Pursuant to NRS 649.440, the Commissioner can impose administrative fines of not  
26 more than \$10,000.00 for any violation of this chapter.

1 In addition to any other remedy or penalty, the Commissioner may  
2 impose an administrative fine of not more than \$10,000 upon a  
3 person who:

4 1. Without a license or certificate, conducts any business or  
5 activity for which a license or certificate is required pursuant to the  
6 provisions of this chapter; or

7 2. Violates any provision of this chapter or any regulation  
8 adopted pursuant thereto.

9 19. A finding that Respondent willfully violated the provisions of Chapter 649 of the  
10 NRS is not necessary.

11 20. Respondent's argument that the Division should treat it similar to another business  
12 if there is another business conducting similar activities and the Division did not require that  
13 other business to obtain a license is without merit. In Nevada, administrative decisions are  
14 not *stare decisis* and do not constitute binding precedent. See Gray Line Tours of Southern  
15 Nevada v. Public Service Commission of Nevada, 97 Nev. 200, 203 (1981) (providing,  
16 administrative agencies are not bound by the doctrine of *stare decisis*). Consequently, the  
17 Division applies the law to the facts of each circumstance on a case-by-case basis.

18 21. Respondent also argues that the Deed of Trust documents constitute a three party  
19 agreement and that Respondent simply agrees to perform activities that are required by Ch.  
20 107 of the NRS. To the extent, Respondent is attempting to argue that the statutes contained  
21 in Ch. 107 of the NRS are the specific statutes at issue and that they should control with  
22 regard to whether Respondent needs a collection license, Ch. 107 does not address whether  
23 a collection agency license is needed. In addition, NRS 107.050 states, "[n]othing in NRS  
24 107.030 and 107.040 shall prevent the parties to any transfer in trust from entering into other,  
25 different or additional covenants or agreements than those set out in NRS 107.030." In this  
26 case, the parties apparently entered into additional agreements regarding the attempting to  
27 obtain and obtaining of payments by Respondent. Moreover, with regard to what business  
28 activities require a collection agency license, NRS 649.020 is the specific statute and it does  
not contain an exemption for Respondents.

1       22. Respondent also argues that NRS 80.015 exhibits the Nevada Legislature's  
2 recognition that foreclosing pursuant to a deed of trust is a different activity than debt  
3 collection. Respondent points out that the statute excludes the enforcement of mortgages and  
4 security interests from the definition of doing business in Nevada. Notably, NRS 80.015(4)(b)  
5 states that such an exclusion "does not affect the applicability of any other provision of law  
6 with respect to the person and may not be offered as a defense or introduced in evidence in  
7 any civil action, criminal action, administrative proceeding or regulatory proceeding to prove  
8 that the person is not doing business in this State." Consequently, NRS 80.015 does not  
9 prohibit the enforcement of NRS 649.020 nor does it exempt Respondent from the  
10 requirement to be licensed as a collection agency.

11       23. Respondent cited to and provided several cases which state that non-judicial  
12 foreclosure does not constitute debt collection pursuant to the Fair Debt Collection Practices  
13 Act (hereinafter "FDCPA"). The FDCPA defines "debt collector" as, "any person who uses any  
14 instrumentality of interstate commerce or the mails in any business the principal purpose of  
15 which is the collection of any debts, or who regularly collects or attempts to collect, directly or  
16 indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692(a)(6).  
17 Whereas, NRS 649.020(1) states, "all persons engaging, directly or indirectly, and as a  
18 primary or a secondary object, business or pursuit, in the collection of or in soliciting or  
19 obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to  
20 another." The statutes are considerably different. The FDCPA looks for the collection of  
21 debts to be the primary purpose of a business with the collection of debts, or attempted  
22 collection, being conducted regularly. NRS 649.020(1) is not limited to the collection of debts  
23 being a primary purpose and also includes the soliciting of payments and obtaining in any  
24 manner the payment of a claim. Thus, as set forth above, the plain language of NRS  
25 649.020(1) imposes upon Respondent the requirement to become licensed as a collection  
26 agency.

1           24. The FDCPA states, "[t]his title does not annul, alter, or affect, or exempt any person  
2 subject to the provisions of this title from complying with the laws of any State . . . ." 15 U.S.C.  
3 1692n. Contrary to Respondent's assertions, the FDCPA does not prohibit Nevada from  
4 requiring Respondent to be licensed as a collection agency. *Id.*

5           25. The Legislature is presumed to have knowledge of existing statutes. *International*  
6 *Game Technology, Inc. v. The Second Judicial District Court of the State of Nevada*, 122 Nev.  
7 132, 154 (2006). Thus, it is presumed that the legislature had knowledge of NRS 649.020 and  
8 that the statute excludes certain business activities from the requirement of obtaining a license  
9 as a collection agency. *Id.*; see NRS 649.020. In fact, NRS 649.020(2) enumerates seven (7)  
10 exceptions to the licensing requirement. The Legislature did not amend NRS 649.020 to  
11 include an exemption for the activities conducted by Respondent in connection with its non-  
12 judicial foreclosure services. Consequently, even if it could be argued that NRS 649.020 is  
13 ambiguous, construing the statute according to principles of statutory construction we come to  
14 the same conclusion that the business activities of Respondent are not exempt from the  
15 licensing requirement. *State ex. rel. Nev. Tax Comm'n v. Boerlin*, 38 Nev. 39, 45, 144 P.738  
16 (1914) ("In the construction of a statute in which certain things are enumerated, other things  
17 are to be excluded."); *Silvers v. Sony Pictures Entm't, Inc.*, 402 F.3d 881, 885 (9<sup>th</sup> Cir. 2005)  
18 ("The doctrine of *expressio unius est exclusio alterius* 'as applied to statutory interpretation  
19 creates a presumption that when a statute designates certain persons, things, or manners of  
20 operation, all omissions should be understood as exclusions'").

21           26. Moreover, according to legislative history, conducting foreclosures constitutes debt  
22 collection. See *Minutes of the Subcommittee of the Senate Committee on Commerce and*  
23 *Labor, 73<sup>rd</sup> Session, April 12, 2005, p. 3* (stating, "if you have a full-service management  
24 company, and some of the large ones are full-service, and you are offering to file liens, record  
25 notices of default and go through the foreclosure process, . . . you have to meet the same  
26 licensing and the same qualifications as the actual foreclosure services that are out there");  
27 see *Minutes of the Subcommittee of the Senate Committee on Commerce and Labor, 73<sup>rd</sup>*

1 Session, April 12, 2005, p. 4 (discussing the proposed 649.020(3), "if you are a management  
2 company or . . . community manager who is going to be collecting . . . , then you are going to  
3 be governed under NRS 649, which governs other foreclosure services . . .").

4 27. Any Conclusion of Law hereinafter construed to constitute a Finding of Fact is  
5 hereby adopted as such to the same extent as if originally so denominated.

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**CERTIFICATE OF SERVICE**

I, hereby certify that on January 18, 2016, I served a true and correct copy of the foregoing **PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF THEIR OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT; EXHIBITS "A" – "D"**, on counsel by e-mail transmission to the persons listed below, pursuant to EDCR 8.05(a):

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18 Attorneys for Plaintiffs, except for Antoinette Gill

19 **DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 JEFFREY BENKO, a Nevada resident;

22 CAMILO MARTINEZ, a California  
resident;

23 ANA MARTINEZ, a California resident;

24 FRANK SCINTA, a Nevada resident;

25 JACQUELINE SCINTA, a Nevada

26 resident; SUSAN HJORTH, a Nevada

27 resident; RAYMOND SANSOTA, a Ohio

28 resident; FRANCINE SANSOTA, a Ohio  
resident;

29 SANDRA KUHN, a Nevada resident;

30 JESUS GOMEZ, a Nevada resident;

31 SILVIA GOMEZ, a Nevada resident;

32 DONNA HERRERA, a Nevada resident;

33 ANTOINETTE GILL, a Nevada resident;

34 JESSE HENNIGAN, a Nevada resident;

35 KIM MOORE, a Nevada resident;

36 THOMAS MOORE, a Nevada resident;

37 SUSAN KALLEN, a Nevada resident;

38 ROBERT MANDARICH, a Nevada

39 resident, JAMES NICO, a Nevada resident

40 and PATRICIA TAGLIAMONTE, a

41 Nevada resident

42 Plaintiffs,

43 v.

CASE NO: A-11-649857-C

Honorable Susan W. Scann  
Dept. 29

**PLAINTIFFS' UNOPPOSED  
MOTION TO EXTEND LENGTH  
OF PLAINTIFFS' OPPOSITION  
TO DEFENDANTS' JOINT  
MOTION TO DISMISS  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT BY TEN (10) PAGES;  
EXHIBIT "A"**

**CLASS ACTIONS**

**ARBITRATION EXEMPTION  
CLAIMED:**

Pursuant to NAR 3(A)-

1. Action Concerning Title to  
Real Property;

1 QUALITY LOAN SERVICE  
2 CORPORATION, a California  
3 Corporation; APPLETON PROPERTIES,  
4 LLC, a Nevada Limited Liability  
5 Company; MTC FINANCIAL, INC. dba  
6 TRUSTEE CORPS, a California  
7 Corporation; MERIDIAN  
8 FORECLOSURE SERVICE, a California  
9 and Nevada Corporation dba MTDS, Inc.,  
10 dba MERIDIAN TRUST DEED  
11 SERVICE; NATIONAL DEFAULT  
12 SERVICING CORPORATION, a Arizona  
13 Corporation; CALIFORNIA  
14 RECONVEYANCE COMPANY, a  
15 California Corporation; and DOES 1  
16 through 100, inclusive,

17 Defendants.

2. Class Action: and  
3. Action Seeking Equitable  
and/or Extraordinary Relief

Jury Trial Demanded

Hearing Date: February 22, 2016  
Time: 10:00 a.m.

11 Pursuant to Rule 2.20(a) of the Eighth Judicial District Court Rules ("EDCR"),  
12 Plaintiffs hereby request from this Court an order permitting Plaintiffs to file a longer  
13 opposition to Defendants' Joint Motion to Dismiss Plaintiffs' Second Amended  
14 Complaint than the 30 pages, excluding exhibits, provided for by the EDCR.  
15 Plaintiffs request—and Defendants do not oppose—that Plaintiffs' opposition may be  
16 longer by no more than ten (10) pages. *See* Exhibit A, a true and correct copy of  
17 which is attached hereto.

18 Pursuant to Rule 2.20(a), "[u]nless otherwise ordered by the court, papers  
19 submitted in support of pretrial . . . briefs shall be limited to 30 pages, excluding  
20 exhibits." Defendants have informed Plaintiffs' counsel in writing that they do not  
21 oppose the order requested by Plaintiffs here. *See* Exhibit A.

22 Given the abundance of Defendants, issues, and legal arguments to be  
23 presented by Plaintiffs in opposition, applicable to multiple theories of action, good  
24 cause exists to grant Plaintiffs' request. Defendants have no objection to the  
25 extension in page length requested. *See* Exhibit A. Plaintiffs have no objection to the  
26 Court granting comparable permission to Defendants for additional pages in their  
27 Reply Brief. Plaintiffs' opposition, consistent with Rule 2.20(a), will include a table  
28

1 of contents and table of authorities.

2 For all of the foregoing reasons, Plaintiffs request that the Court enter an order  
3 extending the length of Plaintiffs' Opposition to Defendants' Joint Motion to Dismiss  
4 Plaintiffs' Second Amended Complaint by ten (10) pages.

5  
6 Dated: January 18, 2016

LAW OFFICE OF NICHOLAS A. BOYLAN,  
A.P.C.

7  
8  
9 By: /s/ Nicholas A. Boylan  
10 Nicholas A. Boylan, Esq.  
11 Attorney for Plaintiffs  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JEFFREY BENKO, a Nevada resident;  
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resident, JAMES NICO, a Nevada resident  
and PATRICIA TAGLIAMONTE, a  
Nevada resident

Plaintiffs,

v.

CASE NO: A-11-649857-C

Honorable Susan W. Scann  
Dept. 29

**ORDER REGARDING  
PLAINTIFFS' UNOPPOSED  
MOTION TO EXTEND LENGTH  
OF PLAINTIFFS' OPPOSITION  
TO DEFENDANTS' JOINT  
MOTION TO DISMISS  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT BY TEN (10) PAGES;  
EXHIBIT "A"**

**CLASS ACTIONS**

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7 Corporation; MERIDIAN  
8 FORECLOSURE SERVICE, a California  
9 and Nevada Corporation dba MTDS, Inc.,  
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11 SERVICE; NATIONAL DEFAULT  
12 SERVICING CORPORATION, a Arizona  
13 Corporation; CALIFORNIA  
14 RECONVEYANCE COMPANY, a  
15 California Corporation; and DOES 1  
16 through 100, inclusive,

17 Defendants.

- Real Property;  
2. Class Action: and  
3. Action Seeking Equitable  
and/or Extraordinary Relief

Jury Trial Demanded

Hearing Date: February 22, 2016  
Time: 10:00 a.m.

## ORDER

IT IS HEREBY ORDERED that, pursuant to Rule 2.20(a) of the Eighth  
Judicial District Court Rules, the length of Plaintiffs' Opposition to Defendants' Joint  
Motion to Dismiss Plaintiffs' Second Amended Complaint may be extended by ten  
(10) pages, for a total of no more than forty (40) pages, excluding exhibits.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
District Judge

**CERTIFICATE OF SERVICE**

I, hereby certify that on January 18, 2016, I served a true and correct copy of the foregoing **PLAINTIFFS' UNOPPOSED MOTION TO EXTEND LENGTH OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT BY TEN (10) PAGES; EXHIBIT "A"**, on counsel by e-mail transmission to the persons listed below, pursuant to EDCR 8.05(a):

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CASE NO: A-11-649857-C

Honorable Susan W. Scann  
Dept. 29

**PLAINTIFFS' POINTS AND  
AUTHORITIES IN OPPOSITION  
TO MTC'S SUPPLEMENTAL  
BRIEF, RE MOTION TO DISMISS  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT**

**CLASS ACTIONS**

**ARBITRATION EXEMPTION  
CLAIMED:  
Pursuant to NAR 3(A)-**

1 Nevada resident

2 Plaintiffs,

3 v.

4 QUALITY LOAN SERVICE  
5 CORPORATION, a California  
6 Corporation; APPLETON PROPERTIES,  
7 LLC, a Nevada Limited Liability  
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17 RECONVEYANCE COMPANY, a  
18 California Corporation; and DOES 1  
19 through 100, inclusive,

20 Defendants.

Real Property;

2. Class Action: and

3. Action Seeking Equitable  
and/or Extraordinary Relief

Jury Trial Demanded

Hearing Date: February 22, 2016

Time: 10:00 a.m.

16 Plaintiffs file this Response in Opposition to the Supplemental Memorandum  
17 of Points and Authorities filed by MTC Financial Inc. dba Trustee Corps ("MTC").

18 This Supplemental Opposition is based on this Memorandum of Points and  
19 Authorities, and the papers and pleadings on file herein, and any oral argument  
20 presented during the hearing of this matter.

## 21 MEMORANDUM OF POINTS AND AUTHORITIES

### 22 I. Introduction

23 In addition to the variety of arguments levied by the Defendants in their Joint  
24 Motion to Dismiss Plaintiff's Second Amended Complaint ("SAC"), MTC filed a  
25 Supplemental Memorandum of Points and Authorities to further provide arguments  
26 that pertain solely to MTC and the claims alleged by Plaintiffs Raymond and  
27  
28

1 Francine Sansota (hereinafter "Sansota"). The arguments presented by MTC in its  
2 Supplemental Memorandum of Points and Authorities can be summarized as:

- 3 1. Since Sansota received a discharge in Bankruptcy, MTC could not have  
4 been collecting a debt because the debts of Sansota were discharged; and  
5 2. Sansota did not plead a claim for fraud.

6 The positions taken by MTC are without merit, and do not reflect the law or  
7 facts present in this case as alleged in the SAC.

8  
9 **II. MTC Does Not Accurately Portray the Sansotas' Claims, the Controlling**  
10 **Legal Authority, or the Effect of a Bankruptcy Discharge**

11 The chief additional argument from MTC appears to be that a finding of this  
12 Court that foreclosure of a mortgage lien is collection of a debt under Nevada law  
13 would somehow conflict with bankruptcy law. It is unclear how MTC reaches this  
14 conclusion, but it somehow uses twisted logic by claiming that the bankruptcy  
15 discharge received by Sansota prohibits a demand for money to pay prepetition debt,  
16 so MTC could not be attempting to collect a debt from Sansota. This specious  
17 position reflects how little MTC understands these issues.

18 NRS 649.020 defines "Collection Agency" under Nevada law as:

19  
20 [A]ll persons engaging, directly or indirectly, and as a primary or a  
21 secondary object, business or pursuit, in the collection of or in soliciting  
22 or obtaining in any manner the payment of a claim owed or due or  
23 asserted to be owed or due to another.  
(emphasis added)<sup>1</sup>

24  
25  
26 <sup>1</sup> This statute also sets forth certain businesses or professions that are not included as  
27 a "Collection Agency" under Nevada law; however, noticeably absent from this list  
28 of exclusions are either companies who process foreclosures for another or trustees  
under a deed of trust. NRS 649.020(2).

1 Under Nevada law, a "Claim" is "any obligation for the payment of money or its  
2 equivalent that is past due." NRS 649.010.

3 In the context of bankruptcy law, a "claim" is the right to payment or the right  
4 to an equitable remedy for breach of performance if such breach gives rise to a right  
5 to payment. 11 USC §101(5). Similarly, "debt" is liability on a claim. 11 USC  
6 §101(12). In short, the creditor owns the claim, and the debtor has the debt.

7 The discharge granted in bankruptcy discharges a debtor from all debts and  
8 any liability on a claim. 11 USC §727(b). The discharge does not discharge or  
9 extinguish the claim, but merely a debtor's personal liability on a claim. A lien that  
10 arises from a deed of trust/mortgage that secures an obligation, for which a debtor's  
11 personal liability has been discharged in bankruptcy, is still a claim. *See Johnson v.*  
12 *Home State Bank*, 501 U.S. 78, 111 S.Ct. 2150 (1991). Thus, "[e]ven after a debtor's  
13 personal obligations have been extinguished [by a discharge], the mortgage holder  
14 still retains a 'right to payment' in the form of its right to the proceeds from the sale  
15 of the debtor's property." *Id.* at 84. "Alternatively, the creditor's surviving right to  
16 foreclose[ure] can be viewed as a 'right to an equitable remedy' for the debtor's  
17 default on the underlying obligation." *Id.* Thus, a "bankruptcy discharge extinguishes  
18 only one mode of enforcing a claim—namely, an action against the debtor *in*  
19 *personam*—while leaving intact another—namely, an action against the debtor *in rem*."  
20 *Id.*

21 Former local bankruptcy judge, the Honorable Bruce Markell, addresses this  
22 very issue as follows:

23  
24 [B]ankruptcy affects the availability of different collection remedies, without  
25 affecting the existence of the debt itself. Indeed, even after the bankruptcy  
26 discharge has been granted, so long as a viable means of collection remains,  
27 such as the pursuit of collateral for the discharged debt, a creditor will be able  
28 to collect some, if not all, of the debt.

*In re Okosisi*, 451 B.R. 90, 95 (Bankr. D.Nev. 2011).

1 MTC is attempting to impose the term "debt" where it does not belong.  
2 Plaintiffs allege that MTC is a "Collection Agency" under the definition of Nevada  
3 law, not necessarily a debt collector under federal law.<sup>2</sup> By definition, collection  
4 agencies under Nevada law engage in the collection of claims that belong to another.  
5 NRS 640.020. The terms "debt" and "claim" are related, but not necessarily the same.  
6 While all debts are claims, not all claims are debts.

7 The bankruptcy discharge received by Sansota discharged the debts of Sansota,  
8 as well as their personal liability on any claim. The bankruptcy discharge, however,  
9 left intact the right to collect on the claim against Sansota *in rem*, allowing the  
10 beneficiary under the deed of trust, through the various services of MTC, to collect  
11 on the "right to payment" in the form of its right to the proceeds from the foreclosure  
12 sale of the Sansota home. *See Johnson*, 501 U.S. at 83-84.

13 Under Nevada law, a "claim" is broadly defined as "any obligation for the  
14 payment of money or its equivalent that is past due." NRS 640.010 (emphasis added).  
15 A "claim" is not limited to just non-discharged debts of a borrower. It is not limited  
16 to obligations owed personally by a borrower. It is not limited in any manner.

17 Correspondingly, in Nevada, a "Collection Agency" collects, in any manner,  
18 payment of a claim that is due to another. NRS 649.020. There are no limitations of  
19 this definition other than the narrow items contained in NRS 649.020(2), and MTC  
20 does not enjoy the protection of one of the exclusions in that subsection.

21 The bankruptcy discharge received by Sansota did not discharge the ability to  
22 enforce the "right to payment" by utilizing an *in rem* claim against Sansota. Since a  
23 "claim," as defined by NRS 649.010, is any obligation for the payment of money,  
24 this *in rem* claim must be a "claim" under this statute. There is no conflict with  
25 bankruptcy law on this issue.

26  
27 <sup>2</sup> A debt collector is a definition used in the federal Fair Debt Collection Practices Act ("FDCPA")  
28 in 15 USC §1692a(6). This case does not allege or pertain in any manner to a violation of the  
FDCPA.

1 MTC collected funds on this *in rem* claim against Sansota for the benefit of an  
2 unascertained lender. *See* Trustee's Deed Upon Sale furnished by MTC, Exhibit 1, in  
3 its Request for Judicial Notice filed on December 18, 2015. By doing so, MTC acted  
4 as a collection agency under Nevada law and should be treated accordingly.  
5

6 **III. Sansota Has Pled a Claim for Statutory Consumer Fraud Against MTC**  
7

8 The title of MTC's second argument point is that "Sansota Cannot Plead a  
9 Statutory Consumer Fraud Action Against [MTC]." MTC Supp. Brief, p. 3. MTC,  
10 however, never addresses why Sansota—according to MTC—"cannot" plead such a  
11 claim. MTC does go on to assert that this "*claim fails because of lack of any facts*  
12 *possible to plead fraud.*" *Id.* (emphasis in original).

13 The statutory "Consumer Fraud" alleged against MTC stems from NRS  
14 41.600, which provides in pertinent part:

- 15 1. An action may be brought by any person who is a victim of consumer  
16 fraud.
- 17 2. As used in this section, "consumer fraud" means:  
18 . . .  
19 (e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925,  
20 inclusive.
- 21 3. If the claimant is the prevailing party, the court shall award the claimant:  
22 (a) Any damages that the claimant has sustained;  
23 (b) Any equitable relief that the court deems appropriate; and  
24 (c) The claimant's costs in the action and reasonable attorney's fees.
- 25 4. Any action brought pursuant to this section is not an action upon any  
26 contract underlying the original transaction.

27 Further, NRS 598.0923 provides that:  
28

A person engages in a "deceptive trade practice" when in the course of  
his or her business or occupation he or she knowingly:



1  
2 1. Conducts the business or occupation without all required state,  
3 county or city licenses.

4 In the SAC, the Sansotas allege that:

- 5
- 6 • Plaintiffs Raymond Sansota and Francine Sansota were the subject of  
7 illegal collection agency activities and communications from and by  
8 MTC. SAC, at ¶ 5.
  - 9 • On July 28, 2010, MTC recorded a Notice of Default on real property  
10 owned by Sansota. *Id.*
  - 11 • MTC, in this Notice of Default, states that it should be contacted to  
12 determine the amount needed to cure the default and demanded payment  
13 from Sansota to get current on their obligation owed to a third party. *Id.*
  - 14 • MTC also recorded a Notice of Trustee's Sale on this property owned by  
15 Sansota on February 8, 2011. *Id.*
  - 16 • This Notice of Trustee's Sale provides, among other things, that the  
17 Sansota's home was to be sold to "pay the remaining unpaid balance of  
18 the obligations secured by the property to be sold and reasonably  
19 estimated costs, expenses and advances." *Id.*
  - 20 • MTC, at all relevant times prior to approximately 2012, did not hold a  
21 Nevada license to engage in collection activities in Nevada, nor did it  
22 register as a foreign collection agency with the Commissioner of the  
23 Nevada Financial Institutions Division ("FID"). *Id.* at ¶ 17.
  - 24 • At all times relevant in the SAC, MTC was acting on behalf of a third-  
25 party lender and/or loan servicer. *Id.* at ¶ 23.
  - 26 • After default was declared by the lender, MTC then conducted the  
27 collection activities. *Id.* at ¶ 23(a).
  - 28 • Sansota was told by MTC that unless they could either remit the payoff



1 amount on the loan or the past due payments owed to cure delinquency  
2 on the account, their property would be sold to satisfy the debt. *Id.* at ¶  
3 23(c).

- 4 • MTC sent the sales proceeds received from the foreclosure sale to the  
5 lender for whom it was acting. *Id.* at ¶ 23(i).
- 6 • MTC received payments for its illegal conduct. *Id.* at ¶ 21.
- 7 • MTC did not hold the requisite license to act as a “Collection Agency”  
8 as defined by NRS 649.020, and also did not register as a foreign  
9 collection agent or agency with the Commissioner of the Nevada FID.  
10 *Id.* at ¶ 34.
- 11 • MTC nevertheless pursued various collection agency activities against  
12 Plaintiffs including such items as debt-related notices, demands,  
13 collection communications, conducting foreclosure sales and processes,  
14 and collection of monies to apply to Plaintiffs’ account. *Id.*
- 15 • MTC thus caused Plaintiffs’ damages and/or received illicit revenue  
16 and/or profits. *Id.*
- 17 • The collection agency activities of MTC are and were illegal and  
18 improper because of MTC’s failure to obtain the required licenses or  
19 register as a foreign collection agent or agency with the Commissioner  
20 of the Nevada FID. *Id.* at ¶ 35.
- 21 • MTC’s conduct violated NRS 649.075 and/or NRS 649.171, and  
22 therefore constituted a deceptive trade practice under NRS chapter 598.  
23 *Id.* at ¶ 36.
- 24 • The deceptive trade practices of MTC constitute statutory consumer  
25 fraud as defined by NRS 41.600. *Id.* at ¶ 37.
- 26 • As a direct and proximate result of MTC’s deceptive trade practices and  
27 statutory fraud, Plaintiffs suffered general and/or special damages in an  
28 amount in excess of ten thousand dollars (\$10,000.00). *Id.* at ¶ 38.

- 1           • As a direct and proximate result of MTC's deceptive trade practices and  
2 fraud, Plaintiffs were forced to retain the services of an attorney to  
3 prosecute this action, and Plaintiffs are entitled to an award of their  
4 attorneys' fees and costs incurred in prosecuting this action. *Id.* at ¶ 39.
- 5           • The deceptive trade practices and fraud committed by MTC were done  
6 intentionally to misrepresent, deceive and conceal material facts from  
7 Plaintiffs, were done in conscious disregard of Plaintiffs' interests and  
8 rights, and were willful, wanton, malicious, and oppressive, thereby  
9 entitling Plaintiffs to an award for punitive damages. *Id.* at ¶ 40.
- 10          • The collection agency activities of MTC are and were illegal and  
11 improper because of MTC's failure to obtain the required licenses, or,  
12 alternatively, failure to register as a foreign collection agent or agency  
13 with the Commissioner of the Nevada FID. *Id.* at ¶ 43.
- 14          • MTC received substantial payments for its respective illegal and  
15 improper collection agency activities. As a direct and proximate result of  
16 MTC's deceptive trade practices, MTC was unjustly enriched by virtue  
17 of the fact that it received a fee which it was not legally entitled to  
18 receive and/or retain under Nevada law. Acceptance and retention by  
19 MTC of such benefits under the circumstances would be inequitable,  
20 and MTC should not be entitled to retain these illicit benefits to the  
21 detriment of Plaintiffs. MTC should be disgorged of any and all benefits  
22 obtained by virtue of its deceptive trade practices. *Id.* at ¶ 44.
- 23          • The use of the payments obtained through illegal and improper means  
24 by MTC constitutes an unjust enrichment of MTC at Plaintiffs' expense.  
25 *Id.* at ¶ 45.

26           Generally under Nevada law, in averments of fraud, the circumstances  
27 constituting fraud shall be stated with particularity. NRCP 9(b). Where a claimant  
28

1 seeks damages of more than \$10,000, the demand shall be for damages “in excess of  
2 \$10,000” without further specification of amount. NRCP 8(a).

3 Common law fraud is not pled here, however. The elements of common law  
4 fraud, including misrepresentation and reliance, are therefore irrelevant. No  
5 misrepresentation or deceptive omission has been alleged. Rather, Plaintiffs have  
6 pled a violation of Nevada’s deceptive trade practices act. As a matter of law, by  
7 statutory definition, unlicensed collection activity is deemed a consumer “fraud,” as it  
8 is a defined deceptive trade practice. *See* NRS 41.600 and NRS 598.0923(1).

9 Under analogous federal law, only allegations of fraudulent conduct must  
10 satisfy the heightened pleading requirements of Rule 9(b) of the Federal Rules of  
11 Civil Procedure (“FRCP”). Allegations of non-fraudulent conduct need satisfy only  
12 the ordinary pleading standards of Rule 8(a) of the FRCP. *Vess v. Ciba-Geigy Corp.*  
13 *USA*, 317 F.3d 1097, 1104-05 (9th Cir. 2003). Thus, even if termed “consumer  
14 fraud,” the Court should apply Nevada’s Rule 9(b) only to those of Plaintiffs’  
15 deceptive trade practices claims that “actually are grounded in fraud.” *See George v.*  
16 *Morten*, 2007 U.S. Dist. LEXIS 15980, at \*30-31 (D. Nev. March 1, 2007); *see also*  
17 *Windisch v. Hometown Health Plan, Inc.*, 2010 U.S. Dist. LEXIS 20989, at \*20-21,  
18 (D. Nev. March 1, 2007).

19 In *George*, the plaintiff brought a claim of deceptive trade practice alleging  
20 that the defendants conducted business that required a license by the State of Nevada  
21 without obtaining such a license. *George*, 2007 U.S. Dist. LEXIS 15980, at \*30-31.  
22 The defendants moved to dismiss the claim of deceptive trade practices on the  
23 grounds that the claim failed to satisfy the heightened pleading requirements of Rule  
24 9(b) of the FRCP. *Id.* Judge Pro disagreed, holding:

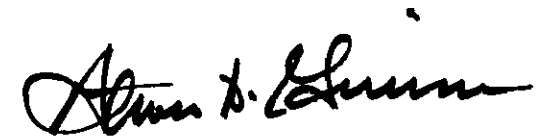
25  
26 This claim is not grounded in fraud because Plaintiff did not allege  
27 [defendants’] failure to obtain the Real Estate Sales Person license was  
28 fraudulent and did not rely on such failure in his fraud claim.  
Accordingly, under the ordinary notice pleading standard, Plaintiff has

1 stated a claim against [defendants] because Plaintiff alleged Defendants  
2 conducted business without obtaining the Real Estate Sales Person  
3 license. The Court therefore will deny Defendants' motion to dismiss  
4 Plaintiffs second deceptive trade practices claim.

*Id.*

5 Here, Plaintiffs contend Defendants, including MTC, violated Nevada  
6 Deceptive Trade Practices Act 598.0923(1). NRS 598.0923(1) states that a defendant  
7 is guilty of a deceptive trade practice where he/she knowingly "conducts the business  
8 or occupation without all required state, county or city licenses." Nowhere in the  
9 SAC do Plaintiffs allege common law fraud elements such as a misrepresentation  
10 with intent to deceive or any overarching fraudulent scheme to defraud the individual  
11 Plaintiffs or the public. Thus, Plaintiffs' claim is not grounded in fraud because they  
12 do not expressly allege that Defendants' failure to obtain the collection agent/agency  
13 license required under Nevada law was fraudulent. Rather, Plaintiffs' deceptive trade  
14 practice claim is based on the fact that Defendants conducted collection agency  
15 businesses without obtaining a Nevada license for debt collection activity. Thus, like  
16 the *George* court, this Court should deny Defendants' motion to dismiss because  
17 Plaintiffs' cause of action under NRS 598.0923(1) does not trigger application of the  
18 particularity requirement under Nevada's Rule 9(b).

19 Moreover, Plaintiffs' allegations in the SAC specifically detail the  
20 circumstances pertaining to the statutory Consumer Fraud perpetrated by MTC and  
21 thus are properly pled even if Rule 9(b) applies. The Sansotas allege with great  
22 particularity the actions of MTC and the circumstances that constitute Consumer  
23 Fraud under NRS 41.600. The Sansotas allege causation, as well as the collection  
24 efforts and resulting foreclosure on their home by an unlicensed MTC. The Sansotas  
25 also allege damages, not only as required by NRCP 8(a), but also the equitable relief  
26 (i.e., disgorgement allowed for their Unjust Enrichment claim) which is part of the  
27 damages provided for under NRS 41.600(3). These damages include, despite MTC's  
28 assertions to the contrary, the payment of money from the Sansotas to MTC. *See*



CLERK OF THE COURT

**JOIN**

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Attorneys for Defendant, MTC FINANCIAL INC.  
dba TRUSTEE CORPS

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JEFFREY BENKO, a Nevada resident;  
CAMILO MARTINEZ, a Nevada resident;  
ANA MARTINEZ, a Nevada resident;  
FRANK SCINTA, a Nevada resident;  
JACQUELINE SCINTA, a Nevada resident;  
SUSAN HJORTH, a Nevada resident;  
RAYMOND SANSOTA, a Ohio resident;  
FRANCINE SANSOTA, a Ohio resident;  
SANDRA KUHN, a Nevada resident;  
JESUS GOMEZ, a Nevada resident;  
SYLVIA GOMEZ, a Nevada resident;  
DONNA HERRERA, a Nevada resident;  
ANTOINETTE GILL, a Nevada resident;  
JESSE HENNIGAN, a Nevada resident;  
KIM MOORE, a Nevada resident;  
THOMAS MOORE, a Nevada resident,

Plaintiffs,

vs.

QUALITY LOAN SERVICE  
CORPORATION, a California Corporation;  
APPLETON PROPERTIES, LLC, a Nevada  
Limited Liability Company; MTC  
FINANCIAL, INC. dba TRUSTEE CORPS,  
a California Corporation; MERIDIAN

Case No. A-11-649857-C

Dept. No.: XXIX

**(ELECTRONIC FILING CASE)**

**DEFENDANT MTC FINANCIAL INC.  
dba TRUSTEE CORPS' JOINDER IN  
DEFENDANTS' JOINT MOTION TO  
DISMISS PLAINTIFFS' SECOND  
AMENDED COMPLAINT;  
SUPPLEMENTAL MEMORANDUM OF  
POINT AND AUTHORITIES IN  
SUPPORT THEREOF**

Hearing Date: February 22, 2016

Hearing Time: 10:00AM

FORECLOSURE SERVICE, a California  
and Nevada Corporation dba MTDS, Inc.,  
dba MERIDIAN TRUST DEED SERVICE;  
NATIONAL DEFAULT SERVICING  
CORPORATION, a Arizona Corporation;  
CALIFORNIA RECONVEYANCE  
COMPANY, a California Corporation; and  
DOES 1 through 100, inclusive,

Defendants.

**DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS' JOINDER IN  
DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED  
COMPLAINT; SUPPLEMENTAL MEMORANDUM OF POINT AND AUTHORITIES  
IN SUPPORT THEREOF**

COMES NOW, Defendant MTC FINANCIAL INC. dba TRUSTEE CORPS ("TRUSTEE  
CORPS"), and by and through its counsel of record, and hereby files this Joinder in and to the  
following: Defendants' Joint Motion to Dismiss Plaintiffs' Second Amended Complaint.

This Joinder is based on this Joinder, the Memorandum of Points and Authorities found  
within the Defendants' foregoing joint moving papers, the supporting supplemental memorandum  
of points and authorities found below, together with the Request for Judicial Notice in Support of  
the Joinder, which is concurrently filed under separate cover, and upon all pleadings, papers and  
documents on file herein, and any oral argument which may be presented at the time of the  
hearing, and all pleadings and papers on file in this matter as well as any oral argument at the  
anticipated hearing thereon.

DATED: December 18, 2015.

SILVESTRI GIDVANI, P.C.  
400 South Fourth Street, Suite 500  
Las Vegas, NV 89101

By: /s/ Phillip A. Silvestri  
Phillip A. Silvestri, Esq.  
Neal D. Gidvani, Esq.  
Attorneys for Defendant, MTC FINANCIAL  
INC. dba TRUSTEE CORPS

1                   **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

2           **I. INTRODUCTION**

3           TRUSTEE CORPS hereby joins and incorporates herein the memorandum of points and  
4 authorities to Defendants’ Joint Motion to Dismiss Plaintiffs’ Second Amended Complaint.

5           The purpose of this supplemental memorandum of points and authorities (“supplemental  
6 memorandum”) is limited to issues pleaded specifically in the Second Amended Complaint  
7 (“SAC”) as to Trustee Corps.

8           **II. BACKGROUND**

9           In the SAC, the sole Plaintiffs asserting claims against Trustee Corps are Raymond  
10 Sansota and Francine Sansota (collectively, “Sansota”). Sansota’s two claims asserted against  
11 Trustee Corps are: the first count for consumer fraud and second count for unjust enrichment.

12           According to the SAC, Sansota filed a Chapter 7 Bankruptcy on or about August 14, 2008  
13 (SAC, ¶5). The U.S. Bankruptcy Court on or about January 25, 2009 discharged Sansota’s debt  
14 (Id.). As a result, Sansota had no pre-petition personal debt to pay. The Sansota’s bankruptcy  
15 case was subsequently closed (Id.).

16           On July 28, 2010, Trustee Corp recorded a Notice of Default and of Election to Cause  
17 Sale of Real Property Under Deed of Trust (“NOD”) with respect to real property then owned by  
18 Sansota (SAC, ¶5, Ex. G). The NOD reflects Sansota defaulted on deed of trust referenced in the  
19 NOD starting December 1, 2009.

20           On February 8, 2011, Trustee Corps recorded a Notice of Trustee’s Sale Important Notice  
21 to Property Owner (“NOTS”) notifying Sansota of the auction sale date for the real property at  
22 issue (Id., Ex. F).

23           On March 31, 2011, a Trustee’s Deed Upon Sale (“TDUS”) was recorded (Request for  
24 Judicial Notice (“RJN”), Ex. 1). TDUS reflects the subject real property was sold in a non-  
25 judicial foreclosure auction on March 9, 2011 to third party purchaser The Prem Deferred Trust  
26 (“Prem”).

27           ///

28           ///

### III. FORECLOSING ON A FIRST TRUST DEED LIEN IS NOT DEBT COLLECTION

As set forth in Defendants' Joint Motion to Dismiss the Second Amended Complaint, trustees engaging in non-judicial foreclosure activities are not collection agencies, are not engaging in the collection of a claim, and are not required to be licensed. Even if non-judicial foreclosure activities were possibly subject to NRS 649 (which they are not), the SAC must be dismissed as it relates to Trustee Corps. Before the non-judicial foreclosure process commenced, the outstanding amount owed on the Sansota's property was discharged in bankruptcy.

Because of this discharge, the issue of pre-petition debt must be distinguished from the foreclosure of their mortgage lien. With respect to a discharge in bankruptcy, the Supreme Court explained the difference between a mortgage and a debt as follows in Johnson v. Home State Bank, 501 U.S. 78, 82-83, 111 S.Ct. 2150, 115 L.Ed.2d 66 (U.S. 1991):

"A defaulting debtor can protect himself from personal liability by obtaining a discharge in Chapter 7 liquidation. See 11 U.S.C. §727. However, such a discharge extinguishes *only* "the personal liability of the debtor." 11 U.S.C. § 524(a)(1). Codifying the rule of Long v. Bullard, 117 U.S. 617, 6 S.Ct. 917, 29 L.Ed. 1004 (1886), the Code provides that a creditor's right to foreclose on the mortgage survives or passes through the bankruptcy [citations omitted]."

In the instant action, the bankruptcy discharge of Sansota prohibits or bars claims or demands for money to pay prepetition debt. Thus, there can be no debt collection or demands to collect a debt from Sansota. If Trustee Corps were attempting to collect a debt, Sansota has a remedy.

"Bankruptcy judges, like district judges, have the power to coerce compliance with injunctive orders. In the bankruptcy context, "the creditor who attempts to collect a discharged debt is violating not only a statute but also an injunction and is therefore in contempt of the bankruptcy court that issued the order of discharge...[Creditor] may be liable for contempt ... if it willfully violated the permanent injunction of § 524.." Alderwoods Group, Inc. v. Garcia, 682 F.3d 958, 966 (11th Cir. 2012).

The Bankruptcy Court determines the extent of the injunction. In re McGhan, 288 F.3d 1172, 1179, 1180 (9<sup>th</sup> Cir. 2002). In the instant case, Sansota is asking the Court to find Trustee Corps' actions to foreclose a mortgage lien to be a form of debt collection under state law. State action finding a debt in these circumstances would be akin or similar to modifying the discharge order in the Sansota's bankruptcy to find the foreclosure of a lien to be the collection of debt in



1 violation of the discharge injunction. To find that conducting a foreclosure of a mortgage lien to  
2 be the collection of a debt under state law would be inconsistent, anomalous, or in conflict with  
3 Federal law finding that the Bankruptcy Code provides that a creditor's right to foreclose on a  
4 mortgage survives or passes through a bankruptcy. See, Matter of Gantt, 7 B.R. 13-14 (Bankr.  
5 N.D. Ga. 1980); In re Nason, 22 B.R. 690, 691 (Bankr. D. Me. 1982); *see also*, Harmon vs.  
6 United States through Farmers Home Admin., 101 F.3d 574, 579 (8th Cir. 1996). In the instant  
7 case, Sansota does not plead that Trustee Corps did anything to them other than to foreclose on a  
8 first trust deed lien. Such action does not constitute collection of a debt.

9 **IV. SANSOTA CANNOT PLEAD A STATUTORY CONSUMER FRAUD ACTION**  
10 **AGAINST TRUSTEE CORPS**

11 Sansota claims damages as "fraud victims" under NRS 41.600 (through NRS 598.0923).  
12 Nev.Rules Civ. Proc., Rule 9(b) requires all allegations of fraud to be stated "with particularity."  
13 *This claim fails because of lack of any facts possible to plead fraud.*

14 The elements of a private cause of action for consumer fraud include: (1) an act of  
15 consumer fraud by the defendant; (2) cause; and (3) damage to Plaintiff. See, Picus v. Wal-Mart  
16 Stores, Inc., 256 F.R.D. 651,658 (D. Nev. 2009). In the instant case, Sansota's subject real  
17 property underwent a foreclosure sale with respect to a defaulted first trust deed lien neither  
18 reinstated nor for which Sansota tendered. The cause of the loss of the real property was a  
19 foreclosure as result of default and failure to tender. In the instant case, the property was sold to  
20 third party, Prem, and the sale satisfied the first trust deed lien (RJN, Ex. 1). Nothing is pleaded  
21 that Sansota paid any money to Trustee Corps from the start of the foreclosure to the finish of the  
22 foreclosure; nothing is pleaded that Trustee Corps harassed Sansota by sending collection letters  
23 or making phone calls to pay money to Sansota (sending the NOD and the NOTS are simply part  
24 of and pursuant to Nevada's non-judicial foreclosure scheme); and nothing is pleaded that Trustee  
25 Corps demanded or collected any money from Sansota after the foreclosure sale. Consequently,  
26 *Sansota has not pleaded Trustee Corps caused damages.*

27 ///

28 ///

1     **V.     CONCLUSION**

2             Based on the foregoing supplemental memorandum of points and authorities and the  
3 points and authorities in the joint motion to dismiss, the Court is requested to dismiss with  
4 prejudice Sansota's claims against Trustee Corps. The Court need not permit an attempt to  
5 amend a pleading if it determines the pleading cannot possibly be cured by other allegations of  
6 fact.

7             DATED: December 18, 2015.

8                             SILVESTRI GIDVANI, P.C.  
9                             400 South Fourth Street, Suite 500  
                              Las Vegas, NV 89101

10  
11                            By: /s/ Phillip A. Silvestri  
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                              Attorneys for Defendant, MTC FINANCIAL  
12                            INC. dba TRUSTEE CORPS  
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## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on December 18, 2015, I served a a copy of the foregoing **DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS' JOINDER IN DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT; SUPPLEMENTAL MEMORANDUM OF POINT AND AUTHORITIES IN SUPPORT THEREOF** via E-Served or by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Las Vegas, as follows:

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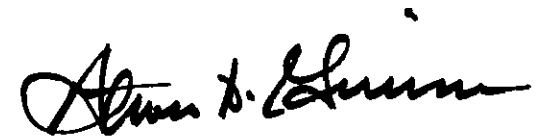
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Kent F. Larsen	<a href="mailto:kfl@slwlaw.com">kfl@slwlaw.com</a>	<input checked="" type="checkbox"/>
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Antoinette Gill  
4754 Deer Forest  
Las Vegas, NV 89139  
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/s/ Phillip A. Silvestri  
An employee of SILVESTRI GIDVANI, P.C.



CLERK OF THE COURT

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Attorneys for Defendant, MTC FINANCIAL INC.  
dba TRUSTEE CORPS (erroneously named herein  
as MTC FINANCIAL, INC. dba TRUSTEE  
CORPS)

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JEFFREY BENKO, a Nevada resident;  
CAMILO MARTINEZ, a Nevada resident;  
ANA MARTINEZ, a Nevada resident;  
FRANK SCINTA, a Nevada resident;  
JACQUELINE SCINTA, a Nevada resident;  
SUSAN HJORTH, a Nevada resident;  
RAYMOND SANSOTA, a Ohio resident;  
FRANCINE SANSOTA, a Ohio resident;  
SANDRA KUHN, a Nevada resident;  
JESUS GOMEZ, a Nevada resident;  
SYLVIA GOMEZ, a Nevada resident;  
DONNA HERRERA, a Nevada resident;  
ANTOINETTE GILL, a Nevada resident;  
JESSE HENNIGAN, a Nevada resident;  
KIM MOORE, a Nevada resident;  
THOMAS MOORE, a Nevada resident,

Plaintiffs,

vs.

QUALITY LOAN SERVICE  
CORPORATION, a California Corporation;  
APPLETON PROPERTIES, LLC, a Nevada  
Limited Liability Company; MTC

Case No. A-11-649857-C

Dept. No.: XXIX

**(ELECTRONIC FILING CASE)**

**DEFENDANT MTC FINANCIAL INC.  
dba TRUSTEE CORPS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
JOINDER IN AND TO THE  
FOLLOWING: DEFENDANTS' JOINT  
MOTION TO DISMISS PLAINTIFFS'  
SECOND AMENDED COMPLAINT**

Hearing Date: February 22, 2016

Hearing Time: 10:00AM

1 FINANCIAL, INC. dba TRUSTEE CORPS,  
2 a California Corporation; MERIDIAN  
3 FORECLOSURE SERVICE, a California  
4 and Nevada Corporation dba MTDS, Inc.,  
5 dba MERIDIAN TRUST DEED SERVICE;  
6 NATIONAL DEFAULT SERVICING  
7 CORPORATION, a Arizona Corporation;  
8 CALIFORNIA RECONVEYANCE  
9 COMPANY, a California Corporation; and  
10 DOES 1 through 100, inclusive,

11 Defendants.

12 **REQUEST FOR JUDICIAL NOTICE**

13 **IN SUPPORT OF DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS’**  
14 **JOINDER IN DEFENDANTS’ JOINT MOTION TO DISMISS PLAINTIFFS’ SECOND**  
15 **AMENDED COMPLAINT**

16 Defendant MTC FINANCIAL INC., dba TRUSTEE CORPS (“Trustee Corps”),  
17 respectfully requests that this Court, and any department to which this hearing is assigned, take  
18 judicial notice of the following official record, which was recorded in the Office of the County  
19 Recorder for Clark County, Nevada, a copy of which is attached hereto, and referred to in the  
20 accompanying Joinder in and to the following: **DEFENDANTS’ JOINT MOTION TO**  
21 **DISMISS PLAINTIFFS’ SECOND AMENDED COMPLAINT:**

22 1. Trustee’s Deed Upon Sale (“TDUS”) recorded on March 31, 2011 evidencing the  
23 sale of the subject real property to The Prem Deferred Trust. The foreclosure sale took place on  
24 March 9, 2011. (Exhibit “1”).

25 Judicial notice may be taken of facts not subject to reasonable dispute and either generally  
26 known in the community or capable of accurate and ready determination by reference to sources  
27 whose accuracy cannot be reasonably questioned. See, N.R.S. 47.150.

28 ///

///

///

1           Trustee Corps therefore respectfully requests that the Court take judicial notice of the  
2 above officially recorded records.

3           DATED: December 18, 2015.

4                                   SILVESTRI GIDVANI, P.C.  
5                                   400 South Fourth Street, Suite 500  
6                                   Las Vegas, NV 89101

7                                   By: /s/ Phillip A. Silvestri  
8                                   Phillip A. Silvestri, Esq.  
9                                   Neal D. Gidvani, Esq.  
10                                  Attorneys for Defendant, MTC FINANCIAL  
11                                  INC. dba TRUSTEE CORPS  
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## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on December 18, 2015, I served a a copy of the foregoing **DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF JOINDER IN DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT** via E-Service or by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Las Vegas, as follows:

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2 4754 Deer Forest  
3 Las Vegas, NV 89139  
4 PRO SE

5 /s/ Phillip A. Silvestri  
6 An employee of SILVESTRI GIDVANI, P.C.  
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# Exhibit 1

A.P.N. 179-34-614-164

[Recording Requested By:

[WHEN RECORDED MAIL TO  
AND MAIL TAX STATEMENTS TO:]  
THE PREM DEFERRED TRUST  
8350 W. SAHARA AVE. #150  
LAS VEGAS,NV 89117

Inst #: 201103310003069

Fees: \$15.00 N/C Fee: \$0.00

RPTT: \$260.10 Ex: #

03/31/2011 12:05:50 PM

Receipt #: 724306

Requestor:

NATIONAL TITLE COMPANY

Recorded By: OSA Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

[Space above this line for recorder's use only]

Trustee Sale No.NV09003798-10-1 . Loan No. 0192320398 Title Order No. 100427843-NV-  
LPI

## TRUSTEE'S DEED UPON SALE

The undersigned grantor declares:

- 1) The Grantee herein was not the foreclosing beneficiary.
- 2) The amount of the unpaid debt together with costs was: **\$133,586.50**
- 3) The amount paid by the grantee at the trustee sale was: **\$51,000.00**
- 4) The documentary transfer tax is: **\$ 260.10**
- 5) Said property is in the city of: HENDERSON

and **MTC FINANCIAL, Inc., dba TRUSTEE CORPS**, herein called "Trustee", as Trustee (or as Successor Trustee) of the Deed of Trust hereinafter described, hereby grants and conveys, but without covenant or warranty, express or implied, to **THE PREM DEFERRED TRUST**, herein called "Grantee", the real property in the County of Clark, State of Nevada, described as follows:

### Parcel I:

Lot Two (2) in Block Fifty-Five (55) of the Plat of OLD VEGAS RANCH UNIT 1 (HIGH NOON), a Common Interest Community, as shown by map thereof on file in Book 106 of Plats, Page 61, in the

Office of the County Recorder of Clark County, Nevada.

Together with associated Garage Unit as set forth in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements of High Noon at Old Vegas Ranch, recorded October 09, 2002 in Book 20021009 as Document No. 00581

### Parcel II:

A non-exclusive easement of reasonable ingress, egress and use in, to and over the common elements as set forth and subject to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for OLD VEGAS RANCH recorded October 3, 2002 in Book 20021003 as Document No. 01559, Official records.

This deed is made pursuant to the authority and powers given to Trustee (or to Successor Trustee) by law and by that certain Deed of Trust dated January 27, 2004, made to RAYMOND R SANSOTA AND FRANCINE M SANSOTA, HUSBAND AND WIFE and recorded on January 30, 2004, as Instrument No. 03803 of Official Records in the office of the Recorder of Clark County,

Nevada, Trustee (or Successor Trustee) having complied with all applicable statutory provisions and having performed all of his duties under the said Deed of Trust. All requirements of law and of said Deed of Trust relating to this sale and to notice thereof having been complied with. Pursuant to the Notice of Trustee's Sale, the above described property was sold by Trustee (or Successor Trustee) at public auction on 03/09/2011 at the place specified in said Notice, to Grantee who was the highest bidder therefor, for \$51,000.00 cash, in lawful money of the United States, which has been paid.

Dated: 03/09/2011

**MTC FINANCIAL, INC. dba TRUSTEE CORPS**

  
\_\_\_\_\_  
GLORIA JUAREZ

**THIS INSTRUMENT IS RECORDED  
AS AN ACCOMMODATION ONLY  
AND WITHOUT LIABILITY**

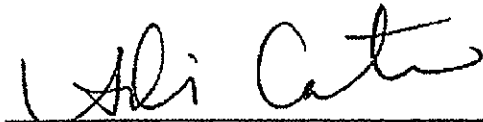
State of CALIFORNIA

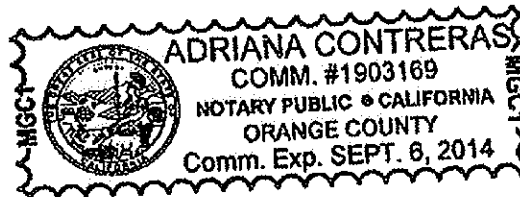
County of ORANGE

On 3/15/11 before me, Adriana Contreras, a notary public personally appeared Gloria Juarez who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public in and for said County and State



**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

## 1. Assessor Parcel Number(s)

a. 179-34-614-164  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

## 2. Type of Property:

a ☐ Vacant Land    b ☒ Single Fam. Res.  
c ☐ Condo/Twnhse    d ☐ 2-4 Plex  
e ☐ Apt. Bldg    f ☐ Comm'l/Ind'l  
g ☐ Agricultural    h ☐ Mobile Home  
☐ Other \_\_\_\_\_

## FOR RECORDER'S OPTIONAL USE ONLY

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

## 3. a. Total Value/Sales Price of Property

\$51,000.00

b. Deed in Lieu of Foreclosure Only (value of property)

( )

c. Transfer Tax Value:

\$51,000.00

d. Real Property Transfer Tax Due

\$ 260.104. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that dis allowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature \_\_\_\_\_

GLORIA JUAREZ

Capacity

Grantor

Signature \_\_\_\_\_

Capacity

Grantee**SELLER (GRANTOR) INFORMATION****(REQUIRED)**

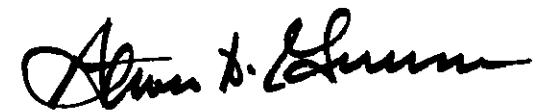
Print Name: Trustee Corps. \_\_\_\_\_

Address: 17100 Gillette Avenue \_\_\_\_\_

City: Irvine \_\_\_\_\_

State: CA \_\_\_\_\_ Zip: 92614

**BUYER (GRANTEE) INFORMATION****(REQUIRED)**Print Name: THE PREM DEFERRED TRUSTAddress: 8350 W. SAHARA AVE. #150City: LAS VEGASState: NV Zip: 89117**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**Print Name: National Title Co Escrow #: 289226 LPAddress: 7251 W. Lake Mead Blvd 350City: LV State: NV Zip: 89128



CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JEFFREY BENKO, a Nevada resident; CAMILO  
MARTINEZ, a California resident;  
ANA MARTINEZ, a California resident;  
FRANK SCINTA, a Nevada resident;  
JACQUELINE SCINTA, a Nevada resident;  
SUSAN HJORTH, a Nevada resident;  
RAYMOND SANSOTA, a Ohio resident;  
FRANCINE SANSOTA, a Ohio resident;  
SANDRA KUHN, a Nevada resident; JESUS  
GOMEZ, a Nevada resident; SILVIA GOMEZ, a  
Nevada resident; DONNA HERRERA, a Nevada  
resident; ANTOINETTE GILL, a Nevada  
resident; JESSE HENNIGAN, a Nevada resident;  
KIM MOORE, a Nevada resident; THOMAS  
MOORE, a Nevada resident; SUSAN KALLEN,  
a Nevada resident; ROBERT MANDARICH, a  
Nevada resident; JAMES NICO, a Nevada  
resident and PATRICIA TAGLIAMONTE, a  
Nevada resident

Plaintiffs,

v.

QUALITY LOAN SERVICE CORPORATION,  
a California Corporation; APPLETON  
PROPERTIES, LLC, a Nevada Limited Liability  
Company; MTC FINANCIAL, INC. dba  
TRUSTEE CORPS, a California Corporation;

CASE NO: A-11-649857-C

Honorable Susan W. Scann  
Dept. 29

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' JOINT MOTION TO  
DISMISS PLAINTIFFS' SECOND  
AMENDED COMPLAINT**

**CLASS ACTIONS**

**ARBITRATION EXEMPTION  
CLAIMED:**

Pursuant to NAR 3(A)-

1. Action Concerning Title to Real Property;
2. Class Action; and
3. Action Seeking Equitable and/or Extraordinary Relief

Jury Trial Demanded



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MERIDIAN FORECLOSURE SERVICE, a  
California and Nevada Corporation dba MTDS,  
Inc., dba MERIDIAN TRUST DEED SERVICE;  
NATIONAL DEFAULT SERVICING  
CORPORATION, a Arizona Corporation;  
CALIFORNIA RECONVEYANCE COMPANY,  
a California Corporation; and DOES 1 through  
100, inclusive,  
  
Defendants.

Hearing Date: February 22, 2016  
Time: 10:00 a.m.

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1 I. INTRODUCTION

2 Years ago, in 2010, Quality Loan Service Corporation ("QLS") was caught by the Financial  
3 Institution Division (hereinafter "FID") conducting various debt collection activities, far beyond the  
4 simple recording of a notice of default pursuant to a deed of trust. The FID issued a cease and desist  
5 order, stopping the wrongful activities of QLS, unless and until QLS became licensed by the FID as  
6 a collection agency in Nevada. The San Diego-based company, knowing it was caught committing  
7 a major violation of Nevada law, and impliedly admitting its liability here, quickly obtained its  
8 collection agency license from the FID, no later than February 6, 2011, for its first location<sup>1</sup> in San  
9 Diego and, for its second San Diego office, on September 28, 2012. Plaintiffs' Request for Judicial  
10 Notice ("RJN"), ¶¶ 1-2; Exs. A & B. The QLS license remains active today. RJN, ¶ 2; Ex. B.  
11 Defendant MTC Financial, Inc. ("MTC") obtained its collection agency license from the FID no  
12 later than April 19, 2012. RJN, ¶ 3; Ex. C.

13 Accordingly, Defendants' speculative comments about why the FID may have chosen not to  
14 appeal Judge Williams' erroneous reversal of Commissioner Burns' decision<sup>2</sup> is unpersuasive.  
15 (QLS had complied with the FID's demand.) This is particularly true given that, after the FID  
16 began its proceedings against QLS in 2010, the FID was apparently successful in pursuing a clear  
17 path with the Nevada Legislature, such that, in 2011, the Legislature added NRS107.028 to Chapter  
18 107. Thus, the Nevada legislature specifically clarified and made crystal clear the pre-existing  
19 intent of both the legislative and administrative branches of Nevada government that only licensed  
20 collection agencies (NRS 649) are among those entities allowed by law to serve as trustees of deeds  
21 of trust, i.e., to conduct foreclosure proceedings.

22 In addition to numerous other compelling facts alleged here and taken as true by law,  
23 Defendants are also upended by their own words, admitting they were engaged in debt collection  
24 (requesting and collecting payments on past due debts) as agents of the lenders, stated by  
25

26 <sup>1</sup> According to the FID, each and every out of state collection agency office/location  
27 that is soliciting payments from Nevada consumers must be separately licensed. See  
28 e.g., NRS 649.167.

<sup>2</sup> A copy of Commissioner Burns' decision is attached. RJN, ¶ 4, Ex. D.

1 Defendants in contemporaneous documents that Defendants themselves wrote and sent to Plaintiffs.  
2 The cases do not support Defendants' "mini-Miranda" excuse, and these written admissions point  
3 directly to a 12(b)(5) adjudication in favor of Plaintiffs here. So too does the detailed and well-  
4 reasoned decision of Commissioner Burns, of the Nevada Financial Institutions Division. RJN, ¶ 4,  
5 Ex. D; *see also* SAC, ¶¶ 23, 34 (very specific allegations of Defendants' various debt collection  
6 activities).

7 Defendants are bound by both the facts of specific collection agency activities alleged in the  
8 SAC (e.g., demanding and collecting payments on past due debts) and their own written words, for  
9 the purpose of a motion to dismiss under NRCP 12(b)(5). For example, Meridian's notice sent to  
10 the Nevada consumers who are Plaintiffs here flatly admits that Meridian "is assisting the  
11 beneficiary to collect a debt and any information obtained will be used for that purpose." SAC, Ex.  
12 "D". The same is true for QLS, which admitted in its writing that: "This office is attempting to  
13 collect a debt and any information obtained will be used for that purpose." SAC, Exs. "A", "B",  
14 "C", and "E", and "F". In a separate writing, Quality Loan Service admitted its collection agency  
15 actions, saying: "This notice is sent for the purpose of collecting a debt. This firm is attempting to  
16 collect a debt on behalf of the holder and owner of the Note. Any information obtained by or  
17 provided to this firm or the Creditor will be used for that purpose." SAC, Ex. "F". Defendant  
18 National Default Servicing Corporation ("NDSC") also admitted in its writing: "This is an attempt  
19 to collect a debt and any information will be used for that purpose." SAC, Exs. "S" and "T". *See,*  
20 *e.g., Wade v. Reg'l Credit Ass'n*, 87 F.3d 1098 (9th Cir. 1996) (defendant violated Idaho's version  
21 of the Nevada licensing law pled here, but not federal law).

22 The allegations of the SAC are dispositive of the instant motion. The allegations of  
23 paragraphs 23 and 34 of the SAC, for example, make clear that Defendants' activities went far  
24 beyond merely recording a statutory notice of default. *See Reese v. Ellis, Painter, Ratteree, &*  
25 *Adams, LLP*, 678 F.3d 1211, 1216-1217 (11th Cir. 2012).

26 Contrary to the express and specific allegations of the SAC (e.g., SAC, ¶¶ 23, 34),  
27 Defendants nevertheless state to this Court the bold untruth that they did nothing other than the  
28

1 public recordation of a notice of default.<sup>3</sup> However, the allegations of the SAC,<sup>4</sup> which all agree  
2 must be taken as true, include the following:<sup>5</sup>

- 3 1. Plaintiffs were directly the subject of collection activities and communications from  
4 Defendants, including demands for payment on the underlying debt. SAC, ¶¶ 1-15.
- 5 2. Plaintiffs were told by Defendants that unless they could either remit the payoff  
6 amount on the loan or the past due payments owed to cure the delinquency on the  
7 loan account, their properties would be sold to satisfy the debt. SAC, ¶23(c).
- 8 3. Defendants issued directly to the Plaintiffs notices and demands for payment,  
9 including the payoff amount on the loan, and requested that plaintiffs send a  
10 cashier's check payable to Defendants and submitted directly to Defendants'  
11 accounting offices. SAC, ¶23(f).
- 12 4. While expressly demanding payment of the underlying debt, Defendants issued  
13 notices and communications directly to Plaintiffs that periodically provided wire  
14 instructions to Plaintiffs so that they could make the loan payments demand by  
15 Defendants directly to Defendants via wire transfer. SAC, ¶ 23(g).

16  
17  
18 <sup>3</sup> After discovery occurs in this case, Defendants' credibility with this Court may be  
19 destroyed, as it is expected that overwhelming evidence will show that Plaintiffs'  
20 allegations of debt collection activities are true.

21 <sup>4</sup> According to law, for purpose of the Rule 12(b)(5) adjudication, the allegations of  
22 the complaint must be liberally construed in favor of the plaintiffs. See, e.g., NRCP  
23 8("All pleadings shall be so construed as to do substantial justice."); *Hay v. Hay*, 100  
24 Nev. 196, 198, 678 P.2d 672, 674 (1984) (Nevada "courts liberally construe  
25 pleadings to place into issue matters which are fairly noticed to the adverse party.").

26 <sup>5</sup> Although it is believed unnecessary, by amendment, plaintiff can add additional  
27 allegations to the effect that from their various locations and call centers, both in  
28 writing and telephonically, while acting on behalf of the lenders to collect the past  
due debts and solicit payments, defendants made direct contact with plaintiffs,  
demanding payment of the debts. And, after necessary discovery, it is highly  
probable that the information and documentation will show thousands and thousands  
of debt collection communications and demands for payment from the defendants to  
the plaintiffs, and also receipt of payments on the debt, as part of their processes.

- 1           5. Defendants actually collected money on behalf of lenders, pursuant to their agency  
2           relationship with the lenders, and, upon receipt, Defendants would forward the  
3           amounts received to the lenders for payment on the outstanding debt. SAC, ¶ 23(h).  
4           6. When Defendants sold property, Defendants would collect and then forward the full  
5           amount of the net cash proceeds of money received to the lenders for whom they  
6           were acting as collection agent, for crediting against the outstanding loan. SAC, ¶  
7           23(i).

8           Furthermore, the SAC does sufficiently plead causation and damages under applicable law.<sup>6</sup>  
9           Paragraph 21 of the SAC alleges that Plaintiffs' debts were increased by the dollar amount of illegal  
10          payments received by Defendants for their illegal, unlicensed debt collection services. This  
11          constitutes thousands of dollars of damages for each and every Plaintiff. Paragraph 44 of the SAC  
12          makes plain that Defendants in fact received substantial illegal payments for their respective illegal  
13          and improper collection agency activities and, through their illegal activity, "Defendants gained an  
14          advantage, to the detriment" of Plaintiffs. Paragraph 44 of the SAC further alleges that as a "direct  
15          and proximate result of [D]efendants' deceptive trade practices, each [D]efendant was unjustly  
16          enriched by virtue of the fact that it received a fee [added to Plaintiffs' debt] which it was not  
17          legally entitled to receive and/or retain" under Nevada law. "Acceptance and retention by the  
18          [D]efendants of such benefits under the circumstances would be inequitable, and [D]efendants  
19          should not be entitled to retain these illicit benefits to the detriment of [P]laintiffs. Each  
20          [D]efendant should be disgorged of any and all benefits obtained by virtue of their deceptive trade  
21          practices." SAC, ¶ 44. Paragraphs 45-47 of the SAC also expressly allege proximate cause and  
22          damages. In the SAC, paragraphs 1 and 2 of the Prayer for Relief seek recovery of all such  
23          damages. Consistent with applicable law, paragraphs 3-5 of the Prayer for Relief request  
24          recoverable damages, equitable relief and the attorneys' fees which are a recoverable item of  
25          damage under Nevada's deceptive trade practices statute, NRS 41.600.

26           <sup>6</sup> If deemed necessary by the Court, amendment could surely enhance and augment  
27          the allegations of causation and damages, and Plaintiffs respectfully reserve and  
28          request the right to do so if needed.



1       A. The Reasoning of Commissioner Burns, on behalf of the Nevada Department of  
2       Business and Industry, Financial Institutions Division, is Compelling (RJN, ¶ 4, Ex. D)

3       With respect to the substantive issues of Nevada law presented here, including proper  
4       interpretation and application of most of the Nevada statutes at issue, the legal reasoning and  
5       analysis stated in Commissioner Burns' decision is truly compelling. Commissioner Burns is the  
6       highest authority at the FID, and the single most experienced and knowledgeable Nevadan on the  
7       issues at hand. Commissioner Burns' fourteen-page decision persuasively dismantles most every  
8       argument asserted here by Defendants. Defendants' only response of note is that Commissioner  
9       Burns' decision was overturned by a trial court, and not appealed.

10       The Department 16 order, ostensibly signed by Judge Williams, appears to be an advocacy  
11       piece, every word of which was crafted by QLS's attorneys at the firm of Lionel, Sawyer & Collins.  
12       The order contains no indication of any independent review, analysis, or contribution by the Judge.  
13       In fact, the order is not signed by the Judge, but says instead, "Jessie Walsh for Timothy C.  
14       Williams." Below that signature, the order indicates that it was "prepared and submitted" by  
15       Attorney Paul Larson, of the firm Lionel, Sawyer & Collins representing QLS. In paragraph 9 of  
16       the order, there is a significant mischaracterization of Commissioner Burns' fact-finding and his  
17       determinations, which mischaracterization and various related omissions illustrate the inaccuracies  
18       spread throughout the entire order. Specifically, the order misstated that Commissioner Burns  
19       determined that merely exercising the power of sale in a deed of trust constitutes the action of a  
20       collection agency. The trial court order omits any reference to the pervasive evidence discussed and  
21       the critical findings of Commissioner Burns' decision, which show a variety of debt collection  
22       activities (including demanding and collecting payments on past due amounts), different from and  
23       well beyond the mere recordation of a default notice or the mere statutory exercise of the power of  
24       sale. *Cf. Reese, supra*. Plaintiffs respectfully suggest that the order is without persuasive force.

25       Pursuant to NRS Chapter 649, the FID has the authority to interpret the statute and is the  
26       most knowledgeable about the statutory scheme. See NRS 649.051 ("The Commissioner shall  
27       administer and enforce the provisions of this chapter"); NRS 649.053 ("The Commissioner shall  
28       adopt such regulations as may be necessary to carry out the provisions of this chapter."); NRS

1 649.440 (“Commissioner may impose an administrative fine of not more than \$10,000 upon a  
2 person who . . . [w]ithout a license or certificate, conducts any business or activity for which a  
3 license or certificate is required pursuant to the provisions of this chapter; or . . . [v]iolates any  
4 provision of this chapter or any regulation adopted pursuant thereto.”); NRS 649.135  
5 (“Commissioner shall enter an order approving the application for a license, . . . if the  
6 Commissioner finds that the applicant has met all the other requirements of this chapter pertaining  
7 to the applicant’s qualifications and application.”). In the prior case against QLS, the FID’s then  
8 Commissioner personally acted as the hearing officer, and determined exactly the opposite of what  
9 Defendants contend. RJN, ¶ 4, Ex. D. That is, conducting various foreclosure activities in the  
10 manner performed here, by demanding and collecting money on past due amounts, constitutes debt  
11 collection in Nevada. Accordingly, the Commissioner correctly determined that QLS was not  
12 exempt from the licensing requirement under NRS 649.020. *Id.*

13 This Court should defer to the FID, as the applicable Nevada administrative agency. *See,*  
14 *e.g., Holiday Ret. Corp. v. State Div. of Indus. Rels.*, 128 Nev. Adv. Rep. 13, 274 P.3d 759, 761  
15 (2012); *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 566 (1980). Nothing in Judge Williams’  
16 order reflects any consideration whatsoever of the law indicating that it is the Court’s duty to give  
17 primary deference to the administrative agency in charge.

18 **II. THE PRIOR QLS DECISION IN DEPT. 16 IS**  
19 **NOT CONTROLLING HERE**

20 **A. The Decision in Dept. 16 Is Neither Binding Nor Persuasive**

21 In their Brief, at pg. 9, Defendants claim that the sister court “scrutinized the legislative  
22 history of the various Nevada statutes implicated” in its determination. Although drafted by the  
23 QLS lawyers at Lionel Sawyer, the text of the order does not expressly show or recite any scrutiny,  
24 analysis, review, or consideration of any legislative history. There is no citation to legislative  
25 history in the order. Nor is there any quotation of the legislative record in the order. Moreover, the  
26 text of the order reflects no consideration of the 2011 amendment of NRS Chapter 107 and its  
27 express inclusion of NRS 649 licensed collection agencies. NRS 107.028.

1        **B. The Prior QLS Order Is Distinguishable on the Critical Facts**

2        As reiterated throughout this brief, according to the text of the order from Dept. 16 in the  
3        QLS matter, the Court limited its determination to the simple fact that QLS did nothing other than  
4        record a notice of default (and possibly conduct the sale). The facts at issue here, as pled in the  
5        SAC, depict a very different scenario, which itemizes a variety of debt collection activities,  
6        including demanding payments, receiving payments, forwarding payments, soliciting from the  
7        banks the opportunity to act on their behalf to collect the debts, seeking payment by cashier's  
8        checks and/or wire transfers made payable to Defendants, all as collection agents for the lenders,  
9        etc.

10       **C. The Prior QLS Order Is Incorrect on Its Face**

11       For example, it seems that there is a glaring legal error on the face of the QLS order from  
12       Department 16 that is relied upon by Defendants here. In the "Conclusions of Law," paragraph  
13       numbers 2 and 3 thereof, it appears that Judge Williams based his order in substantial part on a  
14       determination that the California company, QLS, was not doing business in the State of Nevada  
15       pursuant to NRS 80.015. It is inexplicable that the order did not cite or discuss the contrary,  
16       dispositive portion of that same statute, with respect to the issue. Specifically, NRS 80.015(4)(b)  
17       provides specifically that: "The fact that a person is not doing business in this state within the  
18       meaning of this section . . . [d]oes not affect the applicability of any other provision of law with  
19       respect to the person and may not be offered as a defense or introduced in evidence in any civil  
20       action, . . . involving an alleged violation of chapter 597, 598,<sup>7</sup> or 598A of NRS." The issue of  
21       whether QLS was doing business in the State as set forth in NRS 80.015 is not even allowed to be  
22       an issue on this matter, yet it was the basis of Judge Williams' order

23       **D. There Are Numerous and Critical Defects in the Federal Trial Court Orders Relied**  
24       **Upon by Defendants**

25       According to all the federal appellate courts, which issue the binding decisions that set the

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26       <sup>7</sup> NRS 598.0923(1) defines a deceptive trade practice in the course of a person's  
27       business or occupation when he or she knowingly conducts the business or  
28       occupation without all required state, county, or city licenses.

1 legal precedents which must be followed, under the less stringent federal law (the FDCPA, not at  
2 issue here, but relevant in the trial court orders relied upon by Defendants), trustees conducting  
3 foreclosure activities of the kind at issue in this case are debt collectors. *See Wilson v. Draper &*  
4 *Goldberg PLLC*, 443 F.3d 373 (4th Cir. 2006); *Piper v. Portnoff Law Assocs.*, 396 F.3d 227 (3rd  
5 Cir. 2005); *Reese*, 678 F.3d 1211; *Romea v. Heiberger & Assocs.*, 163 F.3d 111, 117 (2nd Cir.  
6 1998); *Gburek v. Litton Loan Servicing LP*, 614 F.3d 380, 386 (7th Cir. 2010); *Kaltenbach v.*  
7 *Richards*, 464 F.3d 524 (5th Cir. 2006); *Glazer v. Chase Home Fin. LLC*, 704 F.3d 453 (6th Cir.  
8 2013); *see also Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028 (9th Cir. 2009); *Carter v.*  
9 *Deutsche Bank Nat'l Trust Co.*, 2010 U.S. Dist. LEXIS 44984 (N.D. Cal. May 7, 2010) (declining  
10 to dismiss FDCPA claim at pleading stage). The *Wilson* and *Piper* holdings have also been  
11 recognized as sources of authority by a trial court in the 1st Circuit. *Moore v. Mortgage Elec.*  
12 *Registration Sys.*, 848 F. Supp. 2d 107 (D.N.H. Jan. 27, 2012) (holding claims could not be  
13 dismissed on basis of activities not falling within FDCPA).

14 The decision in *Wilson* is on all fours. Like the Defendants here, the defendants in *Wilson*  
15 relied on various unreported district court decisions. *Wilson*, 443 F.3d at 374. The Fourth Circuit  
16 unambiguously rejected the defense contention that they could not be "debt collectors" under the  
17 FDCPA because they were substitute trustees foreclosing on a deed of trust. *Id.* As here, Defendant  
18 had engaged in a variety of debt collection activities, including sending letters and/or notices  
19 expressly admitting that they were attempting to collect a debt. *Id.* at 374-375.

20 The Ninth Circuit has cited the *Wilson* decision without reservation or restriction. *Rowe*, 559  
21 F.3d 1028. Another trial court in the Ninth Circuit refused to dismiss a FDCPA case at the pleading  
22 stage, recognizing the authority for finding the FDCPA applies. *Carter*, 2010 U.S. Dist. LEXIS  
23 44984. Given the consensus among numerous federal circuit courts, any trial court orders to the  
24 contrary are without force. They are simply wrong.

25 Accordingly, given the contrary federal circuit decisions, Defendants cannot properly rely  
26 on the erroneous federal trial court decisions from Nevada. Several of those trial court decisions  
27 have additional glaring errors. For example, several of Defendants' cases concluded that the  
28

1 foreclosure companies were not required to obtain a license because their foreclosure activities  
2 were not “doing business” in the state. *See, e.g., Karl v. Quality Loan Serv. Corp.*, 759 F. Supp. 2d  
3 1240, 1248 (D. Nev. 2010). Under NRS 80.015(1), activities such as creating or acquiring  
4 indebtedness, mortgages and security interest in real or personal property, and securing or  
5 collecting debts or enforcing mortgages and security interests in property securing the debts do not  
6 technically constitute doing business in the State of Nevada for the sole purpose of determining  
7 whether a foreign corporation is required to register with the Nevada Secretary of State under NRS  
8 chapter 80. However, “the fact that a person is not doing business in this state within the meaning  
9 of this section . . . does not affect the applicability of any other provision of law with respect to the  
10 person and may not be offered as a defense or introduced in evidence in any civil action, . . .  
11 involving an alleged violation of chapter 597, 598, or 598A of NRS.” NRS 80.015(4)(b) (emphasis  
12 added).

13 Defendants’ reliance on the federal trial court cases is therefore erroneous because these  
14 cases generally failed to consider NRS 80.015(4)(b). *See, e.g., Karl*, 759 F. Supp. 2d at 1248 (D.  
15 Nev. 2010) (finding that “[s]ecuring or collecting debts or enforcing mortgages and security interest  
16 in property securing the debts” does not constitute “doing business” in Nevada under NRS  
17 80.015(h)). None of these cases attempted to consider or examine NRS 80.015(4), which clearly  
18 requires Defendants to comply with Nevada’s deceptive trade practice statutes regardless of  
19 whether their foreclosure and collection activities technically constitute “doing business” in the  
20 State for other purposes. Therefore, Defendants were required to comply with the license  
21 requirement of NRS 649.075, pursuant to NRS 80.015(4) and NRS 598.0923(1).

22 Defendants’ reliance on unpublished federal district court cases is also misplaced because  
23 they are distinguishable and/or unpersuasive. For example, one decision relied on by Defendants is  
24 *Padilla v. PNC Mortg.*, 2011 WL 3585484 (D. Nev. Aug. 15, 2011). In *Padilla*, the plaintiff  
25 brought, in addition to other claims, a wrongful foreclosure claim under NRS 649.020, and the  
26 court determined that “there is no private right of action under NRS Chapter 649.” *Id.* at \*1, 4.

1 *Padilla* did not involve the question of private right of action with respect to the deceptive trade  
2 practice statute.

3 Furthermore, the above district court decisions do not instruct this Court because they do not  
4 carry any binding precedential effect. *See, e.g., NASD Dispute Resolution, Inc. v. Judicial Council*,  
5 488 F. 3d 1065, 1069 (9th Cir. 2007) (“[A] district court opinion does not have binding precedential  
6 effect.”).

7  
8 **III. UNDER NEVADA LAW AND THE SAC, DEFENDANTS ENGAGED IN DEBT**  
9 **COLLECTION ACTIVITIES AND WERE REQUIRED TO BE LICENSED AS**  
10 **COLLECTION AGENCIES AS THEY ENGAGED IN MUCH MORE THAN THE**  
11 **MINISTERIAL ACT OF RECORDING NOTICES OF DEFAULT**

12 Defendants’ contentions disregard well-established principles under Rule 12(b)(5) and  
13 ignore the allegations stated by Plaintiffs in the SAC. As previously noted, the SAC clearly  
14 establishes that Defendants engaged in more than ministerial activities of recording notices of  
15 default. For instance, Plaintiffs allege that Defendants were involved only when debt was past due  
16 and needed to be collected; that they solicited information from their clients (lenders) to find out the  
17 payoff amounts; that they sent notices that state “it is an attempt to collect a debt”; that they asked  
18 debtors to send cashier’s checks to their accounting office to pay off debt; that they periodically  
19 provided wire instructions to debtors, so that they would be able to make payments; that they sent  
20 debt validation notices to debtors; and that they forwarded the payment amounts, or the amounts  
21 they obtained from selling properties at auctions, to the lender. *See, e.g., SAC*, ¶¶ 23. These  
22 allegations demonstrate that Defendants engaged in more than default recordation activities, such as  
23 by actually collecting and handling money on behalf of their client lenders and, therefore, were  
24 subject to the license requirement under NRS 649.075. *See e.g., Reese*, 678 F.3d 1211; *Ottovich v.*  
25 *Washington Mutual*, 2010 U.S. Dist. LEXIS 99161 (N.D. Cal. Sept. 22, 2010) (Alsup, J.).

26 Furthermore, even if federal law applied under the FDCPA, which it does not, based on  
27 Plaintiffs’ allegations that Defendants’ activities went far beyond merely mailing and recording a  
28 notice of default, on the specific facts alleged here, Defendants’ actions constitute debt collection.  
*See e.g., Reese*, 678 F.3d 1211, *Ottovich*, 2010 U.S. Dist. Lexis 99161; *see also Natividad v. Wells*



1 *Fargo Bank, N.A.*, 2013 U.S. Dist. LEXIS 74067 (C.D. Cal. May 24, 2013); *Pfeifer v. Countrywide*  
2 *Home Loans Inc.*, 211 Cal.App.4th 1250, 150 Cal.Rptr.3d 673 (Ct. App. 2012).

3  
4 **IV. THE PRIOR *QUALITY LOAN* DECISION DOES NOT HAVE PRECLUSIVE  
EFFECT IN THIS CASE**

5 **A. The Four Requirements For Issue Preclusion Have Not Been Established**

6 Issue and claim preclusion do not apply unless specific requirements are met. *Redrock Valley*  
7 *Ranch, LLC v. Washoe County*, 127 Nev. Adv. Rep. 38, 254 P.3d 641, 646 (2011). The “following  
8 factors are necessary for application of issue preclusion: (1) the issue decided in the prior litigation  
9 must be identical to the issue presented in the current action; (2) the initial ruling must have been on  
10 the merits and have become final; . . . (3) the party against whom the judgment is asserted must  
11 have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and  
12 necessarily litigated.” *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713  
13 (internal quotation marks and citation omitted; second alteration in original). The fourth  
14 requirement means that the issue in the prior case was “actually litigated and determined by a valid  
15 and final judgment, and the determination [was] essential to the judgment.” *In re Sandoval*, 126  
16 Nev. Adv. Rep. 15, 232 P.3d 422, 424 (quoting *Restatement (Second) of Judgments*  
17 (“*Restatement*”), section 27 (1982)).

18 “Additionally, claim and issue preclusion cannot *enlarge* an order that the rendering judge  
19 *expressly limited*.” *Holt v. Reg'l Tr. Servs. Corp.* 127 Nev. Adv. Rep. 80, 266 P.3d 602, 605 (2011).  
20 “The availability of issue preclusion is a mixed question of law and fact, in which legal issues  
21 predominate”; moreover, even “[o]nce it is determined [to be] available, the actual decision to  
22 apply it is left to the discretion of the tribunal in which it is invoked.” *Redrock Valley Ranch*, 127  
23 Nev. Adv. Rep. 38, 254 P.3d at 647 (internal quotation marks omitted; alterations in original). “The  
24 party seeking to assert a judgment against another has the burden of proving the preclusive effect of  
25 the judgment.” *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 481, 215 P.3d 709, 718 (2009).

26 1. It Is Improper for Defendants to Raise Issue Preclusion by Motion to  
27 Dismiss

1 As a preliminary matter, it is generally procedurally improper under Nevada law for  
2 Defendants to raise issue preclusion by way of a motion to dismiss because issue preclusion is an  
3 *affirmative* defense that must be both pled and proven by the party asserting it. *See* N.R.C.P. 8(c)  
4 (“In pleading to a preceding pleading, a party shall set forth *affirmatively* . . . estoppel, . . . res  
5 *judicata*, . . . and any other matter constituting an avoidance or affirmative defense.”); *Bower*, 125  
6 Nev. at 481 (“The party seeking to assert a judgment against another has the *burden of proving* the  
7 preclusive effect of the judgment.”); *Schwartz v. Schwartz*, 95 Nev. 202, 204, 591 P.2d 1137, 1139  
8 (1979) (“Res *judicata* is an affirmative defense that must be specifically pleaded.”). Accordingly, it  
9 would be improper for the Court to adjudicate in a motion to dismiss Defendants’ affirmative  
10 defense of issue preclusion. The Court should expressly decline to do so, especially in order to  
11 avoid unfairly prejudicing Plaintiffs by considering matters outside the pleadings, thereby  
12 converting Defendants’ motion to dismiss into a motion for summary judgment while failing to  
13 give Plaintiffs discovery and a “reasonable opportunity to present all material made pertinent to  
14 such a motion by Rule 56” of the Nevada Rules of Civil Procedure. *See* N.R.C.P. 12(b) (“If . . .  
15 matters outside the pleading are presented to and not excluded by the court, the motion shall be  
16 treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall  
17 be given reasonable opportunity to present all material made pertinent to such a motion by Rule  
18 56.”); *see also Redrock Valley Ranch*, 254 P.3d at 647.

19 i. The Issue Decided in Prior QLS Litigation Is Not Identical to Issue Presented Here

20 For issue preclusion to be available, the issue decided in the prior litigation must be  
21 identical to the issue or issues presented in the current action. *See Five Star Capital Corp.*, 124 Nev.  
22 at 1055, 194 P.3d at 713. Defendants mistakenly contend that the “precise issue” presented in  
23 *Quality Loan* is the same as the issue before the Court in this action. *See, e.g.,* Defs’ Motion to  
24 Dismiss, p. 6. According to Defendants, this first requirement for issue preclusion is “easily met”  
25 because, Defendants assert, the “issue decided in *Quality Loan* is identical to the collection agency  
26 issue underlying this lawsuit.” *Id.* at p. 17. Not so.

27 According to his written order in *Quality Loan*, the pertinent issue decided by Judge  
28 Williams was whether a foreclosure trustee who is *only* exercising the power of sale under a deed of



1 According to his written order in *Quality Loan*, the pertinent issue decided by Judge  
2 Williams was whether a foreclosure trustee who is *only* exercising the power of sale under a deed of  
3 trust and NRS 107 is collecting a debt or claim, or soliciting the payment of a debt as defined in  
4 NRS 649 such that the trustee is required to be licensed as a collection agency by the FID. *See, e.g.,*  
5 *Quality Loan*, at 2-3. Defendants do not appear to dispute this. *See, e.g.,* Defs' Motion to Dismiss,  
6 p. 10.

7 As discussed throughout this brief, Plaintiffs here, despite Defendants' assertions to the  
8 contrary, do not allege that Defendants were required to be licensed by the FID as collection  
9 agencies solely because they recorded a notice of default as trustees. Rather, Plaintiffs have alleged  
10 in the SAC that *these* Defendants were required to be licensed by the FID because they were in fact  
11 collection agencies and simultaneously engaged in collection activity under Nevada law when they  
12 performed the non-judicial foreclosures that are alleged in the SAC. Defendants' activities as  
13 collection agencies are evidenced by—but certainly not limited to—the various actions they took in  
14 carrying out these non-judicial foreclosures. These actions included but were not limited to  
15 soliciting the work from the banks, demanding payment on past due debts, and collecting and  
16 forwarding payments. These issues are not identical to the content of Judge Williams' order in  
17 *Quality Loan*: whether a trustee of a deed of trust "who is *only* exercising the power of sale under  
18 NRS chapter 107 . . . is required to obtain a license from the FID as a collection agency" when  
19 "*merely* exercising the power of sale specifically granted" under a deed of trust and NRS 107.<sup>8</sup>

20 To the extent that Defendants may attempt to argue that Judge Williams decided more than  
21 his written order in *Quality Loan* expresses, Nevada law is clear: issue preclusion cannot "enlarge  
22 an order that the rendering judge expressly limited." *Holt v. Reg'l Tr. Servs. Corp.* 127 Nev. Adv.  
23 Rep. 80, 266 P.3d 602, 605 (2011). This Court should not entertain any arguments as to what issues  
24 Judge Williams decided that would exceed or enlarge the text of his written order.

25 ii. Defendants Fail to Establish Privity

26  
27 <sup>8</sup> As discussed below, Plaintiffs do not allege that *all* trustees of deeds of trust are also collection  
28 agencies by virtue of their being trustees. *See* NRS 107.028. It is clear, however, that *some* trustees  
are collection agencies—and must obtain licenses from the FID accordingly—as well as trustees.

1 (a) Privity under Restatement Section 41 Is Lacking

2 “Issue preclusion can only be used against a party whose due process rights have been met  
3 by virtue of that party having been a party or in privity with a party in the prior litigation.”  
4 *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. Adv. Rep. 28, 321 P.3d 912, 917 (2014) (quoting  
5 *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 481, 215 P.3d 709, 718 (2009)). For this privity  
6 requirement, the Nevada Supreme Court has adopted the *Restatement* section 41's “examples of  
7 privity that arises when a plaintiff's interests are being represented by someone else.” *Id.* at 917-918  
8 (citing *Restatement* § 41(1982)).

9 Defendants mistakenly contend that privity is established here under the *Restatement's*  
10 examples of a person who was represented by an “official or agency invested by law with authority  
11 to represent the person's interests.” *See Restatement* § 41(1)(d). Defendants fail to take into account  
12 the important guidance found in the comments to section 41(1)(d), however. Comment *d* to section  
13 41 states that:

14  
15 As an aspect of the powers and responsibilities of his office, a public official may have  
16 authority to maintain or defend litigation on behalf of individuals or of a collective public  
17 interest. That authority may be construed as *exclusive*, in that maintaining an action to  
18 protect the interest, or defending the interest when an action concerning it is brought by  
19 another, is treated as solely within the authority of the official or agency involved. When the  
20 authority of the official or agency is so construed, other persons correlatively are denied  
21 judicially enforceable interest in the matter, or as it may be called ‘standing to sue,’ and are  
22 thus unable to become parties to litigation concerning the interest. *In such circumstances,*  
23 *the question of their being precluded in subsequent litigation by hypothesis cannot arise.*

24 In other circumstances, the authority of the public official or agency is coexistent with that  
25 of individuals or members of the public, such as citizens or taxpayers, in that the latter are  
26 recognized as having a legally enforceable right permitting them to bring or defend an  
27 action concerning an interest which the official or agency may also seek to protect through  
28 litigation. Where this is so, a further question presented is whether the exercise of the  
official or agency's authority . . . should be construed as preempting the otherwise available  
opportunity of the individual or members of the public to prosecute or defend litigation in  
the matter. Where the exercise of that authority is regarding as preemptive, the public  
official or agency represents such other persons for the purposes of litigation concerning the  
interests in question and the judgment is binding on them. *On the other hand, the remedies*  
*that a public official is empowered to pursue may be interpreted as being supplemental to*  
*those which private persons may pursue themselves. In that circumstance, the official's*  
*maintenance of an action does not preclude other litigation by the persons affected. The*

1        *opposing party, however, may be precluded from relitigating issues determined in the first*  
2        *action . . . .*  
3        (emphasis added).

4        Here, Defendants have failed to even address—let alone establish—whether the authority of  
5        the FID is exclusive, or, if not exclusive, preemptive such that the prior litigation would be binding  
6        on Plaintiffs here.<sup>9</sup> That omission is fatal to Defendants’ preclusion argument, especially as the  
7        statutes cited by Defendants show that the FID’s authority is exclusive. For instance, the authority  
8        of the FID to suspend or revoke the license of a collection agency, found in NRS 649.395(2)(a), and  
9        to revoke management of multiple collection agencies, found in NRS 649.220(4)(a)-(b), is  
10       exclusive, insofar as it is solely within the power of the FID rather than coexistent with the powers  
11       of individuals or members of the public (such as Plaintiffs here). Similarly, the power of the FID to  
12       issue cease and desist orders as part of its disciplinary powers—the very power, indeed, whose  
13       exercise led to the *Quality Loan* decision—is vested by the Nevada legislature *exclusively* in the  
14       FID Commissioner. See NRS 649.390(2) (“If the Commissioner determines that an unlicensed  
15       person is engaging in an activity for which a license is required pursuant to this chapter, the  
16       Commissioner shall issue and serve on the person an order to cease and desist from engaging in the  
17       activity until such time as the person obtains a license from the Commissioner.”). Because members  
18       of the general public—such as Plaintiffs here—thus were and are unable to become parties to such  
19       litigation, the question of their being precluded in subsequent litigation cannot arise as a matter of  
20       law. See *Restatement* § 41, cmt. d; see also *Democratic Cent. Comm. v. Washington Met. Area*  
21       *Transit Comm’n*, 842 F.2d 402, 409-410 n.52 (D.C. Cir. 1988) (“The American Law Institute  
22       distinguishes between agencies granted *exclusive* authority to litigate on behalf of the public and  
23       agencies whose legal authority *coexists* with that of private citizens. As to the former, no question  
24       of preclusion can arise because individuals have no standing to sue. As to the latter, one must  
25       determine whether the agency’s action *preempts* individual action. Non-preemptive agency action  
26       does *not* prevent a later suit by an individual.”) (emphasis added; citations to *Restatement* § 41

27       <sup>9</sup> It would be unfair to allow Defendants to attempt to rectify this failure through their reply brief,  
28       since Plaintiffs would be deprived of the opportunity to respond insofar as Defendants failed to  
     raise these points in their moving papers.

1 omitted). Defendants have also failed to show that the FID has been invested by law with authority  
2 to represent individuals such as Plaintiffs in civil actions such as the one before Court here and  
3 recover damages on their behalf. *Cf. Mohammed v. May Dep't Stores, Inc.*, 273 F.Supp. 2d 531,  
4 535 (U.S. Dist. Ct. D. Del. 2003) ("The EEOC is invested by law with the power to represent  
5 aggrieved individuals in civil actions against employers to recover damages for discrimination.").

6 To the extent that the FID's authority might not be exclusive, Defendants have failed to  
7 establish that exercise of that authority preempts subsequent individual action (such as by Plaintiffs  
8 here) rather than being supplemental to the remedies that private parties may pursue themselves.  
9 See Restatement § 41, Comment d. Here, for instance, an action for remedies such as damages by  
10 Plaintiffs would properly be supplemental to the remedies available to the FID in the prior  
11 proceeding, which was prospectively concerned with enforcing compliance with Nevada law rather  
12 than seeking damages for past harm suffered by failure to comply with such law.

13 The two cases cited by Defendants are not to the contrary. In the first, the question of privity  
14 concerned an estate and its beneficiary, which does not implicate the same exclusivity and  
15 preemption considerations that representation by public officials and agencies does. *See Alcantara*,  
16 130 Nev. Adv. Rep. 28, 321 P.3d at 917-918. The second, a California case that predates by  
17 decades Nevada's substantial revisions to its law of issue and claim preclusion, applied the doctrine  
18 of *claim* rather than *issue* preclusion, which have distinct purposes. *Cf. Rynsbarger v. Dairymen's*  
19 *Fertilizer Cooperative, Inc.*, 266 Cal.App.2d 269, 275-276 (Cal. Ct. App. 1968), *with Five Star*, 124  
20 Nev. at 1054, 194 P.3d at 721-713 ("As a result of this lack of clarity in our case law regarding the  
21 factors relevant to determining whether claim or issue preclusion apply, we take this opportunity to  
22 establish clear tests for making such determinations. We now specifically adopt the terms of claim  
23 preclusion and issue preclusion as the proper terminology in referring to these doctrines. This will  
24 help avoid confusion and interchanging use of the two separate doctrines . . .").

25 In *Rynsbarger*, moreover, the California appellate court concluded that privity between  
26 three cities and private individuals existed because the private individuals were "so identified in  
27 interest" with the public parties from the first proceeding that those individuals "although not  
28

1 before the court in person, [had been] so far represented by others that [their] interest received  
2 actual and efficient protection.” *Rynsburger*, 266 Cal.App.2d at 277-278. It was also significant that  
3 the private individuals had previously requested the public parties to initiate the prior public  
4 nuisance action on their behalf, the prior lawsuit had been “filed for the purpose of benefiting all  
5 property owners” (including the private individuals) affected by the public nuisance, and many of  
6 the allegations in the complaints in the two cases were “substantially the same.” *Id.* at 276. Here, in  
7 contrast, the *Quality Loan* action was not carried out at Plaintiffs’ request, was not expressly  
8 initiated on Plaintiffs’ behalf, did not contain substantially the same allegations as those found in  
9 Plaintiffs’ SAC here, and did not seek damages for Plaintiffs.

10 **B. The Exceptions to Privity Found in Section 42 Apply**

11 Equally troubling is Defendants’ failure to acknowledge or address the exceptions found in  
12 section 42 of the *Restatement* to the privity rule found in section 41. These exceptions are expressly  
13 referred to in and thus incorporated by section 41 itself. Defendants’ failure to address these  
14 exceptions is especially surprising as at least two of the exceptions apply here: the exceptions for  
15 divergence of interest and lack of diligence. *See Restatement* §42(1)(d)-(e), Comments *e* and *f*.

16 **C. The FID’s Interests Substantially Diverged From Those of Plaintiffs Here**

17 Here, there are ample grounds for this Court to find that the FID’s interests in beginning and  
18 then defending the *Quality Loan* proceeding substantially diverged from the interests of Plaintiffs  
19 here, such that the FID could not and did not fairly represent Plaintiffs as to the matters for which  
20 the prior proceeding is invoked now by Defendants. *See Restatement* § 42(d). The FID simply  
21 wanted QLS to get its license in Nevada, and QLS did so. The FID’s interest in bringing the prior  
22 proceeding was to insure compliance by Defendant QLS with Nevada law and the FID’s  
23 regulations. *See* Defs’ Ex. B and Plaintiffs’ Exhibit D (showing FID sought to make QLS comply  
24 with Nevada licensing requirements). The FID in the prior proceeding had no interest—and the  
25 prior proceeding could not have led to—obtaining damages or other relief for Plaintiffs’ here, for  
26 the injuries they have alleged in the SAC. There was no deceptive trade practices claim for  
27 damages. During the course of the prior proceeding, QLS obtained a certificate as a foreign  
28 collection agency from the FID. *See* Plaintiffs’ Exs. A & B. Once that happened, the FID’s interests

1 in defending the prior proceeding vastly diverged from those of Plaintiffs here, as the FID had  
2 achieved its goals in initiating the prior action, whereas Plaintiffs, who had not and still have yet to  
3 receive relief for the harm they suffered, had achieved nothing. Similarly, as discussed throughout  
4 this brief, once the Nevada legislature amended the relevant statutes to satisfy the FID's interests,  
5 the FID presumably had no reason to continue to defend the prior action by appeal. These statutory  
6 revisions, however, did not meet Plaintiffs' interests here, since they did nothing to provide  
7 Plaintiffs relief for the damages they incurred. Accordingly, the substantial divergence of interests  
8 between the FID and Plaintiffs here establishes that privity does not exist between them as the FID  
9 could not fairly represent Plaintiffs in the prior proceeding. *See S.O.V. v. People ex rel. M.C.*, 914  
10 P.2d 355, 359-361 (Colo. 1996) (State and non-party child deemed not to be in privity in prior  
11 paternity suit because "child's interests in a paternity proceeding are of a different and broader  
12 nature than those of the State"); *see also Democratic Cent. Comm.*, 842 F.2d at 409-410 (No privity  
13 because "Commission's representation . . . was clearly less than the advocacy of private parties"  
14 and the "interests of PUC and Transit's farepayers differed markedly").

15 **D. QLS Was on Notice that the FID Failed to Prosecute or Defend in**  
16 **Quality Loan with Due Diligence and Reasonable Prudence**

17 There are also good grounds here for this Court to conclude that the FID failed to prosecute  
18 the *Quality Loan* proceeding with due diligence and reasonable prudence, and that QLS was on  
19 notice of the facts making that failure apparent. *See Restatement* § 42(e). Despite serious errors of  
20 law in Judge Williams' *Quality Loan* decision, the FID failed to appeal it, thereby demonstrating a  
21 lack of due diligence and reasonable prudence on the FID's part in representing Plaintiffs' interests.  
22 As the opposing party to the prior proceeding, QLS naturally was on notice of the FID's failure to  
23 appeal—and thus on notice of the FID's failure to defend the prior action adequately. Given QLS  
24 had by then obtained the certificate that the FID insisted it required, and the Nevada legislature had  
25 amended relevant statutes in ways favorable to the FID, the FID's failure to appeal may have been  
26 sensible *as to the FID's interests* but, as noted above, certainly was *not* due diligence and  
27 reasonable prudence as to *Plaintiffs' different and broader interests*. Thus, the FID's failure to  
28 appeal was such "grossly deficient" management of the litigation as far as Plaintiffs' interests were



(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 of Clark :

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

Legal description attached hereto and made a part hereof.

which currently has the address of

Las Vegas  
[City]

, Nevada

7573 Alexander Hills

[Street]

89139  
[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 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.

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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.

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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, Loan No: 120361452

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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.

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

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

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

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

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

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

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

(b) Any such agreements will not affect the rights Borrower has — if any — with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

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

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

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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 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  
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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 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

Loan No: 120361452

Initials: *MJF*

Nevada Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

**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  
Loan No: 120361452

Initials: *[Signature]*

Nevada Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

—THE COMPLIANCE SOURCE, INC.—

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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. \$ 100 where no credit checks are required, the greater of \$400 or 1% of unpaid principal balance of the mortgage - up to a maximum of \$900 - if the change of ownership requires credit approval of the new mortgagor; or any maximum prescribed by Applicable Law.

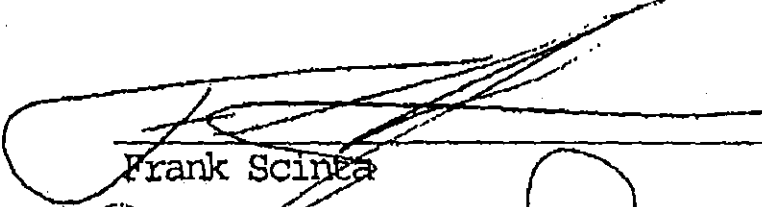
[Signatures on Following Page]

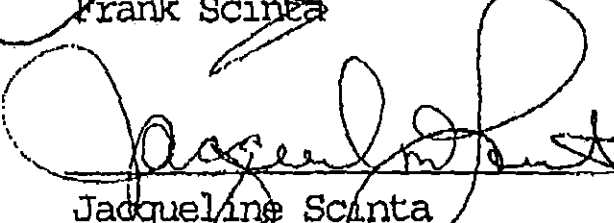
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

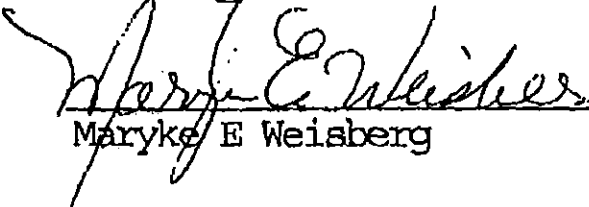
Witnesses:

Printed Name: \_\_\_\_\_  
[Please Complete]

Printed Name: \_\_\_\_\_  
[Please Complete]

  
Frank Scinta (Seal)  
-Borrower  
[Printed Name]

  
Jacqueline Scinta (Seal)  
-Borrower  
[Printed Name]

  
Maryke E Weisberg (Seal)  
-Borrower  
[Printed Name]

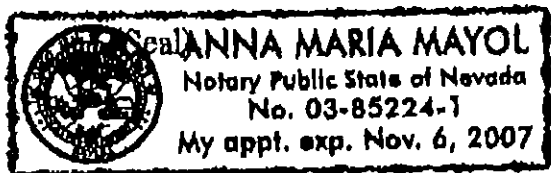
\_\_\_\_\_  
(Seal)  
-Borrower  
[Printed Name]

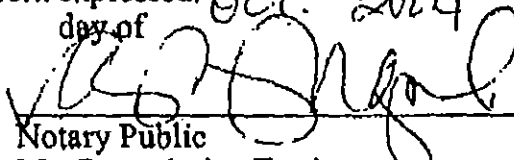
State of Nevada [Acknowledgment on Following Page]  
County of Clark §  
§  
§

Before me the undersigned authority, on this day personally appeared Frank Scinta and Jacqueline Scinta and Maryke E Weisberg

known to me (or proved to me through an identity card or other document) to be the person(s) whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal on this 15 day of Oct. 2004



  
Notary Public [Printed Name]  
My Commission Expires:

Loan No: 120361452





Order Number: 04-02-0928-SAH

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

LOT 58 IN BLOCK 1 OF LAMPLIGHT COTTAGES UNIT 3, AS SHOWN BY MAP  
THEREOF ON FILE IN BOOK 113, OF PLATS, PAGE 55, IN THE OFFICE OF THE  
COUNTY RECORDER OF CLARK COUNTY, NEVADA.

## PLANNED UNIT DEVELOPMENT RIDER

MIN: 100055401203614526

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 14th day of October, 2004, 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 IndyMac Bank, F.S.B., a federally chartered savings bank (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

7573 Alexander Hills, Las Vegas, NV 89139  
[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 Declaration of Covenants, Conditions, and Restrictions of Record (the "Declaration"). The Property is a part of a planned unit development known as

Lamplight Cottages Unit No. 3  
[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.

**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,

Loan No: 120361452

Multistate PUD Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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Initials

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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.

Loan No: 120361452

Multistate PUD Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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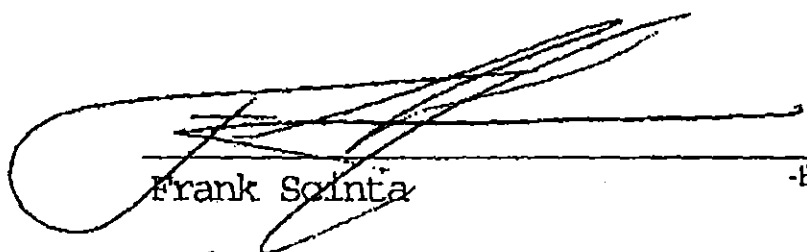
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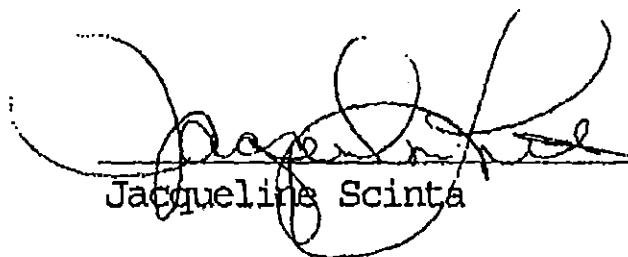
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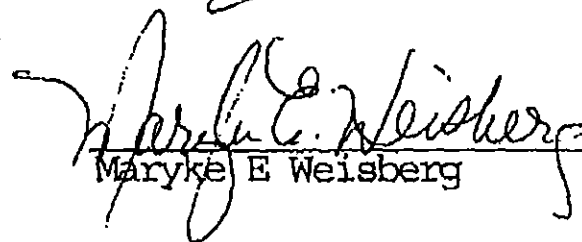
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

  
\_\_\_\_\_  
Frank Scinta (Seal)  
-Borrower

  
\_\_\_\_\_  
Jacqueline Scinta (Seal)  
-Borrower

  
\_\_\_\_\_  
Maryke E. Weisberg (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

Loan No: 120361452

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AA000592

## 1-4 FAMILY RIDER (Assignment of Rents)

Loan No: 120361452

MIN: 100055401203614526

THIS 1-4 FAMILY RIDER is made this 14th day of October, 2004, 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 IndyMac Bank, F.S.B., a federally chartered savings bank (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

7573 Alexander Hills, Las Vegas, NV 89139  
[Property Address]

**1-4 FAMILY COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT.** In addition to the Property described in Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

**B. USE OF PROPERTY; COMPLIANCE WITH LAW.** Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

**C. SUBORDINATE LIENS.** Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

Initials: 

Multistate 1-4 Family Rider—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
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**D. RENT LOSS INSURANCE.** Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

**E. "BORROWER'S RIGHT TO REINSTATE" DELETED.** Section 19 is deleted.

**F. BORROWER'S OCCUPANCY.** Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

**G. ASSIGNMENT OF LEASES.** Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

**H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notices of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorneys' fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

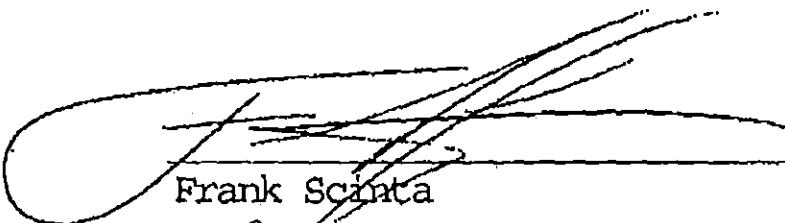
Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

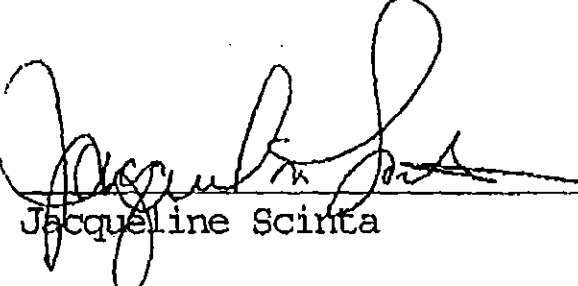


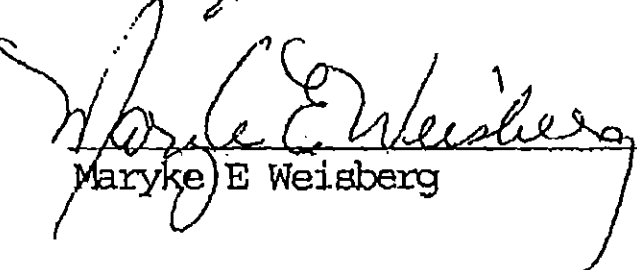
Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

**I. CROSS-DEFAULT PROVISION.** Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this 1-4 Family Rider.

  
Frank Scinta (Seal)  
-Borrower

  
Jacqueline Scinta (Seal)  
-Borrower

  
Maryke E Weisberg (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

## FIXED/ADJUSTABLE RATE RIDER

(One-Year Treasury Index - Rate Caps)

Loan #: 120361452

MIN: 100055401203614526

THIS FIXED/ADJUSTABLE RATE RIDER is made this 14th day of October 2004, 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 Fixed/Adjustable Rate Note (the "Note") to IndyMac Bank, F.S.B., a federally chartered savings bank

("Lender") of the same date and covering the property described in the Security Instrument and located at:  
7573 Alexander Hills, Las Vegas, NV 89139

[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE 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. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 6.000 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

#### 4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

##### (A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of November 2007, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."



MULTISTATE FIXED/ADJUSTABLE RATE RIDER - ONE-YEAR TREASURY INDEX- Single Family

Page 1 of 4

8480548 (0309)

VMP Mortgage Solutions (800)621-7291

Initials:

*mm*  
*FF*  
*OK*

6008  
8/03

AA000596



**(B) The Index**

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board. The most recent Index figure available as of the date 45 days before each Change Date 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 750/1000ths percentage points ( 2.750 %) 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 9.000 % or less than 3.000 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 12.000 %.

**(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 initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any 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.

**(G) Date of First Principal and Interest Payment**

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment due after the first Change Date.

Loan No: 120361452

8480548 (0309)

Page 2 of 4

Initials: mw

6008

8/03



*[Handwritten signature]*

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

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall 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.

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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be 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.

Loan No: 120361452

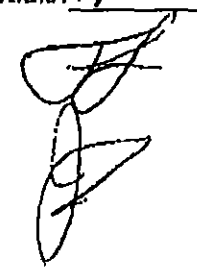
8480548 (0309)

Page 3 of 4

Initials: 

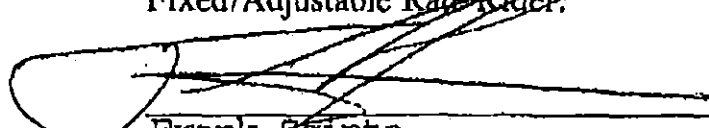
6008

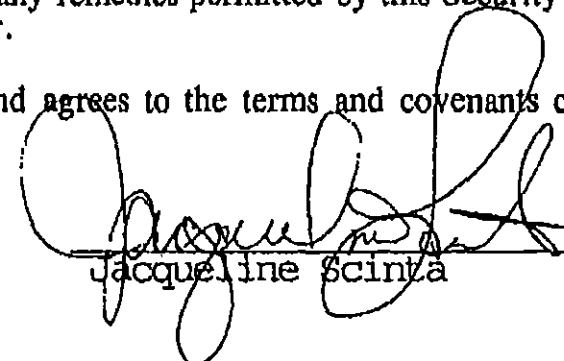
8/03

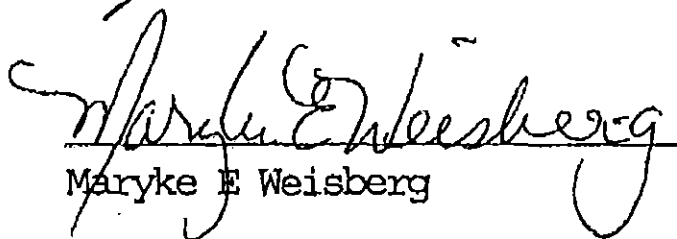


If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security 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 Fixed/Adjustable Rate Rider.

 (Seal)  
Frank Scinta -Borrower

 (Seal)  
Jacqueline Scinta -Borrower

 (Seal)  
Maryke E Weisberg -Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

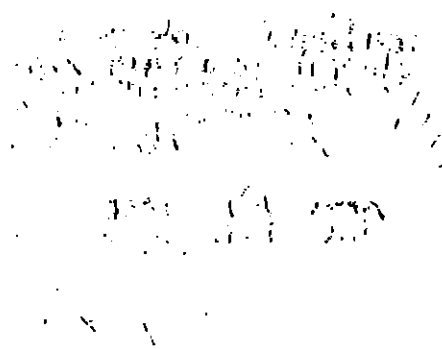
8480548 (0309)

Page 4 of 4

6008  
8/03

Loan No: 120361452





AA000599

CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

DEC. 08. 2015

*Debbie Conaway*  
RECORDER

AA000600

# EXHIBIT A-16



20050301-0003922

Fee: \$34.00

N/C Fee: \$0.00

03/01/2005

14:18:48

T20050037642

Requestor:

ACCUDATA TITLE LLC

Frances Deane

KGP

Clark County Recorder

Pgs: 21

Assessor's Parcel Number:

162-04-311-025

Return To:

AMERICAN MORTGAGE EXPRESS DBA MILLENNIUM  
FUNDING GROUP

805 BROADWAY SUITE 600

VANCOUVER, WA 98660

Prepared By:



Recording Requested By:

AMERICAN MORTGAGE EXPRESS FINANCIAL DBA  
MILLENNIUM FUNDING GROUP

NV0501-11635 C-147

[Space Above This Line For Recording Data]

## DEED OF TRUST

LOAN NO.: 05020700

MIN 100147300050207006  
MERS Phone: 1-888-679-6377

### 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  
together with all Riders to this document.

FEBRUARY 23, 2005

(B) "Borrower" is

PATTY SEGURA, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

AMERICAN MORTGAGE EXPRESS FINANCIAL DBA MILLENNIUM FUNDING GROUP

Lender is a CORPORATION


organized and existing under the laws of CALIFORNIA

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

VMP-6A(NV) (0307)

Page 1 of 15

LENDER SUPPORT SYSTEMS INC MERS6ANV NEW 108/031

Initials:   
Form 3029 1/01

AA000602

Lender's address is  
805 BROADWAY SUITE 600, VANCOUVER, WA 98660

(D) "Trustee" is  
ACCUDATA TITLE

(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 FEBRUARY 23, 2005

The Note states that Borrower owes Lender

TWO HUNDRED FORTY THOUSAND AND NO/100 X X X X X X X X X X X X X X X X

Dollars

(U.S. \$240,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MARCH 01, 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"/> 1-4 Family Rider
<input type="checkbox"/> Graduated Payment Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> Biweekly Payment Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Rate Improvement Rider	<input type="checkbox"/> Second Home Rider
<input checked="" type="checkbox"/> Other(s) [specify]	PREPAYMENT RIDER	

(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, 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]:

LOT FORTY-ONE (41) IN BLOCK FOUR (4) OF GLEN HEATHER ESTATES UNIT NO. 4, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 8 OF PLATS, PAGE 9, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Parcel ID Number: 162-04-311-025

which currently has the address of

1801 LOCH LOMOND WAY [Street]  
LAS VEGAS [City], Nevada 89102 [Zip Code]

("Property Address"):

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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.

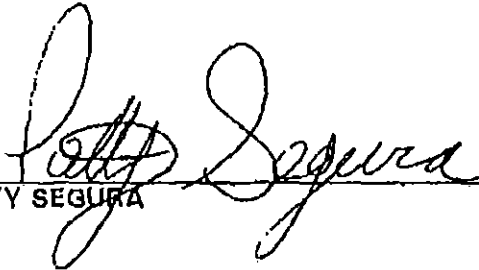
**25. Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$

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:

\_\_\_\_\_  
-Witness

\_\_\_\_\_  
-Witness

  
PATTY SEGURA (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

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(Seal)  
-Borrower

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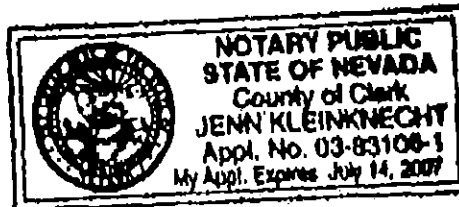
STATE OF NEVADA  
COUNTY OF *Clark*

This instrument was acknowledged before me on *2-23-05* by  
PATTY SEGURA

*Jenn Kleinknecht*

Mail Tax Statements To:

AMERICAN MORTGAGE EXPRESS FINANCIAL DBA MILLENNIUM  
FUNDING GROUP  
805 BROADWAY SUITE 600  
VANCOUVER, WA 98660



## ADJUSTABLE RATE RIDER

(6-Month LIBOR Index - Rate Caps)

(Assumable during Life of Loan) (First Business Day of Preceding Month Lookback)

LOAN NO.: 05020700

MIN: 100147300050207006  
MERS Phone: 1-888-679-6377

THIS ADJUSTABLE RATE RIDER is made this 23rd day of FEBRUARY, 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 the Borrower's Adjustable Rate Note (the "Note") to AMERICAN MORTGAGE EXPRESS FINANCIAL DBA MILLENNIUM FUNDING GROUP

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

1801 LOCH LOMOND WAY, LAS VEGAS, NV 89102

[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE 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 8.500 %. 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 MARCH, 2007, and may change on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

Initials: 

MULTISTATE ADJUSTABLE RATE RIDER 6-Month LIBOR Index (Assumable during Life of Loan) (First Business Day Lookback) - Single Family - Freddie Mac UNIFORM INSTRUMENT Form 5120 3/04  
VMP-815R (0405) Page 1 of 4 LENDER SUPPORT SYSTEMS INC. 816R.NEW (06/04)

AA000617

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the six month London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market, 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 which 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 EIGHT AND 000/1000THS percentage point(s) ( 8.000 %) 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 11.500 % or less than 8.500 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE AND 000/1000THS percentage point(s) ( 1.000 %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 13.500 % , or less than 8.500 %.

**(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**

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

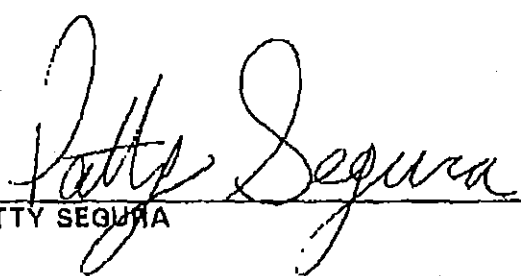
**Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales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

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

 PATTY SEGURA	(Seal) -Borrower	(Seal) -Borrower
(Seal) -Borrower	(Seal) -Borrower	(Seal) -Borrower
(Seal) -Borrower	(Seal) -Borrower	(Seal) -Borrower
(Seal) -Borrower	(Seal) -Borrower	(Seal) -Borrower



## PREPAYMENT RIDER

MIN: 100147300050207006  
MERS Phone: 1-888-679-6377

LOAN NO.: 05020700

This "PREPAYMENT RIDER" (hereinafter "Rider") is made this 23rd day of FEBRUARY, 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 made by the undersigned (the "Borrower") to secure Borrower's Note (the Note") to  
AMERICAN MORTGAGE EXPRESS FINANCIAL DBA MILLENNIUM FUNDING GROUP

(the "Lender") which is secured by the Security Instrument on real property located at:

1801 LOCH LOMOND WAY, LAS VEGAS, NV 89102  
*[Property Address]*

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

I have the right to make payments of Principal at any time before they are due. A prepayment of all of the unpaid principal is known as a "Full Prepayment." A prepayment of only part of the unpaid principal is known as a "Partial Prepayment."

Except as provided below, I may make a Full or Partial Prepayment at any time. If I make a Partial Prepayment equal to one or more of my monthly payments, my due date may be advanced no more than one month. If I make any other Partial Prepayment, I must still make each later payment as it becomes due and in the same amount. I may make a Full Prepayment at any time. However, if within the first 24 months after the execution of the Deed of Trust, I make any prepayment(s) within any 12-month period the total amount of which exceeds TWENTY percent ( 20.000 %) of the original Principal amount of this loan, I will pay a prepayment charge in an amount equal to the payment of SIX ( 6 ) months' advance interest on the amount by which the total of my prepayment(s) within that 12-month period exceeds TWENTY percent ( 20.000 %) of the original Principal amount of the loan.

Initials: 

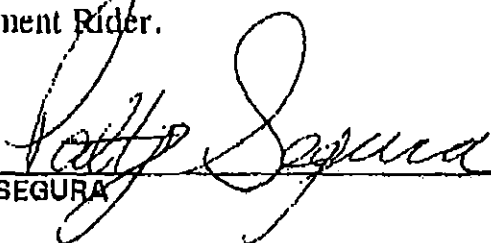
Prepayment - HARD

Page 1 of 2

LENDER SUPPORT SYSTEMS INC. PRE-NV-R PRE (05/04)

AA000621

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

 (Seal) \_\_\_\_\_ (Seal)  
PATTY SEGURA -Borrower -Borrower

\_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower

\_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower

\_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower

MY OFFICE / OFFICE  
11/11/2011  
11/11/2011  
11/11/2011

CERTIFIED COPY. THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

DEC. 08, 2015

*Rebbie Conway*  
RECORDED

# EXHIBIT B

2013 WL 6911859 (Nev. Dist. Ct.) (Trial Order)

District Court of Nevada.

Clark County

QUALITY LOAN SERVICE CORPORATION, Petitioner,

v.

STATE OF NEVADA, Department of Business and Industry, Financial Institutions Division, Respondent.

No. 12A657580.

January 3, 2013.

\*1 Dept. No.: XVI

**Decision and Order Granting Petition for Judicial Review Per NRS 233b.130**

Paul E. Larse, Nevada Bar No. 3756, Lionel Sawyer & Collins, 1700 Bank of America Plaza, 300 South Fourth Street, Las Vegas, Nevada 89101, (702) 383-8819 (Telephone), (702) 383-8845 (Fax), Attorneys for Petitioner

Timothy C. Williams, Judge.

Quality Loan Service Corporation's "Petition for Judicial Review per NRS 233B.130" (dated March 5, 2012) seeking review of the Decision of the Department of Business and Industry, Financial Institutions Division (dated February 12, 2012) came on for hearing on September 24, 2012, and the Court, having considered the Administrative Record, the briefs of the parties and Amicus Curiae, and the arguments of counsel, does hereby issue its Decision and Order, and does hereby make the following Findings and Conclusions:

***FINDINGS OF FACT***

1. In a typical real estate transaction involving a Deed of Trust, a lender loans money to a borrower to purchase real property, and the parties contractually agree that the real property shall be held in trust by a Trustee, pursuant to a Deed of Trust, as security for the loan.
2. The Deed of Trust typically contains a clause in which the borrower agrees that the Trustee may exercise the power of sale in the event of the borrower's default on the loan, or other obligations, and typically also imposes other obligations upon the borrower such as maintaining liability and casualty insurance, keeping the property in good repair, and preventing waste of the property.
3. A Borrower's obligations under a Deed of Trust also typically include additional responsibilities, such as payment of taxes on the real property held in trust.
4. Petitioner Quality Loan Service Corporation ("Petitioner") is a Trustee (by original appointment or successive appointment) of Deeds of Trust, and has historically engaged in the exercise of the power of sale granted to Trustees by such Deeds of Trust and under NRS Chapter 107.
5. In the instance under review herein, Petitioners were Trustees on a Deed of Trust which held real property in trust to secure a loan for the purchase of such real property signed by Randolph Barton and Lori Ahmadi (collectively "Barton"); said Deed of Trust contained an explicit clause granting the Trustee the ability to exercise the power of sale in the event of the borrower's default.

6. Barton defaulted on the loan. After Barton defaulted on the loan, Petitioners noticed and conducted a sale of the real property held in trust for the Barton loan pursuant to procedures dictated by NRS chapter 107.

7. After Petitioner's sale of the real property held in trust as security for the defaulted Barton loan, the Respondent Department of Business of Business and Industry, Financial Institutions Division ("FID"), received a written complaint from Barton that Petitioner's actions constituted the "collection of a debt" requiring a license from the FID as a "collection agency." At that time, Petitioner had no such license. The FID issued a Cease and Desist Order, without further investigation, which ordered Petitioner to cease all activities as a trustee under NRS chapter 107, *inter alia*, until and unless Petitioner became licensed by the FID as a "collection agency".

\*2 8. The Cease and Desist Order was timely appealed by Petitioner, and an appeal hearing before the Commissioner of the FID was held on December 13, 2010.

9. After hearing evidence, arguments of counsel and briefs on the Issues, the FID Commissioner one year later (on February 14, 2012,) issued his decision concluding, *inter alia*, that a Trustee's exercise of the power of sale pursuant to the procedure set forth under NRS Chapter 107 constitutes the collection of, or solicitation of payment of, a claim and the Commissioner therefore ruled that the Petitioner was required to be licensed as a collection agency by the FID in order to exercise the power of sale under a Deed of Trust or NRS Chapter 107.

10. Petitioner has timely appealed the FID's decision, and the Court has received the record of the Administrative Proceedings, the briefs of the parties and Amicus Curae, and heard the arguments of counsel at hearing on September 24, 2012, and having considered the matter, now issues its decision on the Petitioner's Petition for Judicial Review.

### CONCLUSIONS OF LAW

1. Under NRS Chapter 107, a Trustee has the ability to exercise the power of sale for real property held as security for a note upon the default of the borrower for that note.

2. Pursuant to state policy articulated in NRS 80.015, 86.5483(1)(6) and 87A.615, until the passage and implementation of AB 284 in 2011, Trustees exercising the power of sale under a Deed of Trust did not be licensed to do business in the state of Nevada.

3. Pursuant to applicable precedent, the exercise of the power of sale by a Trustee under NRS Chapter 107 is not "doing business" in Nevada. *See e.g. Bonicamp v. Vasquez*, 107 Nev. 377 (2004); *McMillan v. United Mtg. Co.* 82 Nev. 117 (1966); *Bruce v. Homefield Financial Inc.*, 2011 WL 4479736 (U.S. District Court, D. Nev. 2011)

4. Pursuant to applicable precedent, the exercise of the power of sale under a Deed of Trust is not the collection or solicitation of payment of a claim *See e.g. Bruce v. Homefield. supra.*

5. As a matter of applicable law, the exercise of the power of sale by a Trustee under NRS Chapter 107, including giving the required notices and conducting sale of the real property held as security, is not the collection of debt or claim or the solicitation of payment of a debt or claim under NRS Chapter 649.

6. Based upon the foregoing, a Trustee exercising the power of sale pursuant to the procedures set forth in NRS chapter 107 is not required to obtain a license as a "collection agency" from the FID prior to exercising the power of sale under a Deed of Trust.

7. Because Petitioner, as a Trustee, was merely exercising the power of sale specifically granted under the Barton's Deed of Trust, as well as NRS Chapter 107, Petitioner was not collecting a debt or claim or soliciting the payment of a debt as defined in NRS Chapter 649, and therefore was not required to be licensed by the FID as a collection agency.

8. Based upon the foregoing, the Cease and Desist Order issued by the FID against the Petitioner in 2010 was legally flawed, in that it required Petitioner to cease and desist exercising the Power of Sale under NRS Chapter 107 unless it were licensed as a collection agency under NRS Chapter 649.

\*3 9. Based upon the foregoing, the Decision of the FID was also legally flawed, *in. that:*

(A) The notices required by NRS Chapter 107 in the event of default by the borrower are not the solicitation of payment of a debt or claim;

(B) The exercise of the power of sale by a Trustee pursuant to the procedures set forth in NRS Chapter 107 is not the collection of a debt or claim;

(C) The FID has *no* authority to regulate or oversee a Trustees exercise of the power of sale under, or issuance of the notices required by, NRS Chapter 107;

(D) Only the Judiciary, pursuant to a duly filed claim in District Court, has authority to review or oversee a Trustee's exercise of the power of sale, and its requisite notices, under NRS Chapter 107; and

(E) NRS chapter 649 gives the FID authority to regulate debt collection and collection agencies, but gives the FID no authority to regulate, license or oversee a Trustee's exercise of the power of sale under NRS Chapter 107.

10. Pursuant to NRS 233B.135, this Court has authority to reverse or affirm the Decision of the FID upon judicial review.

11. Because of the unique nature of real property, the use of a Deed of Trust to hold such real property as security for a real estate loan (which includes the Trustee's power of sale by the contractual consent of the borrower), a Deed of Trust is not a "claim" or "debt" as defined by NRS Chapter 649.

12. NRS chapter 649 does not apply to the exercise of the power of sale under a Deed of Trust. Rather, only NRS Chapter 107 regulates the exercise of the power of sale pursuant to a Deed of Trust.

13. NRS Chapter 107 grants no regulatory authority or oversight of the power of sale by Trustees to any state executive agency. Rather, all regulatory authority for the exercise of the power of sale under NRS Chapter 107 is exclusively granted to the Judiciary, by actions filed in District Court (pursuant to NRS Chapter 107) challenging validity of the Trustee's exercise of the power of sale.

14. The FID has no regulatory, licensing or enforcement authority over a Trustee's exercise of the power of sale pursuant to NRS chapter 107.

15. If any Finding or Conclusion herein shall be more appropriately designated the other, they are hereby so designated.

NOW, THEREFORE based upon the foregoing Findings and Conclusions, the Court hereby ORDERS that the Petitioner's Petition for Judicial Review per NRS 233B.130 is granted, and pursuant to the Court's authority under NRS 233B.135, the Court hereby:

1. Reverses the Decision of the FID on the grounds that a Trustee's exercise of the power of sale under NRS Chapter 107 is not the collection of a debt or claim under NRS Chapter 649, and therefore a Trustee who is only exercising the power of sale under NRS chapter 107 is not required to obtain a license from the FID as a collection agency; and

2. Orders that the Cease and Desist Order issued herein by the FID in 2010 and the Decision of the FID issued herein in 2012 are void *ab initio* due to legal error by the FID.

IT IS SO ORDERED this 2<sup>nd</sup> day of *January* 2012.

<<signature>>

DISTRICT COURT JUDGE

PREPARED AND SUBMITTED:

\*4 LIONEL SAWYER & COLLINS

By: <<signature>>

PAUL E. LARSEN

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1700 Bank of America Plaza

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Las Vegas, NV 89101

Attorneys for Petitioner

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JEFFREY BENKO, A NEVADA  
RESIDENT; ET AL.,  
Appellants,  
v.  
QUALITY LOAN SERVICE  
CORPORATION, A CALIFORNIA  
CORPORATION; ET AL.,  
Respondents

Supreme Court No. 73484

District Court Case No. A-11-619857  
Electronically Filed  
Mar 01 2018 10:07 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANTS' APPENDIX**

**VOLUME 3**

**Appeal from Eighth Judicial District Court  
Clark County, Nevada**

**The Honorable William Kephart**

**Law Office of Nicholas A. Boylan, APC**

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Nevada Bar No. 5878  
233 A Street, Suite 1205  
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Attorney for Appellants

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Lender's address is  
603 NORTH WILMOT ROAD, TUCSON, AZ 85711

(D) "Trustee" is  
FIRST AMERICAN TITLE

(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 AUGUST 07, 2007  
The Note states that Borrower owes Lender

FOUR HUNDRED THIRTY SIX THOUSAND AND NO/100 X X X X X X X X X X X X X X

Dollars

(U.S. \$ 436,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than SEPTEMBER 01, 2037

(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 type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> Graduated Payment Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> Biweekly Payment Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Rate Improvement Rider	<input type="checkbox"/> Second Home 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, 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]:

LOT FOUR, (4) IN BLOCK FIVE, (5) OF MUNICIPAL GOLF COURSE, STATES UNIT 2. BOULDER CITY NO. 49, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 37, OF PLATS, PAGE 15, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Parcel ID Number: 186-17-810-004 which currently has the address of  
1625 INDIAN WELLS DRIVE [Street]  
BOULDER CITY [City], Nevada 89005 [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

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

Initials 

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

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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

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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.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

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

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

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

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

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

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

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

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

  
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**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 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.

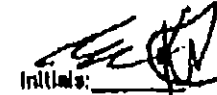
**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing 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.

  
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**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 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

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

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

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

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

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

  
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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. \$

Initials: 

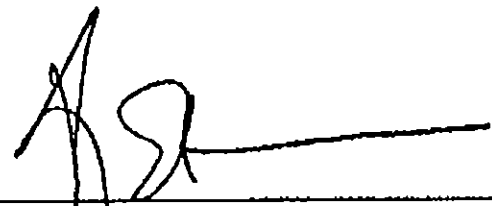
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_  
-Witness

\_\_\_\_\_  
-Witness

  
THOMAS MOORE (Seal)  
-Borrower

  
KIMBERLY MOORE (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

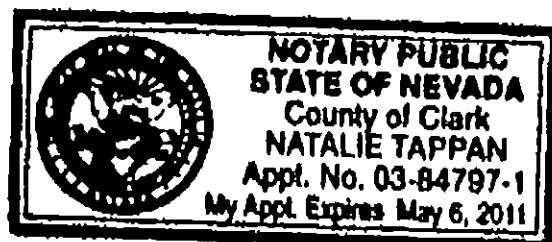
\_\_\_\_\_  
(Seal)  
-Borrower



STATE OF NEVADA  
COUNTY OF *Clark*

This instrument was acknowledged before me on *8/8/07*  
THOMAS MOORE, KIMBERLY MOORE

by



*Natalie Tappan*

Mail Tax Statements To:

CLARK COUNTY

PO BOX 551220  
LAS VEGAS, NV 89155-0000

CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

DEC. 18. 2015

*Debbie Conway*  
RECORDED

AA000512

# EXHIBIT A-12

23

20060927-0005900

Assessor's Parcel Number: 125-34-810-040

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

Recording Requested By:  
PARAMOUNT RESIDENTIAL MORTGAGE GROUP, INC

09/27/2006 14:58:54  
T20060167842

52

Requestor:  
FIRST AMERICAN TITLE COMPANY OF NEVADA

And When Recorded Return To:  
PARAMOUNT RESIDENTIAL MORTGAGE GROUP, INC  
2280 WARDLOW CIRCLE, SUITE 220  
CORONA, CALIFORNIA 92880  
Loan Number: 205060002900

Charles Harvey JKA  
Clark County Recorder Pgs: 23

Mail Tax Statements To:  
PARAMOUNT RESIDENTIAL MORTGAGE GROUP, INC, 12550 HESPERIA  
ROAD, SUITE 214, VICTORVILLE, CALIFORNIA 92395

[Space Above This Line For Recording Data]

## DEED OF TRUST

MIN: 1004247-2050600029-7

### 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 SEPTEMBER 21, 2006, together with all Riders to this document.

(B) "Borrower" is JAMES D NICO, A MARRIED MAN, AS HIS SOLE AND SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.

(C) "Lender" is PARAMOUNT RESIDENTIAL MORTGAGE GROUP, INC

Lender is a CORPORATION organized  
and existing under the laws of CALIFORNIA  
Lender's address is 12550 HESPERIA ROAD, SUITE 214, VICTORVILLE,  
CALIFORNIA 92395

(D) "Trustee" is FIRST AMERICAN TITLE COMPANY  
8350 W. SAHARA AVENUE, SUITE 110, LAS VEGAS, NEVADA 89117

(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 SEPTEMBER 21, 2006. The Note states that Borrower owes Lender ONE HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED AND 00/100 Dollars (U.S. \$ 175,200.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than OCTOBER 1, 2036.

(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):

- ☐ Adjustable Rate Rider
- ☐ Balloon Rider
- ☐ 1-4 Family Rider
- ☒ Condominium Rider

- ☐ Planned Unit Development Rider
- ☐ Biweekly Payment Rider
- ☐ Second Home Rider
- ☒ Other(s) [specify]

PREPAYMENT RIDER TO SECURITY INST

(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. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to 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

of

CLARK

:

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".  
A.P.N. : 125-34-810-040

which currently has the address of

4931 BLACK BEAR ROAD UNIT #104

[Street]

LAS VEGAS

, Nevada

89149-7719 ("Property Address"):

[City]

[Zip Code]

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

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances 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 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. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

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

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

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

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

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

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

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

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

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

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

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

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

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

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

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender 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 contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

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

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

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

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

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

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

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



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

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

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

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

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

**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 Lenders' 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.

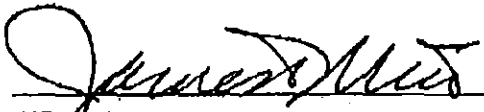
23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without 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. \$ N/A



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.

  
JAMES D NICO (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

Witness:

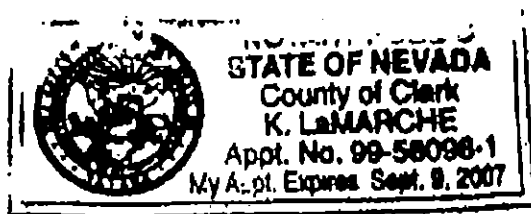
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Witness:

\_\_\_\_\_

State of Nevada  
County of CLARK

This instrument was acknowledged before me on Sept. 22. 2006  
by JAMES D NICO



(Seal)

K. LaMarche  
Notary Public

My commission expires: 9/9/07

## **EXHIBIT 'A'**

### **PARCEL 1:**

**THE RESPECTIVE INTEREST ALLOCATED TO THE UNIT DESCRIBED IN PARCEL 1A AS TENANT-IN-COMMON IN THE COMMON ELEMENTS OF PAINTED DESERT LOT 5, AS SHOWN BY MAP "PLAT" THEREOF ON FILE RECORDED IN BOOK 51 OF PLATS, PAGE 85, AND FURTHER DESCRIBED IN ARTICLE I, SECTION 1.1 OF THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR TURNING POINT COMMUNITY ASSOCIATION, RECORDED MAY 26, 1995 IN BOOK 950526 AS INSTRUMENT NO. 01118, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.**

### **EXCEPTING THEREFROM THE FOLLOWING:**

**ALL UNITS AND ASSOCIATION PROPERTY WITHIN PAINTED DESERT LOT 5 AS SHOWN ON THE PLAT.**

### **AND RESERVING THEREFROM:**

**THE RIGHT TO POSSESSION OF ALL THOSE AREAS DESIGNATED AS LIMITED COMMON ELEMENTS (EXCLUSIVE USE COMMON AREA), AS SHOWN UPON THE PLAT REFERRED TO ABOVE;**

**AND FURTHER RESERVING THEREFROM, FOR THE BENEFIT OF THE OWNERS OF CONDOMINIUMS IN ALL SUBSEQUENT PHASES, NON-EXCLUSIVE EASEMENTS ON, OVER, AND ACROSS THE ASSOCIATION PROPERTY AS DEFINED AND SHOWN UPON THE PLAT REFERRED TO ABOVE FOR INGRESS, EGRESS, AND RECREATIONAL USE, SUBJECT TO THE TERMS AND AS MORE PARTICULARLY SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS REFERRED TO ABOVE, TO WHICH REFERENCE IS HEREAFTER MADE.**

### **PARCEL 1A:**

**UNIT 102C IN BUILDING 8, OF THE PLAT AS REFERRED TO ABOVE.**

### **PARCEL 1B:**

**THE EXCLUSIVE RIGHT TO USE, POSSESSION, AND OCCUPANCY OF THOSE PORTIONS OF THE LIMITED COMMON ELEMENTS (EXCLUSIVE USE COMMON AREA) BEING DESCRIBED UPON THE PLAT AS BALCONIES, PATIOS, STAIRWAYS AND LANDINGS, AND STORAGE AREAS WHICH ARE APPURTENANT TO AND FOR THE EXCLUSIVE USE OF PARCEL 1A.**

### **PARCEL 1C:**

Loan Number: 205060002900

Date: SEPTEMBER 21, 2006

Property Address: 4931 BLACK BEAR ROAD UNIT #104, LAS VEGAS, NEVADA  
89149-7719

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

A.P.N. # : 125-34-810-040

DocMagic eForms 800-649-1362  
[www.docmagic.com](http://www.docmagic.com)

Loan Number: 205060002900

Date: SEPTEMBER 21, 2006

Property Address: 4931 BLACK BEAR ROAD UNIT #104, LAS VEGAS, NEVADA  
89149-7719

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

A.P.N. # : 125-34-810-040

DocMagic eForms 800-849-1382  
[www.docmagic.com](http://www.docmagic.com)

Loan Number: 205060002900

## CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 21st day of SEPTEMBER, 2006, 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 PARAMOUNT RESIDENTIAL MORTGAGE GROUP, INC, A CORPORATION

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

4931 BLACK BEAR ROAD UNIT #104, LAS VEGAS, NEVADA 89149-7719

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

PAINTED DESERT

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

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

**A. Condominium Obligations.** Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project 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, from 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, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application 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, whether of the unit or of the common elements, 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 Condominium Project, 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 condominium 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.

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

  
JAMES D NICO (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower



## PREPAYMENT RIDER

Loan Number: 205060002900

Date: SEPTEMBER 21, 2006

Borrower(s): JAMES D NICO

THIS PREPAYMENT RIDER (the "Rider") is made this 21st day of SEPTEMBER, 2006, 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 repayment of Borrower's promissory note (the "Note") in favor of PARAMOUNT RESIDENTIAL MORTGAGE GROUP, INC, A CORPORATION

("Lender"). The Security Instrument encumbers the Property more specifically described in the Security Instrument and located at

4931 BLACK BEAR ROAD UNIT #104, LAS VEGAS, NEVADA 89149-7719  
[Property Address]

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

### A. PREPAYMENT CHARGE

The Note provides for the payment of a prepayment charge as follows:

#### 4. BORROWER'S RIGHT TO PREPAY; PREPAYMENT CHARGE

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 the Note.

The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under the 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 the Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payment unless the Note Holder agrees in writing to those changes.

If the Note contains provisions for a variable interest rate, 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. If this Note provides for a variable interest rate or finance charge, and the interest rate or finance charge at any time exceeds the legal limit under which a Prepayment penalty is allowed, then the Note Holder's right to assess a Prepayment penalty will be determined under applicable law.

If within THIRTY-SIX ( 36 ) months from the date the Security Instrument is executed I make a full Prepayment or one or more partial Prepayments, and the total of all such Prepayments in any 12-month period exceeds twenty percent (20%) of the original Principal amount of the loan, I will pay a Prepayment charge in an amount equal to SIX ( 6 ) months' advance interest on the amount by which the total of my Prepayments within any 12-month period exceeds twenty percent (20%) of the original Principal amount of the loan.

Notwithstanding the foregoing provisions, I may make a full Prepayment without paying a Prepayment charge in connection with a bona fide and arms-length sale of all or any part of, or any legal or beneficial interest in, the Property within the first 12 months of the term of the Note. The phrase "bona fide and arms-length sale" means a sale in which all of the parties involved in the transaction, including without limitation, the buyer, seller, lender, real estate agent or broker, are independent of one another and unrelated by familial or financial interests. I agree to provide the Note Holder with any and all evidence reasonably requested by the Note Holder to substantiate that the sale of the Property is bona fide and arms-length.

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

  
JAMES D NICO (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

DEC. 08/2015

*Hebbie Conway*  
RECORDED

# EXHIBIT A-13

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RECORDED AT THE REQUEST OF:

UNITED TITLE OF NEVADA

01-30-2004

14:02

SJO

OFFICIAL RECORDS

BOOK/INSTR: 20040130-03803

PAGE COUNT: 19

FEE: 32.00  
RPT: .00

Assessor's Parcel Number:

179-34-614-164

Return To: CH Mortgage Company

Post Closing Department

12357 Riata Trace Pkwy, Suite C150

Austin, TX 78727

Prepared By:

Recording Requested By: CH Mortgage Company

Post Closing Department

12357 Riata Trace Pkwy, Suite C150

Austin, TX 78727

[Space Above This Line For Recording Data]

## DEED OF TRUST

MIN 100020410000274758

### 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 January 27, 2004 together with all Riders to this document.

(B) "Borrower" is Raymond R Sansota and Francine M Sansota, husband and wife

Borrower is the trustor under this Security Instrument.

(C) "Lender" is CH Mortgage Company I, Ltd., Limited Partnership

Lender is a Limited Partnership organized and existing under the laws of Texas

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

Form 3029 1/01

VMP-6A(NV) (0307)

Page 1 of 15

Initials:

VMP Mortgage Solutions (800) 521-7291

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Lender's address is 12357 Riata Trace Pkwy, Suite C150  
Austin, TX 78727

(D) "Trustee" is United Title of Nevada

(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 January 27, 2004.

The Note states that Borrower owes Lender one hundred twenty-eight thousand nine hundred and 00/100

Dollars  
(U.S. \$128,900.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than February 1, 2034.

(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 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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*R*

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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]:

See Exhibit A attached hereto and made a part hereof

Parcel ID Number: 179-34-614-164  
1559 Ward Frontier Lane  
Henderson  
("Property Address"):

which currently has the address of  
[Street]  
[City], Nevada 89015 [Zip Code]

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



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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

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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

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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

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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.



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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

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

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

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

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

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

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

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

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

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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 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.

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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 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

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

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

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

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

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

*[Handwritten initials]*  
*[Handwritten number 2]*



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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. \$0.00

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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:

\_\_\_\_\_  
Raymond R Sansota (Seal)  
-Borrower

\_\_\_\_\_  
Francine M Sansota (Seal)  
-Borrower

\_\_\_\_\_  
-Borrower (Seal)

\_\_\_\_\_  
-Borrower (Seal)

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-Borrower (Seal)

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-Borrower (Seal)

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-Borrower (Seal)

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-Borrower (Seal)

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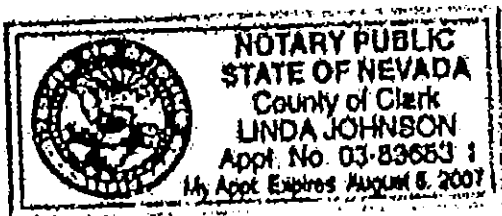
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STATE OF NEVADA  
COUNTY OF Clark

This instrument was acknowledged before me on  
Raymond R Sansota & Francine M Sansota

January 27, 2004

by



Linda Johnson

Mail Tax Statements To:

Prop 42A

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## PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 27th day of January, 2004, 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 CH Mortgage Company I, Ltd., Limited Partnership

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:  
1559 Ward Frontier Lane, Henderson, NV 89015

[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 Covenants, Conditions and Restrictions

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

[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.

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Page 1 of 3

VMP MORTGAGE FORMS - (800)521-7291

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Form 3150 1/01

Initials: *[Signature]*

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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.

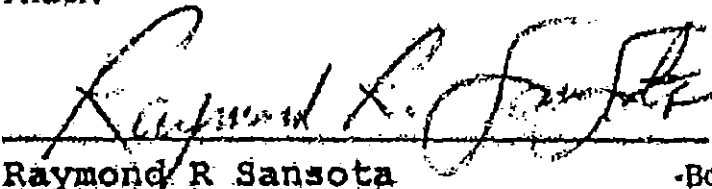
**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby 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.

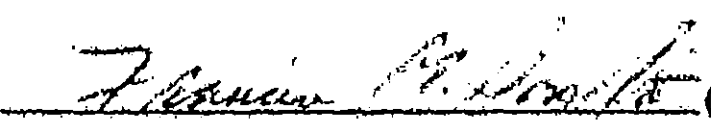
**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial 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.

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

 (Seal)  
Raymond R Sansota -Borrower

 (Seal)  
Francine M Sansota -Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

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Exhibit A

Parcel I:

Lot Two (2) in Block Fifty-Five (55) of the Plat of OLD VEGAS RANCH UNIT 1 (HIGH NOON), a Common Interest Community, as shown by map thereof on file in Book 106 of Plats, Page 61, in the Office of the County Recorder of Clark County, Nevada.

Together with associated Garage Unit, as set forth in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements of High Noon at Old Vegas Ranch, recorded October 09, 2002 in Book 20021009 as Document No. 00581

Parcel II:

A non-exclusive easement of reasonable ingress, egress and use in, to and over the common elements as set forth and subject to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for OLD VEGAS RANCH recorded October 3, 2002 in Book 20021003 as Document No. 01559, Official Records.

CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

DEC. 18. 2015

*Debbie Conway*  
Debbie Conway



# EXHIBIT A-14

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CLARK COUNTY, NEVADA  
FRANCES DEANE, RECORDER

RECORDED AT THE REQUEST OF:  
UNITED TITLE OF NEVADA

10-17-2003 14:01 JVB

OFFICIAL RECORDS

BOOK/INSTR: 20031017-02233

PAGE COUNT: 15

FEE: 28.00  
RPTT: .00

20

15

Assessor's Parcel Number: 176-06-612-007

WHEN RECORDED, MAIL TO:  
Meridias Capital  
9230 S. Eastern Avenue, Suite 155  
Las Vegas, NEVADA 89123

This Instrument was prepared by:  
Meridias Capital  
9230 S. Eastern Avenue, Suite 155  
Las Vegas, NEVADA 89123  
702-938-6800

Mall Tax Statements To:  
Meridias Capital  
9230 S. Eastern Avenue, Suite 155  
Las Vegas, NEVADA 89123

Loan Number: 120003403

Order Number: 02152093 (Space Above This Line For Recording Data)

## DEED OF TRUST

MIN: 100256001200034038

### 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 October 8, 2003, together with all Riders to this document.

(B) "Borrower" is Frank Scinta and Jacqueline Scinta, husband and wife, as joint tenants. Borrower is the trustor under this Security Instrument.

(C) "Lender" is Meridias Capital, organized and existing under the laws of NEVADA. Lender's address is 9230 S. Eastern Avenue, Suite 155, Las Vegas, NEVADA 89123.

(D) "Trustee" is United Title of Nevada. Trustee's address is 3455 Cliff Shadows Parkway, #110, Las Vegas, Clark County, NEVADA 89129.

(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 October 8, 2003. The Note states that Borrower owes Lender ONE HUNDRED FIFTY-TWO THOUSAND FIVE HUNDRED and no/100 Dollars (U.S.

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

Form 3029 1/01

IDS, Inc. - (800) 554-1872

Page 1 of 11

Borrower(s) Initials

AA000560

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\$152,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than November 1, 2033.

(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 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"/> VA Rider          |
| <input type="checkbox"/> 1-4 Family Rider                                      | <input type="checkbox"/> Biweekly Payment Rider                    |  |
| <input checked="" type="checkbox"/> Other (Specify) - Prepayment Penalty Rider |  |  |

(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, telephone 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. § 2601 *et seq.*) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to 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

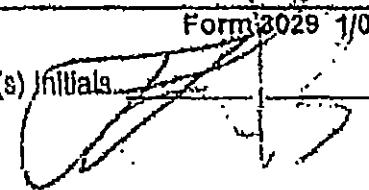
The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) 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 of Clark:

See Attached Exhibit 'A'

which currently has the address of 9660 Brooks Lake Avenue  
Las Vegas, NEVADA 89148

("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.



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but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

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

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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.

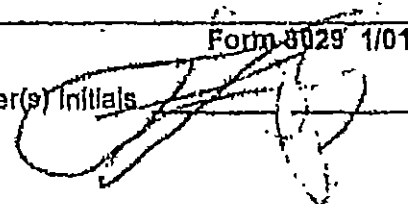
Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**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



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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.



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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. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground 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 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

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mortgage insurer's risk, or reducing losses. If such agreement provided that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

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

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

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

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

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

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

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

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

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of



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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, entitles 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 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.

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

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

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

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

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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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 Lenders' 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.

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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. \$ N/A.

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:

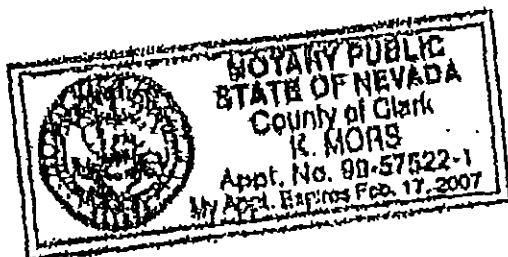
\_\_\_\_\_  
Frank Scinta (Seal)  
-Borrower

\_\_\_\_\_  
Jacqueline Scinta (Seal)  
-Borrower

STATE OF NEVADA, Clark County ss:

On Oct 14, 2003 personally appeared before me, a Notary Public (or judge or other authorized person, as the case may be), Frank Scinta, and Jacqueline Scinta personally known to me, or proven to me to be the persons whose names are subscribed to the foregoing and who acknowledged that they executed the above instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official stamp at my office in the County of the day and year in this certificate first above written.



R. Morris  
Notary Public  
County of Clark, State of Nevada

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**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lot Fifty-Three (53) in Block One (1) of UNIT 4A – WOODSIDE @ SOUTHWEST RANCH, as shown by map thereof file on November 8, 2001 in Book 107 of Plats, Page 39, in the Office of the County Recorder of Clark County, Nevada.

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Loan Number: 120003403

MIN: 100256001200034038

## PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 8th day of October, 2003, 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

Meridias Capital

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

9660 Brooks Lake Avenue  
Las Vegas, NEVADA 89148  
(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

### COVENANTS, CONDITIONS, AND RESTRICTIONS

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

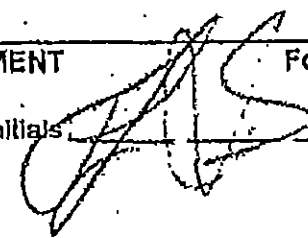
Santa Fe at Southwest Ranch  
(Name of Planned Unit Development)

(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.

**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



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Loan Number: 120003403

MIN: 100256001200034038

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.

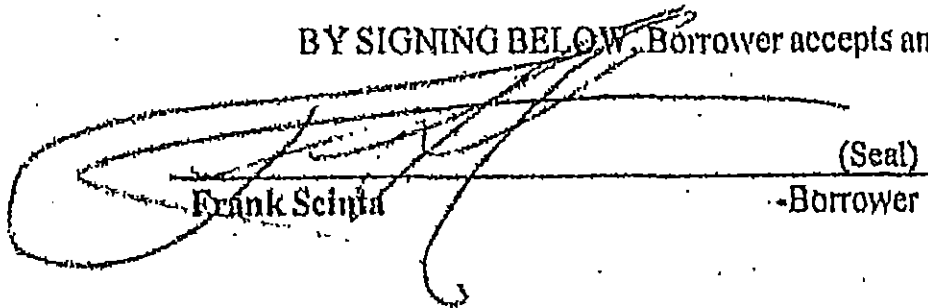
C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

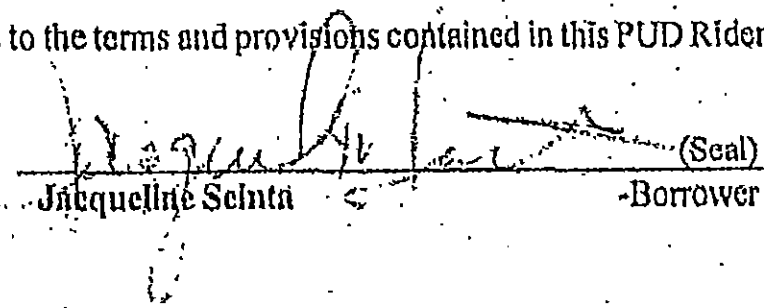
D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby 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.

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

  
\_\_\_\_\_  
(Seal)  
Frank Scinta - Borrower

  
\_\_\_\_\_  
(Seal)  
Jacqueline Scinta - Borrower



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Loan Number: 120003403

## PREPAYMENT RIDER

(Multi-State)

This Prepayment Rider is made this 8th day of October, 2003 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 (the "Note") to Meridias Capital (the "Lender") of the same date and covering the property described in the Security Instrument and located at

9660 Brooks Lake Avenue  
Las Vegas, NEVADA 89148  
(the "Property").

Additional Covenants. Notwithstanding anything to the contrary set forth in the Note or Security Instrument, Borrower and Lender further covenant and agree as follows:

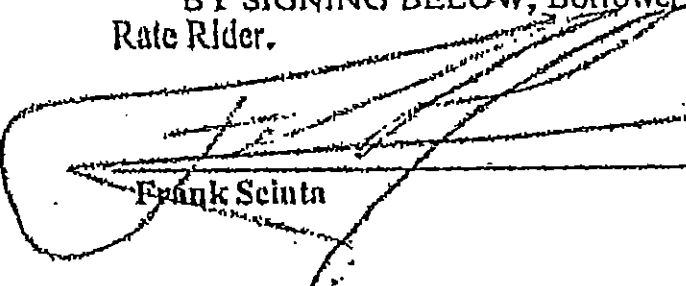
Borrower has the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." A "full prepayment" is the prepayment of the entire unpaid principal due under the Note. A payment of only part of the unpaid principal is known as a "partial prepayment."

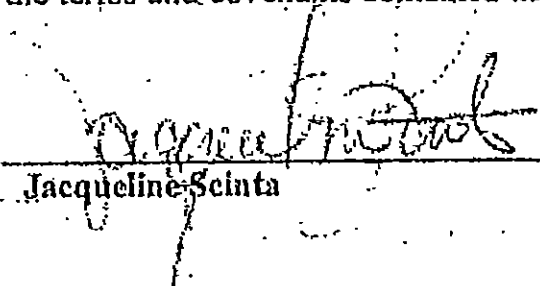
I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "Prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

Subject to the prepayment penalty specified below, I may make a full prepayment or partial prepayments of my obligation. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

If I make prepayments of this loan during the first FIVE YEARS of the Note term, beginning on the date this Note is executed, I will pay a prepayment penalty in the amount of six months' advance interest on the amount by which the aggregate prepayments made within any consecutive twelve month period exceed twenty percent (20%) of the original principal amount. The Note Holder will waive this penalty if I furnish the Note Holder with documentation, in the manner and at the time reasonably specified by the Note Holder, identifying the prepayment as being in connection with the sale of the Property.

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

  
\_\_\_\_\_  
Frank Scinta (Seal)  
-Borrower

  
\_\_\_\_\_  
Jacqueline Scinta (Seal)  
-Borrower



CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

DEC. 18. 2015

*Debbie Conway*  
RECORDED

AA000575

# EXHIBIT A-15

20041021-0000567

Assessor's Parcel No.: 176-12-214-05002  
After recording please return to:  
IndyMac Bank, F.S.B. c/o Document Management  
[Company Name]

[Name of Natural Person]  
3465 E. Foothill Blvd.  
[Street Address]  
Pasadena, CA 91107  
[City, State Zip Code]

Until a change is requested, all tax statements  
shall be sent to the following address:  
IndyMac Bank, F.S.B.

[Name]  
P.O. Box 78826  
[Street Address]  
Phoenix, AZ 85062-8826  
[City, State Zip Code]

Fee: \$36.00  
N/C Fee: \$25.00  
10/21/2004 09:00:40  
T20040117587  
Requestor:  
NEVADA TITLE COMPANY  
Frances Deane PUN  
Clark County Recorder Pgs: 23

04-02-0928-SAH [Space Above This Line For Recording Data]

## DEED OF TRUST

MIN 100055401203614526

### 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 October 14, 2004, together with all Riders to this document.

(B) "Borrower" is Frank Scinta and Jacqueline Scinta and Maryke E Weisberg

Borrower is the trustor under this Security Instrument.

(C) "Lender" is IndyMac Bank, F.S.B., a federally chartered savings bank


Lender is a Federal Savings Bank organized and existing under the laws of  
United States of America Lender's address is 155 North Lake Avenue,  
Pasadena, CA 91101

(D) "Trustee" is Chicago Title Insurance Company

Loan No: 120361452

Nevada Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
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(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 October 14, 2004. The Note states that Borrower owes Lender one hundred sixty five thousand one hundred ninety and NO/100ths Dollars (U.S. \$ 165,190.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than November 1, 2034.

(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"/> Biweekly Payment Rider |
| <input checked="" type="checkbox"/> 1-4 Family Rider      | <input type="checkbox"/> Revocable Trust 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. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to 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.

Loan No: 120361452

Initials: MEAS

Nevada Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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