

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 133
McCLAREN,

Appellant,

vs.

GREEN TREE SERVICING, LLC; THE
BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS
SUCCESSOR TRUSTEE TO JPMORGAN
CHASE BANK, N.A., AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF
CWABS MASTER TRUST REVOLVING
HOME EQUITY LOAN ASSET BACKED
NOTES, SERIES 2004-T,

Respondents.

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Oct 30 2019 06:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 78661

APPEAL

from the Eighth Judicial District Court, Department XXX
The Honorable Jerry A. Wiese, District Judge
District Court Case No. A-14-693882-C

**RESPONDENTS' SUPPLEMENTAL APPENDIX
VOLUME II**

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ALPHABETICAL INDEX TO SUPPLEMENTAL APPENDIX

Name	Volume	Page
Joint Pretrial Memorandum	2	SA0311
Motion for Summary Judgment (Part 1)	1	SA0001
Motion for Summary Judgment (Part 2)	2	SA0251
Reply in Support of Motion for Summary Judgment	2	SA0289
Trial Exhibit 1 - Deed of Trust	2	SA0328
Trial Exhibit 4 - Notice of Delinquent Assessment Lien	2	SA0356
Trial Exhibit 5 - Notice of Default and Election to Sell	2	SA0357
Trial Exhibit 6 - Assignment of Deed of Trust	2	SA0359
Trial Exhibit 9 -Notice of Foreclosure Sale	2	SA0361
Trial Exhibit 10 - Foreclosure Deed	2	SA0363
Trial Exhibit 14 - Miles Bauer Affidavit	2	SA0366
Trial Exhibit 15 - Bank of America Records Showing Fannie Mae Ownership of Loan	2	SA0385
Trial Exhibit 16 - Fannie Mae Lender Letter	2	SA0388
Trial Exhibit 17 - FHFA August 28, 2015 Statement on Servicer Reliance	2	SA0389
Trial Exhibit 18 - FHFA Statement on HOA Super-Priority Lien Foreclosures	2	SA0390
Trial Exhibit 19 - Declaration of CC&Rs	2	SA0391
Trial Exhibit 20 - Wire Payout Request	2	SA0447
Trial Exhibit 21 - Bank of America Payment History	2	SA0448

Trial Exhibit 24 - Additional Bank of America Records Showing Fannie Mae Ownership of Loan	2	SA0457
Trial Exhibit 25 - Declaration of Graham Babin	3	SA0459
Trial Exhibit 26 - Fannie Mae MBS Processed Schedule of Mortgages (Part 1)	3	SA0565
Trial Exhibit 26 - Fannie Mae MBS Processed Schedule of Mortgages (Part 2)	4	SA0709
Trial Exhibit 27 - Fannie Mae Records Showing Loan was not Securitized	4	SA0718
Trial Exhibit 30 - Records from NAS in Response to a Subpoena (Part 1)	4	SA0722
Trial Exhibit 30 - Records from NAS in Response to a Subpoena (Part 2)	5	SA0959
Trial Exhibit 43 - Notice of Servicing Transfer to Green Tree	5	SA1152
Trial Exhibit 44 - Promissory Note	5	SA1156

CHRONOLOGICAL INDEX TO SUPPLEMENTAL APPENDIX

Volume 1

Motion for Summary Judgment (Part 1)..... SA0001

Volume 2

Motion for Summary Judgment (Part 2)..... SA0251

Reply in Support of Motion for Summary Judgment SA0289

Joint Pretrial Memorandum SA0311

Trial Exhibit 1 - Deed of Trust SA0328

Trial Exhibit 4 - Notice of Delinquent Assessment Lien SA0356

Trial Exhibit 5 - Notice of Default and Election to Sell SA0357

Trial Exhibit 6 - Assignment of Deed of Trust..... SA0359

Trial Exhibit 9 -Notice of Foreclosure Sale..... SA0361

Trial Exhibit 10 - Foreclosure Deed SA0363

Trial Exhibit 14 - Miles Bauer Affidavit SA0366

Trial Exhibit 15 - Bank of America Records Showing Fannie Mae
Ownership of Loan..... SA0385

Trial Exhibit 16 - Fannie Mae Lender Letter..... SA0388

Trial Exhibit 17 - FHFA August 28, 2015 Statement on Servicer
Reliance..... SA0389

Trial Exhibit 18 - FHFA Statement on HOA Super-Priority Lien
Foreclosures SA0390

Trial Exhibit 19 - Declaration of CC&Rs SA0391

Trial Exhibit 20 - Wire Payout Request..... SA0447

Trial Exhibit 21 - Bank of America Payment History SA0251

Trial Exhibit 24 - Additional Bank of America Records Showing Fannie Mae Ownership of Loan	SA0457
--	--------

Volume 3

Trial Exhibit 25 - Declaration of Graham Babin	SA0459
--	--------

Trial Exhibit 26 - Fannie Mae MBS Processed Schedule of Mortgages (Part 1)	SA0565
--	--------

Volume 4

Trial Exhibit 26 - Fannie Mae MBS Processed Schedule of Mortgages (Part 2)	SA0709
--	--------

Trial Exhibit 27 - Fannie Mae Records Showing Loan was not Securitized.....	SA0718
---	--------

Trial Exhibit 30 - Records from NAS in Response to a Subpoena (Part 1).....	SA0722
---	--------

Volume 5

Trial Exhibit 30 - Records from NAS in Response to a Subpoena (Part 2).....	SA0959
---	--------

Trial Exhibit 43 - Notice of Servicing Transfer to Green Tree	SA1152
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Trial Exhibit 44 - Promissory Note.....	SA1156
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CERTIFICATE OF SERVICE

I certify that I electronically filed on October 30, 2019, the foregoing **RESPONDENTS' SUPPLEMENTAL APPENDIX, VOLUME II** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I further certify that all parties of record to this appeal are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List.

I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Patricia Larsen

An employee of AKERMAN LLP

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them should be assigned to, and accepted and assumed by, any successor or successors.

Section 1.03. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and Grant of Easements as it may from time to time be amended.

Section 1.04. "Delegate" shall mean a natural person selected pursuant to Section 3.02 hereof, to represent all of the Owners within a Delegate District to vote on their behalf, as further provided in this Declaration and in the Bylaws. All provisions of this Declaration and the Bylaws pertaining to the election, removal, qualification or action of Delegates shall be equally applicable to all alternate Delegates elected pursuant to Section 3.02 hereof.

Section 1.05. "Delegate District" shall mean a geographical area in the Development in which a single Delegate shall represent the collective voting power of all Owners within such geographical area.

Section 1.06. "District" shall mean and refer to the Hillpointe Park Maintenance District, a Nevada non-profit corporation, its successors and assigns.

Section 1.07. "District Property" shall mean and refer to all easements and real property (including improvements thereon and interests therein) which may be owned by the District, specifically including the property described in Exhibits D, D-1, E and F.

Section 1.08. "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested

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notice from the District of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws.

Section 1.09. "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Lot who has requested notice from the District of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws.

Section 1.10. "Lot" shall mean and refer to any plot of land in the Development (other than District Property or any property owned by any non-profit corporation for the common use and enjoyment of Owners) shown upon any recorded final map of the Development, the Owner of which is required by this Declaration to be a member of the District.

Section 1.11. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage, and the terms may be used interchangeably herein.

Section 1.12. "Mortgagee" shall mean and refer to a beneficiary under or holder of a deed of trust as well as a mortgagee, and the terms may be used interchangeably herein.

Section 1.13. "Mortgagor" shall mean and refer to the trustor of a deed of trust as well as a mortgagor, and the terms may be used interchangeably herein.

Section 1.14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable title in fee simple (or legal title if equitable title has merged) to any Lot, including contract sellers. Owner shall not include a person

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or entity having an ownership interest merely as security for the performance of an obligation. The trustor of a deed of trust encumbering a Lot where fee simple title is vested in a trustee shall be considered to be the Owner.

ARTICLE II

PROPERTY RIGHTS

Section 2.01. Owners' Easements of Enjoyment Every Owner shall have a right and easement of ingress and egress and of enjoyment in and to the District Property which shall be appurtenant to and shall pass with the title to each Lot, subject to:

(a) The right of the District to charge reasonable fees for the use of any recreational facility situated upon the District Property.

(b) The right of Declarants to use the District Property for sales, development and related activities pertaining to the Development together with the right of Declarants to transfer such easements to others.

(c) The right of the District to impose fines and to suspend an Owner's right to use any recreational facilities for nonpayment of any regular or special assessment by the District, or if an Owner is otherwise in breach of obligations imposed under this Declaration, the Bylaws, or the rules and regulations set forth in the Bylaws.

(d) The right of the District to dedicate or transfer all or any part of the District Property to any public agency,

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authority or utility subject to such conditions as may be agreed to by the Owners. The granting of easements for utilities or for other purposes consistent with the intended use of the District Property, and the granting of easements for maintenance purposes, shall not be deemed to be a dedication or transfer requiring the vote or written consent of the Owners.

(e) The right of the District to transfer all or any part of the District Property to a corporation to which all the Owners are members and which was established as the successor to the District and its obligations hereunder and to replace the District upon its termination.

(f) The right to adopt uniform rules and regulations regarding use, maintenance and upkeep of the District Property.

Section 2.02. Delegation of Use Any Owner may delegate, in accordance with the Bylaws, the right of enjoyment of the District Property and facilities to family members, tenants or contract purchasers who reside on or in the Lot owned by such Owner, provided, however, that if any Owner delegates such right of enjoyment to tenants or contract purchasers, neither the Owner nor Owner's family members shall be entitled to use such facilities by reason of ownership of that Lot during the period of delegation. Guests of an Owner may use such facilities only in accordance with rules and regulations adopted by the District, which rules and regulations may limit the number of guests who may use such facilities. The District may also promulgate rules and regulations limiting the use of the District Property to one co-Owner and such

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co-Owner's immediate family with respect to any lot held in co-ownership.

ARTICLE III

HILLPOINTE PARK MAINTENANCE DISTRICT

Section 3.01. Membership in the District All Owners shall be members of the District.

Section 3.02. Delegate Districts and Selection of Delegates
The Development shall consist of three Delegate Districts (Jasmine Point, Terracina and Skyview). The Delegate (and alternate Delegate) to represent any Delegate District shall be elected, removed and instructed by Owners in such Delegate District in accordance with the voting procedures set forth below. In electing such Delegate, each Owner shall be entitled to cast the number of votes equal to the number of lots owned by such Owner.

(a) Voting. Those Owners appearing in the official records of the District on the date forty-five (45) days prior to the scheduled date of any meeting of the Owners required or permitted to be held under this Declaration, as record Owners of lots located in the Delegate District shall be entitled to notice of any such meeting in accordance with Section 3.02(e) below. If there is more than one record Owner of any Lot, any and all of the Owners owning such Lot may attend any meeting of the Owners, but the vote attributable to the Lot so owned shall not be increased by reason thereof. Co-Owners owning the majority interest in a Lot may from time to time designate in writing one of their number to vote. Fractional votes shall not be allowed, and the vote for each

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Lot shall be exercised, if at all, as a unit. Where no voting co-Owner is designated, or if the designation has been revoked, the vote for the Lot shall be exercised as the co-Owners owning the majority interests in the Lot mutually agree. However, no vote shall be cast for any Lot if the co-Owners present in person or by proxy cannot agree to said vote or other action. Unless the District receives a written objection in advance from a co-Owner, it shall be conclusively presumed that the voting co-Owner is acting with the consent of all other co-Owners.

(b) Proxies. Every Owner entitled to attend, vote at or exercise consents with respect to any meeting of the Owners may do so either in person or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the District prior to the meeting to which it is applicable. Any proxy may be revoked at any time by written notice to the District or by attendance in person by such Owner at the meeting for which such proxy was given. In any event, no proxy shall be valid beyond the maximum period permitted by law.

(c) Vote Appurtenant to Lot. The right to vote in any such Delegate District may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that any Owner may give a revocable proxy in the manner described above, may assign his right to vote to a contract purchaser, a lessee or tenant actually occupying his Lot or to a Mortgagee of the Lot concerned, for the term of the lease or Mortgage, and any sale, transfer or conveyance of such Lot to a new Owner or Owners shall

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operate automatically to transfer the appurtenant vote to the new Owner, subject to any assignment of the right to vote to a contract purchaser, lessee or Mortgagee as provided herein.

(d) Meetings; Selection and Removal of Delegate. There shall be a meeting of the Owners each year in which the term of office of the Delegate representing such Delegate District expires. At each such meeting, the Owners shall elect a Delegate (and alternate Delegate) to represent them. The Delegate shall be elected by a majority of a quorum of the Owners in such Delegate District. Except where inconsistent with the provisions of Section 3.06 below (in which event the provisions of Section 3.06 shall control), such Delegate shall continue in office for a term of two (2) years or until a successor is elected, whichever is later, unless such Delegate is removed, with or without cause, pursuant to Section 3.07 below.

(e) Notice of Meetings. Meetings of Owners shall be held at a convenient location in or near the Delegate District as designated in the notice of the meeting. Written notice of meetings shall state the place, date and time of the meeting and those matters which, at the time the notice is given, are to be presented for action by the Owners. Notice of any meeting at which Delegates are to be elected shall include the names of all those who are nominees at the time the notice is given to Owners. The Secretary of the District shall cause notice of meetings to be sent to each Owner within the Delegate District, no later than ten (10) days prior to the meeting. special meeting of the Owners in such

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Delegate District may be called at any reasonable time and place by written request (1) by any Declarant, for so long as the Declarant is an Owner, (2) by the Delegate representing Owners in such Delegate District, or (3) by the Owners in a Delegate District having not less than twenty percent (20%) of the total voting power within such Delegate District. To be effective, such written request shall be delivered to either the President or Secretary of the District. Such officers shall then cause notice to be given to Owners entitled to vote that a meeting will be held at a time and place fixed by the Board of Directors of the District (the "Board") not less than ten (10) days, nor more than thirty (30) days after receipt of the written request. Notice of special meetings shall specify the general nature of the business to be undertaken and that no other business may be transacted.

(f) Quorum. The presence at any meeting, in person or by written proxy, of Owners entitled to vote at least twenty-five percent (25%) of the total votes within a Delegate District shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Owners present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirement shall be the presence, in person or by written proxy, of Owners entitled to vote at least ten percent (10%) of the total votes within such Delegate District. If ten percent (10%) of the total votes within such Delegate District is

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not present at the adjourned meeting, in person or by written proxy, the Owners present, either in person or by written proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the adjourned meeting was called, at which meeting those Owners present, either in person or by written proxy, shall constitute a quorum. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is not fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Owners in the manner prescribed for annual or special meetings, as applicable. The Owners present at each meeting shall select a chairman to preside over the meeting and a secretary to transcribe minutes of the meeting. Unless otherwise expressly provided, any action authorized hereunder may be taken at any meeting of such Owners upon the affirmative vote of Owners having a majority of a quorum of the voting power present at such meeting in person or by proxy.

Section 3.03. Suspension of Membership Rights The Board shall have the authority to suspend the membership rights of any Owner, including the right to vote at any meeting of the members of the Delegate District, for any period during which the payment of any assessment against such Owner and the Lot owned by such Owner remains delinquent, it being understood that any suspension for nonpayment of any assessment shall not constitute a waiver or

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discharge of the Owner's obligation to pay the assessments provided for herein.

Section 3.04. Voting by Delegates Each Delegate District shall elect one (1) Delegate (and one (1) alternate Delegate) to the District to exercise the voting power of all of the Class A and Class B members in such Delegate District. If a Declarant furnishes voting instructions to a Delegate in connection with Class A or Class B votes attributable to Lots owned by or subject to a proxy in favor of Declarant, the Delegate shall cast such votes in the manner specified by such voting instructions. The chairman of any meeting at which a Delegate or alternate Delegate is elected shall certify in writing to the Board the name and address of the Delegate or alternate Delegate elected, the time and place of the meeting at which the election occurred and the Delegate District which the Delegate represents. Each Delegate shall be entitled to cast the Class A and Class B votes representing Lots in his Delegate District only during such periods as the Owners of such Lots are entitled to cast votes for the election of a Delegate as provided herein. If a Delegate is not present at a duly called meeting of the Delegates ("Absent Delegate"), then the alternate for such Absent Delegate may attend the meeting and exercise all rights, powers and votes to which the Absent Delegate would be entitled. If the Absent Delegate should arrive prior to the adjournment of any such meeting, the alternate shall no longer be entitled to act in the place of the Absent Delegate; provided that such relinquishment of authority by the

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alternate shall not invalidate any matter previously voted on or acted upon by the alternate in his temporary capacity as Delegate.

Section 3.05. Delegate Qualifications Delegates must be (i) an authorized agent or employee of a Declarant or (ii) a member of the District. If the member is a corporation, partnership, or other such entity, the authorized agent of such corporation, partnership or other entity shall be eligible for election as a Delegate. With the exception of Delegates who are agents or employees of a Declarant, upon termination of any Delegate's membership in the District, such Delegate shall be disqualified from serving the remainder of his term as Delegate, and the position of Delegate for such Delegate District shall be deemed vacant.

Section 3.06. Delegate Terms Each Delegate shall serve a term of two (2) years. The office of a Delegate shall be deemed vacant upon the death, resignation, removal or judicial adjudication of mental incompetence of the Delegate, or upon the Delegate's failure to satisfy all the qualifications of a Delegate as specified in Section 3.05, or in case the Owners in any Delegate District fail to elect a Delegate. Delegate vacancies caused by any reason other than the removal of a Delegate shall first be filled by the alternate Delegate, and if there is no alternate Delegate, by a vote of a majority of the Board. Subject to the foregoing, including eligibility and vacancy provisions herein, each such person shall serve the remainder of the unexpired term

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of office of the predecessor Delegate, or until a successor is elected at a meeting of the Owners in such Delegate District.

Section 3.07. Removal of Delegates A Delegate may be removed without cause by the vote in person or by proxy at any duly constituted meeting of at least a majority of a quorum of the Owners in the Delegate District; provided, that in no event shall a Delegate be removed unless the votes cast in favor of such removal equal the lesser of (i) the number of votes which elected such Delegate to his current term, or (ii) a majority of the total voting power of the Owners in such Delegate District.

Section 3.08. Classes of Voting Membership/Delegate Vote Entitlement The District shall have two (2) classes of voting membership as follows:

(a) Class A. Class A members shall originally be all Owners (with the exception of Declarants for so long as there exists a Class B membership). Each Delegate shall be entitled to cast one vote for each Lot subject to assessment and owned by Class A members in such Delegate District.

(b) Class B. The Class B members shall be Declarants. Each Delegate shall be entitled to cast four (4) votes for each Lot subject to assessment and owned by the Class B Members in such Delegate District. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earliest:

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(1) The fifth anniversary of the most recent close of escrow for the sale of a Lot by Declarants to a member of the home-purchasing public; or

(2) The date on which the termination of the Class B membership is approved by the vote of a majority of the total voting power of the District.

Section 3.09. Allocation of Delegate Votes Whenever a specified action is presented to the Delegates for approval, written notice of the substance of the specified action shall be given to the Delegates at least thirty (30) days prior to the date on which the specified action shall be discussed at a meeting of the Delegates. During the thirty (30) day period prior to the meeting, the Delegates shall submit the specified action to a vote of the Owners within their respective Delegate Districts. As long as there exists a Class B membership, all specified actions shall require the approval of Delegates casting the specified percentage of the voting power of all classes of membership. Upon termination of the Class B membership all specified actions shall require the approval of (1) the specified percentage of the voting power of the Delegates, and (2) such specified percentage of the voting power of the Delegates attributable to Owners other than Declarant. When voting on a specified action, each Delegate shall cast all of the Class A and Class B votes which he represents as follows:

(a) The Delegate shall cast votes attributable to Owners actually voting (whether in person, by proxy, or written ballot) in

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such Delegate District "for" or "against" such specified action in the same manner as such votes were cast by the voting Owners;

(b) The Delegate shall cast votes attributable to Owners within the Delegate District who have not voted on such Specified Action ("Absentee Votes") as follows:

(1) If fifty-one percent (51%) or more of the votes in the Delegate District attributable to Owners other than Declarant have been cast, then any Absentee Votes attributable to Owners other than Declarant shall be cast "for" and "against" the specified action in the same proportions as the votes actually cast by the Owners other than Declarant.

(2) If less than fifty-one percent (51%) of the votes in the Delegate District attributable to Owners other than Declarant have been cast, then the Absentee Votes attributable to Owners other than Declarant shall be voted "for" or "against" the specified action in such proportions as the Delegate shall, in his or her discretion, determine appropriate.

(3) Absentee Votes attributable to a Declarant shall be cast in the same proportion as the votes actually cast by the Declarant.

Section 3.10. Voting Reports In order to verify compliance with the foregoing voting requirements, each ballot cast by a Delegate shall contain such Delegate's certification of the following information: (i) the total number and classification of votes in the Delegate District; (ii) the total number and classification of votes cast "for" and "against" the specified

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action on behalf of Declarant; (iii) the total number of votes cast "for" and "against" the specified action on behalf of Owners other than Declarant; (iv) the total number and classification of Absentee Votes in such Delegate District attributable to Declarant and the total number of Absentee Votes attributable to Owners other than Declarant; and (v) the total number and classification of votes cast by such Delegate "for" and "against" the specified action. The inspector of the election shall tabulate the total number and classification of votes cast by all Delegates in each of the foregoing categories in order to determine whether the necessary approvals have been obtained. It will be conclusively presumed for all purposes of District business that each Delegate casting votes on behalf of the Owners of Lots in his Delegate District will have acted with the authority and consent of all such Owners. All agreements and determinations lawfully made by the District in accordance with the voting procedures established herein, and in the Bylaws, shall be deemed to be binding upon all members, Owners and their respective successors and assigns.

Section 3.11. Transfer of Membership Except as permitted by this Declaration or the Bylaws, a membership in the District shall not be transferred, pledged or assigned. Any attempted transfer, other than as permitted above, shall be deemed a prohibited transfer, shall be void, and shall not be reflected as a transfer upon the District's books and records.

Section 3.12. Duty of District The District shall have the sole and exclusive right and duty to manage, operate, control,

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repair, replace and restore the District Property, all as more fully set forth in the Bylaws.

Section 3.13. Non-Liability of Members In discharging their duties and responsibilities, the members' actions shall be on behalf of and as the representatives of the District which shall, in turn, be on behalf of and as the representative of the Owners, and no member shall be individually or personally liable for performance or failure of performance of such member's duties and responsibilities unless an act or omission involves intentional misconduct, fraud or a knowing violation of law.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS TO DISTRICT

Section 4.01. Creation of Liens and Personal Obligations

Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the District such (i) regular assessments, and (ii) special assessments as may be established in the Bylaws. The regular and special assessments, together with interest, costs, late payment charges and reasonable attorneys' fees, shall be a charge on the Lots, as the case may be, and appurtenances thereto, and shall be a continuing lien upon the Lot and appurtenances thereto against which each such assessment is made. Each such assessment, together with interest, costs, late payment charges and reasonable attorneys' fees, shall also be the personal obligation of each person who was an Owner of a Lot at the time when the assessment fell due.

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Section 4.02. Rate of Assessments Both regular and special assessments of the District shall be borne equally by all Owners. Assessments shall be collected as determined by the District.

Section 4.03. Effect of Nonpayment of Assessments; Remedies of the District Any installment of a regular or special assessment shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. The Board shall be authorized to adopt a system pursuant to which any installment of a regular or special assessment not paid within thirty (30) days after the due date shall bear interest at the rate of up to twelve percent (12%) per annum, commencing thirty (30) days from the due date until paid. In addition, the Board may require the delinquent Owner to pay a reasonable late charge to compensate the District for increased bookkeeping, billing, and other administrative costs. The District may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the District Property or abandonment of such Owner's Lot. If any installment of an assessment is not paid within thirty (30) days after its due date, the Board may mail an acceleration notice to the Owner and to each first Mortgagee of a Lot which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4)

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that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then current fiscal year and sale of the Lot. If the delinquent installment or installments of any assessment and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of such assessment levied against such Owner and such Owner's Lot for the current fiscal year to be immediately due and payable without further demand and may enforce the collection of the full assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 4.04. Notice of Delinquent Assessment No action shall be brought to enforce any assessment lien created herein, unless a "Notice of Delinquent Assessment" is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot and a copy thereof has been recorded by the District. Said Notice of Delinquent Assessment must state (a) the amount of the delinquent assessment and interest, costs (including attorneys' fees) and penalties, (b) a description of the Lot against which the assessment was made, and (c) the name of the record Owner of the Lot. The Notice of Delinquent Assessment shall be signed and acknowledged by an officer of the District. The lien shall continue until fully paid or otherwise satisfied.

Section 4.05. Foreclosure Sale A sale to foreclose a District lien may be conducted by the District, its agent or attorney in accordance with the provisions of Covenants No. 6, 7

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and 8 of NRS 107.030 and 107.090, or in any other manner so consistent and permitted by law. The District shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage or convey the same. Upon completion of the foreclosure sale, an action may be brought by the District or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. No sale to foreclose an assessment lien may be conducted until (1) the District, its agent or attorney has first executed and recorded a notice of default and election to sell the Lot or cause its sale ("Notice of Default") to satisfy the assessment lien, and (2) the delinquent Owner or such Owner's successor in interest has failed to pay the amount of the delinquent assessment and interest, costs (including attorneys' fees) and expenses incident to its enforcement for a period of sixty (60) days. Such sixty (60) day period shall commence on the first day following the day upon which the Notice of Default is recorded and a copy thereof is mailed by certified mail with postage prepaid to the Owner or such Owner's successor in interest at his address, if the address is known, and otherwise to the address of the Lot. The Notice of Default must describe the deficiency in payment. The District, its agent or attorney shall, after the expiration of such sixty (60) day period and before the foreclosure sale, give notice of the time and place of the sale in

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the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed on or before the first publication or posting by certified mail with postage prepaid to the Owner or such Owner's successor in interest at his address if known, and otherwise to the address of the Lot.

Section 4.06. Curing of Default Upon the timely curing of any default for which a Notice of Delinquent Assessment was filed by the District, the officers thereof shall record an appropriate "Release of Lien", upon payment by the defaulting Owner of a reasonable fee to cover the cost of preparing and recording such release. A certificate executed and acknowledged by two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the District and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

Section 4.07. Priority of Assessment Lien The lien of the assessments, including interest and costs (including attorneys' fees), provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale

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or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. When the beneficiary of a first Mortgage of record or other purchaser of a Lot obtains title pursuant to a judicial or nonjudicial foreclosure of the first Mortgage, such person, his successors and assigns, shall be liable for assessments by the District chargeable to such Lot which became due prior to the acquisition of title to such Lot by such person. Such unpaid assessments shall be collectible from all of the Lots subject to assessment, including the Lot belonging to such person, his successors or assigns.

Section 4.08. Capital Contributions to the District Upon acquisition of record title to a Lot from a Declarant, each Owner shall pay to the District an amount equal to one-fourth (1/4) of the amount of the then annual assessment for that Lot as determined by the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the District or to Declarant if Declarant has previously advanced such funds to the District. Following the initial sale of each Lot by a Declarant, each buyer of any Lot in the Development and each subsequent buyer of such Lot, upon acquisition of record title to such Lot, shall pay to the District a transfer fee in such amount as may from time to time be determined by the Board.

Section 4.09. Obligations of Declarants Until the close of escrow for the first Lot sold by a Declarant to a member of the home-purchasing public, each Declarant shall pay a pro rata share of all costs and expenses incurred by the District. Thereafter,

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each Declarant shall pay annual assessments for each Lot owned by such Declarant at a rate equal to twenty-five percent (25%) of the annual assessment paid by Owners who have purchased a Lot from a Declarant.

ARTICLE V

ARCHITECTURAL CONTROL

Section 5.01. Required Approvals No building, fence, wall, or other structure or improvement shall be commenced, erected, placed, or altered upon any Lot, until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the District or by an architectural committee appointed by the District and composed of three (3) representatives. In the event the District or its designated committee fails to approve or disapprove such locations, plans and specifications, or other requests within sixty (60) days after the submission thereof to it, then such approval will not be required, provided that any structure or improvement so erected or altered conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Development. No alteration shall be made in the exterior color design or openings of any building or other construction undertaken unless prior written approval of the alteration shall have been obtained from the District or its designated committee. The grade, level or drainage characteristics

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of any Lot shall not be altered without the prior written approval of the District or its designated committee. The District or its designated committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Development generally. The District or its designated committee shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, topography, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. Anything herein to the contrary notwithstanding, approval by the District or its designated committee is not exclusive and all plans and specifications required to be approved by Clark County, and/or the City of Henderson, whether through the building permit process or otherwise, shall be so approved prior to the commencement of any work.

Section 5.02. Garages Garages shall not be converted into living area without the approval of the architectural committee.

Section 5.03. Roofs Nothing shall be mounted on a roof without the approval of the architectural committee. All satellite dishes, antennae, air conditioner and/or heating systems shall be

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ground-mou not extend above the wall surrounding any Lot.

Parking No boats, recreational vehicles, trucks, cars, boats or trailers shall be parked on any street or development for more than twenty-four hours. If vehicles are parked on a Lot, they shall be screened from view.

Section 5.05. Front Yards Owners shall landscape and shall maintain, repair and replace such landscaping such that it is in a safe and attractive condition.

Section 5.06. Animals No animals, fowl, reptiles, poultry, fish or insects of any kind ("Animals") shall be raised, bred or kept on any Lot within the District, except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable local ordinance or any other provision of this Declaration. "Unreasonable quantities" shall ordinarily mean more than two (2) pets per household. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the District must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the Animal. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any Animals brought

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or kept within the District by an Owner or by members of his family, his tenants or his guests.

Section 5.07. Nuisances No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the District, and no odor shall be permitted to arise therefrom so as to render the District or any portion thereof unsanitary, unsightly, or offensive from any public or private street or from any other Lot. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Lot so as to be offensive or detrimental to any other Lot in the District or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably disturb other Owners or their tenants shall be located, used or placed on any portion of the District. Alarm devices used exclusively to protect the security of a Lot and its contents, shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

Section 5.08. Signs No sign, poster, billboard, advertising device or other display of any kind shall be displayed so as to be visible from outside any Lot without the approval of the architectural committee, except such signs of customary and

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reasonable dimensions as may be displayed on each Lot advertising the Lot for sale or lease.

Section 5.09. Interpretation All questions of interpretation or construction of any of the terms or conditions in this Article V shall be resolved by the District or its designated committee, and its decision shall be final, binding and conclusive on all of the parties affected.

Section 5.10. Violations In the event a violation of these restrictions exists, or in the event of the failure of any Owner to comply with a written directive or order from the District or its designated committee, then in such event, the District shall have the right and authority to perform the subject matter of such directive or order, including, if necessary, the right to enter upon the Lot, and the cost of such performance shall be charged to the Owner of the Lot in question, which cost shall be due within five (5) days after receipt of written demand therefor, and the amount thereof shall become a lien upon the Lot enforceable in the same manner as set forth in Article IV with respect to assessments.

Section 5.11. No Waiver The approval of the District or its designated committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the District, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and

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specifications, drawings or matter whatever, subsequently or additionally submitted for approval or consent.

Section 5.12. No Liability Neither Declarants nor the District or its designated committee, nor any member thereof, nor their duly authorized representatives shall be liable for any loss, damage or injury arising out of, or in any way connected with, the performance of duties under this Article V, unless due to fraud, intentional misconduct or a knowing violation of law.

Section 5.13. Temporary Structures No movable or permanent structure of any kind shall be placed on any Lot without the prior written permission of the District, except such temporary structures and facilities as may be placed by Declarants in the course of construction of improvements within the Development.

Section 5.14. Diligently Prosecuting Work The work of constructing and erecting any building or other structure shall be prosecuted diligently from the commencement thereof and the same shall be complete within a reasonable time, not to exceed twelve (12) months, in accordance with the requirements herein contained, provided, however, that the time for completion shall be extended by the period of delays in construction caused by strikes, inclement weather or other causes beyond the control of the Owner.

Section 5.15. Applicability to Declarants Nothing in this Article V regarding obtaining architectural approval shall apply to any Declarant.

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ARTICLE VI

UTILITY EASEMENTS

There is hereby created a blanket easement upon, across, over and under the Development, including District Property and each Lot, for purposes of ingress, egress, installation, replacement, repaid, and maintenance of utility and service lines and systems, by Declarants, their contractors and subcontractors and agents and employees of the providing utility or service company, including but not limited to, gas, electricity, communication, sewer, telephone, television, and water.

ARTICLE VII

INSURANCE

Section 7.02. Hazard Insurance The District shall obtain and maintain in effect for (i) any improvements located on District Property, insurance against loss by fire and the risks covered by a standard all risk of loss perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof, and (ii) all personalty owned by the District, insurance with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the District. Insurance proceeds for improvements to the District Property and personalty owned by the District shall be payable to the District. In the event of any loss, damage or destruction, the District may cause the same to be replaced, repaired or rebuilt. In the event the cost of such

ML/6863-147
010991/01/4

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replacement, repair or rebuilding of the District Property (a) exceeds the insurance proceeds available therefor, or (b) no insurance proceeds are available therefor, the deficiency may be assessed to the Owners as a special assessment.

Section 7.02. Liability Insurance The District shall obtain and maintain in effect public liability insurance in the name of the District and against any liability for personal injury or property damage resulting from any occurrence in or about the District Property in an amount not less than \$1,000,000 with respect to the claim of one (1) person in one (1) accident or event and not less than \$2,000,000 with respect to claims of two (2) or more persons in one (1) accident or event, and not less than \$100,000 for damage to property.

Section 7.03. Inspection of Policies Copies of all insurance policies obtained by the District (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the District and open for inspection by Owners at any reasonable time. All such insurance policies shall (i) provide that they shall not be cancelled by the insurer without first giving at least ten (10) days prior notice in writing to the District and to each holder of a first mortgage listed on a schedule to the policies and (ii) contain a waiver of subrogation by the insurer(s) against the District.

Section 7.04. Premiums and Proceeds Insurance premiums for any such blanket insurance coverage obtained by the District and

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any other insurance deemed necessary by the District shall be an expense to be included in the repair and special assessments levied by the District. The District is granted the authority to negotiate and settle with insurance carriers.

Section 7.05. Bond: Additional Insurance The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and the officers of the District against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. However, fidelity bond coverage which names the District as an obligee must be obtained by or on behalf of the District for any person or entity handling funds of the District, including, but not limited to, officers, directors, trustees, employees or agents of the District, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the District at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum equal to one-fourth (1/4) of the annual assessments on all Lots in the Development, plus reserve funds.

ARTICLE VIII

CONDEMNATION

In the event the District Property or any portion thereof shall be taken for public purposes by condemnation as a result of

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any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the District.

The District is granted the authority to negotiate and settle with the condemning authority.

ARTICLE IX

MAINTENANCE AND LANDSCAPING RESPONSIBILITIES

Section 9.01. District Maintenance Before conveying the District Property to the District, Declarants shall landscape said property (including the installation of a sprinkler system). The District shall maintain, repair and replace the District Property and all improvements thereon. The District shall also maintain, repair and replace such landscape such that it is in a safe and attractive condition.

Section 9.02. Restoration of District Property Any restoration or repair of District Property after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and original plans and specifications unless otherwise approved by Eligible Mortgage Holders and Eligible Insurers or Guarantors of at least fifty-one percent (51%) of the Lots subject to Eligible Mortgage Holders and Eligible Insurers or Guarantors.

Section 9.03. Owner Maintenance Each Owner shall keep and maintain in good repair and appearance all portions of such Owner's

Lot and improvements thereon, including, but not limited to, any fence which is on the Lot line and the residence located on such Owner's Lot. The Owner of each Lot shall water, weed, maintain and care for the landscaping located on such Owner's Lot so that the same presents a neat and attractive appearance. No Owner shall, however, maintain or change any portion of such Owner's Lot which is covered by a maintenance easement in favor of the District or any other nonprofit owners' association.

Section 9.04. Right of Entry The District shall have the right to enter upon any Lot in connection with any maintenance, repair or construction in the exercise of the powers and duties of the District; provided the District first gives reasonable notice of such entry to the Owner of such Lot. Any damage caused by an entry upon a Lot shall be repaired at the expense of the entering party.

ARTICLE X

RIGHTS OF MORTGAGEES

Section 10.01. Payments of Taxes or Premiums by Mortgagees Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the District Property, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure new casualty insurance policies, or secure a new casualty insurance coverage on the lapse

of a policy covering District Property, and Mortgagees making such payments shall be entitled to immediate reimbursement thereof from the District. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee who requests the same to be executed by the District.

Section 10.02. Approval of First Mortgagees Unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each first Mortgage owned) have given their prior written approval, the District shall not be entitled to:

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the District Property or this Declaration (but the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this Section 10.02(a)).

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(c) By act or omission, change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of residences, the exterior maintenance of residences, the maintenance of the District Property, walks or common fences and driveways, or the upkeep of lawns and plantings in the Development.

(d) Fail to maintain fire and extended coverage insurance on the District Property on a current replacement cost

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basis in an amount not less than one hundred percent (100%) of the insurable value.

(e) Use hazard insurance proceeds for losses to any portion of the District Property for other than the repair, replacement or reconstruction of District Property.

Section 10.23. Notice to Eligible Mortgage Holders and Eligible Insurers or Guarantors Upon written request for notice delivered to the District identifying the name and address of the Eligible Mortgage Holder, Eligible Insurer or Guarantor and the Lot address, each Eligible Mortgage holder and each Eligible Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or any Lot on which there is a loan held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor.

(b) Any delinquency in the payment of District assessments or charges owed by an Owner subject to a loan held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the District.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders and Eligible Insurers or Guarantors as specified herein.

Section 10.04. Documents to be Available to Mortgagees The District shall make available to Owners, Mortgagees, and Eligible Insurers or Guarantors of any first Mortgage, current copies of the Declaration, Bylaws, other rules concerning the use of the District Property and its books, records and financial statements. The term "available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The holders of fifty-one percent (51%) or more of first Mortgages shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Any such financial statement so requested shall be furnished within a reasonable time following such request.

Section 10.05. Mortgagee Protection A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrance of any first Mortgage made for value which may then exist on any Lot, provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Lot or Unit in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale or note holder acquiring title in lieu thereof shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

EXHIBIT O

CERTIFICATE OF CUSTODIAN OF RECORDS

State of Nevada)
)ss.
County of Clark)

NOW COMES Susan Moses, who after being duly sworn deposes and say:

1. That the deponent is the paralegal of Nevada Association Services, Inc., and in his/her capacity as paralegal is a custodian of the records of Nevada Association Services, Inc.

2. That Nevada Association Services, Inc. is licensed to do business as a corporation in the State of Nevada.

3. That on the day of , 2018, the deponent was served with a subpoena in connection with the above-entitled cause, calling for the production of records pertaining to Saticoy Bay LLC Series 133 McLaren v. Green Tree Servicing, et al, Case No. A693882; Property Address: 133 McLaren St., Henderson, NV; APN# 178-16-215-068.

4. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

5. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or Nevada Association Services, Inc.

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


Signature

5/11/2018
Date

N64181



Phone (702) 804-8885 Fax (702) 804-8887
Toll Free (888) 627-5544
6224 W. Desert Inn Road, Suite A Las Vegas, NV 89146

Would anyone like to qualify for 133 McLaren Street Henderson, NV 89074?

On Behalf of Hillpointe Park Maintenance, I am conducting their foreclosure sale with a reference number of TS number N64181. Recorded under a notice of Delinquent Assessment Lien January 14, 2011, as instrument number 0001247 Book 20110114 in the official records of Clark County, Nevada. The purported owner at the same time of recordation is Charles Wight, Tara Wight. The purported street address is 133 McLaren Street Henderson, NV 89074. The Assessors Parcel number is 178-16-215-068. This property is being sold on an as-is basis and sale will be made without covenant or warranty, expressed or implied. I have an opening bid from the Hillpointe Park Maintenance of \$3,052.87. Are there any other offers?

Postponement Script

TS number N64181. The purported street address is 133 McLaren Street Henderson, NV 89074 has been postponed to January 3, 2013.

Cancelled Script

TS number N64181. The purported street address is 133 McLaren Street Henderson, NV 89074 has been cancelled.

\$ 10,200
Eddie
HHH
1



RIS

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

JARED M. SECHRIST, ESQ.

Nevada Bar No. 10439

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*Attorneys for The Bank of New York Mellon
fka The Bank of New York, as successor
Trustee to JPMorgan Chase Bank, N.A, as
Trustee for the Certificateholders of CWABS
Master Trust Revolving Home Equity Loan
Asset Backed Notes, Series 2004-T and Green
Tree Servicing, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 133
MCLAREN,

Plaintiff,

vs.

GREEN TREE SERVICING LLC; THE
BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS
SUCCESSOR TRUSTEE TO JPMORGAN
CHASE BANK, N.A., AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS
MASTER TRUST, REVOLVING HOME
EQUITY LOAN ASSET BACKED NOTES,
SERIES 2004-T; NATIONAL DEFAULT
SERVICING CORPORATION, CTC REAL
ESTATE SERVICES; CHARLES J. WIGHT;
AND TARA J. WIGHT,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-14-693882-C

Dept. No.: XXX

**REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

1 Defendants The Bank of New York Mellon fka The Bank of New York, as successor Trustee
2 to JPMorgan Chase Bank, N.A, as Trustee for the Certificateholders of CWABS Master Trust
3 Revolving Home Equity Loan Asset Backed Notes, Series 2004-T (**BONY**) and Green Tree Servicing
4 LLC, now known as Ditech Financial LLC (**Green Tree**) (collectively **Defendants**) hereby file their
5 reply in support of their Motion for Summary Judgment.

6 INTRODUCTION

7 Defendants are entitled to summary judgment because the undisputed facts show that the HOA
8 Trustee conducted a sub-priority sale. Even if it were a super-priority sale, Bank of America’s tender
9 of the super-priority amount extinguished the super-priority lien pursuant to well-established Nevada
10 law in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014) and *Horizon at*
11 *Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, 373 P.3d 66
12 (2016). In addition, as described in Defendants’ Motion for Summary Judgment, while Fannie Mae
13 is in conservatorship under FHFA, none of its property “shall be subject to . . . foreclosure . . . without
14 the consent of [FHFA].” 12 U.S.C. § 4617(j)(3) (the **Federal Foreclosure Bar**).¹ Here, at the time
15 of the HOA Sale, Fannie Mae owned the Loan, including both the note and Deed of Trust encumbering
16 the Property. Therefore, the HOA Sale could not extinguish that Deed of Trust without FHFA’s
17 consent, and Plaintiff took its interest in the Property, if any, subject to that lien.

18 Indeed, as the Nevada Supreme Court has recently confirmed, “the Federal Foreclosure Bar
19 implicitly preempts NRS 116.3116 to the extent that a foreclosure sale extinguishes the deed of trust.”
20 *Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417 P.3d 363 (Nev. 2018). Moreover,
21 the Nevada Supreme Court, the Ninth Circuit, and multiple federal and state courts have resolved
22 dozens of similar cases in favor of Fannie Mae, Freddie Mac, and their servicers on summary judgment
23 by evaluating materially the same evidence as that in this case. *See Nationstar Mortg., LLC v.*
24 *Guberland LLC-Series 3*, No. 70546, 2018 WL 3025919 (Nev. June 15, 2018) (unpublished
25 disposition); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *FHFA v. SFR Invs. Pool 1, LLC*, 893
26 F. 3d 1136 (9th Cir. 2018); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App’x 658 (9th Cir. 2017);

27
28 ¹ Terms not defined herein shall take on the definition in Defendants’ Motion for Summary Judgment (MSJ).

1 *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir. 2017). These courts have held that the
2 Federal Foreclosure Bar protects an Enterprise's lien interests when its servicer appears as record
3 beneficiary of a deed of trust, and have rejected the legal and evidentiary challenges Plaintiff raises
4 here.

5 **LEGAL ARGUMENT**

6 **I. The HOA Sale Was Unfair and Oppressive.**

7 In response to Defendants' *Shadow Canyon* argument, Plaintiff simply argues that "[t]he bank
8 has not set forth any defect in the sale that would constitute fraud, oppression or unfairness." Opp. at
9 14. To the contrary, as set forth in Defendants' Motion for Summary Judgment, the HOA's CC&Rs
10 provide that the HOA's lien "shall be subordinate to the lien of any first Mortgage upon any Lot" and
11 shall not "defeat or render invalid the lien, charges or encumbrance of any first Mortgage." MSJ Ex.
12 N at §§ 4.07, 10.05. The HOA Trustee also publicly stated that that the Deed of Trust would remain
13 a first priority lien on the property following the HOA sale. See MSJ Exs. K, L. Finally, the HOA
14 Trustee opened bidding at the HOA Sale at the total amount of the lien and foreclosed after Bank of
15 America tendered the nine-month super-priority amount prior to the HOA Sale despite the fact that
16 the HOA Trustee refused to provide a payoff statement or otherwise identify the super-priority amount.
17 Plaintiff fails to offer any sort of substantive response to these arguments.

18 **II. Plaintiff's Challenge to Bank of America's Tender Fails.**

19 Plaintiff argues that Bank of America's tender was properly rejected by the HOA because it
20 was conditional. Opp. at 6. This argument has been rejected by the Nevada Supreme Court, which
21 recently evaluated a tender made by Bank of America, as well as the accompanying Miles Bauer tender
22 letters. *Bank of America, N.A. v. Ferrell Street Trust*, 2018 WL 2021560, at *2 (Nev. Apr. 27, 2018)
23 (unpublished). The Supreme Court explained that the Miles Bauer letter was "an unconditional offer
24 to pay the superpriority portion of the lien in full," and was thus a "perfect tender." *Id.* at *2.

25 Even if Bank of America's tender letter did contain conditions, they were "conditions for which
26 the tendering party has a right to insist." *Id.* Plaintiff maintains that at the time of Bank of America's
27 tender, "it was perfectly appropriate for the HOA to include attorney's fees and costs of collecting as
28 part of the HOA's superpriority lien." Opp. at 9. However, the Nevada Legislature determined that

1 collection costs were not included in an association's super-priority lien years before Bank of
2 America's tender here. NRS 116.3116(2) states in no uncertain terms that the super-priority amount
3 is the amount of "assessments for common expenses ... which would have come due in the absence
4 of acceleration during the 9 months immediately preceding institution of an action to enforce the lien."
5 In *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, 373 P.3d
6 66, 73 (2016), the Nevada Supreme Court noted that NRS 116.3116 was amended in 2015, then
7 explained that "[a]ny discussion in this opinion related to this statute refers to the statute in effect at
8 the time the underlying cause of action arose," which was in June 2010. *Ikon Holdings*, 373 P.3d at
9 68 n.2. The Supreme Court then clearly and unequivocally held that NRS 116.3116(2) limits an
10 association's super-priority lien "to an amount equal to the common expense assessments due during
11 the nine months before foreclosure." *Id.* at 73.

12 A "court's goal in construing statutes is to uphold the intent of the Legislature." *Davidson v.*
13 *Davidson*, 132 Nev. Adv. Op. 71, 382 P.3d 880, 883 (2016). "When [a] Court construes a statute, it
14 is explaining its understanding of what the statute has meant continuously since the date when it
15 became law ... [a] Court has no authority to depart from the congressional command setting the
16 effective date of a law that it has enacted." *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 313 n.12
17 (1994) (emphasis added). When *Ikon Holdings* was decided on April 28, 2016, the Supreme Court
18 was not announcing what NRS 116.3116(2) meant from that point forward, it was holding "what the
19 statute has meant continuously since the date when it became law." *See Rivers*, 511 U.S. at 313 n.12.
20 The only "condition" Bank of America's letter set forth is that the nine-month super-priority lien
21 would be discharged upon payment of the same. This is clearly permitted under Nevada law.

22 **III. The Nevada Recording Statutes Do Not Require, or Even Allow, Recordation of a** 23 **Super-Priority Tender.**

24 Plaintiff's argument regarding the alleged necessity of recording tender has already been
25 rejected by the Nevada Supreme Court and lacks any basis in the law. The Nevada Supreme Court
26 recently confirmed in *Golden Hill* that the tendering party need not "record a document" showing that
27 the tender occurred. *See Saticoy Bay LLC Series 2141 Golden Hill v. JPMorgan Chase Bank, N.A.*,
28 2017 WL 6597154, at *1 (Nev. Dec. 22, 2017) (unpublished).

1 In *Golden Hill*, the homeowner “made payments sufficient to satisfy the superpriority
2 component of the HOA’s lien” before the association’s foreclosure sale, and the district court granted
3 summary judgment in the senior lender’s favor on that basis. *See id.* The Supreme Court affirmed,
4 explaining that the “district court correctly determined that at the time of the foreclosure sale, there
5 was no superpriority component of the HOA’s lien that could have extinguished respondent’s deed of
6 trust.” *Id.* The Court expressly rejected the HOA-sale purchaser’s “argument that [the senior lender]
7 needed to record a document showing that the former homeowner satisfied the superpriority
8 component of the HOA’s lien before the sale,” noting the purchaser cited “no authority in support of
9 imposing such a requirement on” the senior lender. *Id.*, at *2. Like the HOA-sale purchaser in *Golden*
10 *Hill*, Plaintiff argues that the satisfaction of the HOA’s super-priority lien here cannot defeat Plaintiff’s
11 clean title because it was not recorded. Opp. at 10-11. Nevada law imposes no such requirement, and
12 the statutes that Plaintiff contends do impose such a requirement clearly do not apply.

13 The authority Plaintiff cites is the statute requiring recordation of conveyance, the statutory
14 definition of conveyance, and the recording of instruments subordinating priority. Plaintiff argues that
15 a tender payment is a conveyance in real property or a “change to the priority of a real property lien”
16 that must be recorded. Nevada’s statutory recording act provides: “Every conveyance of real property
17 within this state hereafter made, which shall not be recorded as provided in this chapter, shall be void
18 as against any subsequent purchaser, in good faith and for a valuable consideration” NRS
19 111.325. The statute further provides that “conveyance shall be construed to embrace every instrument
20 in writing, except a last will and testament, whatever may be its form, and by whatever name it may
21 be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.”
22 NRS 111.010(a). Based solely on these statutory references, Plaintiff makes the conclusory, and
23 completely unsupported determination, that any tender by Bank of America is a “conveyance” under
24 Nevada law. Plaintiff does not even attempt to explain how the delivery of a check that satisfies (as a
25 matter of law) the super-priority portion of a statutory lien could either create, alienate, assign or
26 surrender a security interest in the Property.

27 Plaintiff does not cite to any applicable law establishing, or even suggesting, that Bank of
28 America’s tender satisfying the super-priority portion of the statutory HOA lien is a property interest

1 that must be recorded in order to be effective against subsequent purchasers. The Deed of Trust was
2 already recorded. There is no recording requirement set forth by the Nevada Supreme Court. Indeed,
3 nothing in Nevada law requires a tender to be recorded to be effective against Plaintiff.

4 **IV. The Federal Foreclosure Bar Precludes Plaintiff from Taking an Interest Free and** 5 **Clear of Fannie Mae's Deed of Trust**

6 The Nevada Supreme Court and the Ninth Circuit have held that the Federal Foreclosure Bar
7 preempts the State Foreclosure Statute. *See, e.g., Christine View*, 417 P.3d at 368; *Berezovsky*, 869
8 F.3d at 931-32. The Nevada Supreme Court and the Ninth Circuit have also analyzed the exact legal
9 issues as those presented in this case under materially identical facts, and recognized that federal law
10 prevents the purchaser of a property at an HOA sale, like Plaintiff here, from acquiring a free-and-
11 clear interest in property encumbered by a loan owned by an Enterprise. *Guberland*, 2018 WL
12 3025919 at *2-3; *Berezovsky*, 869 F.3d at 933; *Elmer*, 707 F. App'x at 428; *see also Flagstar*, 699 F.
13 App'x at 659.

14 Plaintiff asks this Court to disregard controlling precedent and persuasive authority, repeating
15 the same arguments that the Nevada Supreme Court, Ninth Circuit, and other federal and state courts
16 across Nevada have already rejected in dozens of related cases. Specifically, Plaintiff claims that the
17 Federal Foreclosure Bar did not protect Fannie Mae's interest in the Property because: (1) Fannie
18 Mae did not have an interest in the Property; (2) Plaintiff was a bona fide purchaser; (3) FHFA
19 implicitly consented to the extinguishment of Fannie Mae's interest; and (4) Ditech lacks standing to
20 invoke the Federal Foreclosure Bar. Each of these arguments fails as a matter of law.

21 **A. Fannie Mae Had an Interest in the Property at the Time of the HOA Sale.**

22 The Federal Foreclosure Bar's protection is not limited to the interest Fannie Mae might have
23 had if it were the beneficiary of record of the Deed of Trust at the time of the HOA Sale. Rather, it
24 extends to the secured property interest that Fannie Mae has as the owner of the Loan, encompassing
25 both the note and Deed of Trust—an interest recognized under Nevada law—while its contractually
26 authorized servicer was record beneficiary of the Deed of Trust. Fannie Mae's property interest is
27 amply supported in the evidentiary record through recorded property records and Fannie Mae's
28 business records, which the Ninth Circuit have held is admissible, sufficient evidence.

1 **1. Fannie Mae Owned the Note and Deed of Trust Under Nevada Law**

2 Plaintiff contends that Fannie Mae had no property interest for the Federal Foreclosure Bar to
3 protect because Fannie Mae purportedly never recorded its interest. Opp. at 12-19. But Plaintiff’s
4 argument ignores that Fannie Mae’s Deed of Trust *was recorded*, and demonstrates a
5 misunderstanding of Nevada law, which recognizes that Fannie Mae maintains its property interest as
6 a loan owner when its servicer appears as the record beneficiary of the Deed of Trust. *See In re*
7 *Montierth*, 354 P.3d 648 (Nev. 2015); *Guberland*, 2018 WL 3025919 at *2-3 (citing *Montierth*);
8 Restatement (Third) of Property: Mortgages § 5.4 (1997) (“Restatement”). Pursuant to these
9 authorities, Fannie Mae’s ownership of the Loan and the appearance of its servicer, Ditech, as record
10 beneficiary at the time of the HOA Sale ensured that Fannie Mae maintained a property interest.

11 In *Montierth*, the Nevada Supreme Court held that an entity which owned a loan was a secured
12 creditor—meaning that it had a property interest in the collateral—while MERS, an entity with which
13 it had an agency or contractual relationship, was record beneficiary of the deed of trust. The
14 Restatement, which *Montierth* adopts, explains the relationship between “institutional purchasers of
15 loans” and their servicers, and states that when a servicer or nominee appears in the public records as
16 beneficiary of a mortgage, “[i]t is clear in this situation that the owner of both the note and mortgage
17 is the investor and not the servicer.” Restatement § 5.4 cmt. c. Accordingly, “Nevada law . . .
18 recognizes that . . . a note owner remains a secured creditor with a property interest in the collateral
19 even if the recorded deed of trust names” a servicer. *Berezovsky*, 869 F.3d at 932. Here, “[a]lthough
20 the recorded deed of trust here omitted [the Enterprise’s] name, [the Enterprise’s] property interest is
21 valid and enforceable under Nevada law.” *Id.*

22 While Plaintiff attempts to circumscribe the scope of *Montierth* and limit its application, Opp.
23 at 12, 16, the Nevada Supreme Court recently rejected such a narrow reading and applied the holding
24 in *Montierth* to facts nearly identical those presented here. *Guberland*, 2018 WL 3025919 at *2. In
25 *Guberland*, the Nevada Supreme Court addressed whether the Federal Foreclosure Bar applied where
26 an Enterprise “was not the beneficiary of the deed of trust.” *Id.* The court held that a loan owner can
27 maintain a secured property interest while its servicer appears as the recorded beneficiary of the deed
28 of trust, and accordingly vacated a decision granting summary judgment to the HOA sale purchaser in

1 that case, a purchaser which stood in the same position as Plaintiff here. *Id.* at *2-3. Thus, the Nevada
2 Supreme Court has rebuffed Plaintiff’s exact argument—that a loan owner’s property interest depends
3 on its name appearing in the public property records. Moreover, on the same day it issued *Guberland*,
4 the Nevada Supreme Court affirmed a grant of summary judgment in a related case to Fannie Mae’s
5 servicer where that servicer, not Fannie Mae, was record beneficiary of the relevant deed of trust at
6 the time of the HOA foreclosure sale. *5312 La Quinta Hills, LLC BAC Home Loans Servicing, LP*,
7 No. 71069, 2018 WL 3025927, at *1 (Nev. June 15, 2018) (unpublished disposition).

8 In another recent decision, the Nevada Supreme Court confirmed that *Montierth* is applicable
9 in the context of the nominee/servicer-loan owner relationship by citing that case in the context of
10 clarifying that a loan servicer can take action, including litigation, related to a mortgage on behalf of
11 the loan owner. *Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 396 P.3d 754, 757 (Nev. 2017).
12 Moreover, the Nevada Supreme Court recently characterized its *Montierth* opinion as “recognizing
13 that it is an acceptable practice for a servicer to serve as the beneficiary of record for the actual deed
14 of trust beneficiary.” *Ohfuji Invs., LLC v. Nationstar Mortg., LLC*, No. 72676, 2018 WL 1448729, at
15 *1 (Nev. 2017) (unpublished disposition) (citing *Montierth*, 354 P.3d at 351). Thus, the law in Nevada
16 is undisputed—an Enterprise retains a secured property interest when its contractually authorized
17 servicer appears as the beneficiary of record for the deed of trust.

18 Here, Plaintiff concedes that at the time of the HOA Sale, the relevant security interest, the
19 Deed of Trust, was recorded in the name of Ditech. *See, e.g., Opp.* at 14, 15. Ditech was at that time
20 (and is now) Fannie Mae’s servicer for the Loan. Accordingly, the Deed of Trust was the instrument
21 that Fannie Mae owned, regardless of whether Fannie Mae’s name appeared on the face of the
22 instrument. *Montierth*, *Guberland*, and *Ohfuji* confirm that there is no rule that every deed of trust
23 must be recorded *in its owner’s name* for the owner to have a valid, secured, interest. *Guberland*,
24 2018 WL 3025919 at *2; *Montierth*, 354 P.3d at 650-51; *Ohfuji*, 2018 WL 1448729, at *1.

25 Moreover, the Nevada recording statutes that Plaintiff cites, *Opp.* at 15-19, do not require
26 something that the Nevada Supreme Court held was unnecessary in *Montierth* and *Guberland*; nothing
27 in those statutes requires public recording of a change in the ownership of a loan in order for a party
28 to obtain or maintain a property interest under Nevada law. *See* NRS 106.210 (discussing only

1 recording of assignments of beneficial interests). Indeed, the recording statutes require only the
2 recording of a “conveyance” of a deed of trust itself or an assignment of a deed of trust to a new
3 beneficiary of record. *See Leyva v. Nat’l Default Servicing Corp.*, 255 P.3d 1275, 1279 (Nev. 2011)
4 (deed of trust constitutes a conveyance as defined by NRS 111.010). There was no change in the
5 beneficiary of record when Fannie Mae bought the Loan, and therefore no need to record a new
6 assignment in Fannie Mae’s name. Recordation of a new assignment was only necessary upon a
7 change in the beneficiary or nominee acting on Fannie Mae’s behalf.

8 If *Montierth* was limited in the way that Plaintiff suggests, *see* Opp. at 16, and Nevada’s
9 recording statutes required all *loan ownership* interests to be recorded, a loan owner would always
10 also need to serve as beneficiary of record of a deed of trust. Under such a rule, the loan owners in
11 *Montierth* and *Guberland* would not have had secured property interests, and the Nevada Supreme
12 Court would have concluded that the appearances of MERS and Nationstar, respectively, as the
13 record beneficiaries of the deeds of trust invalidated the property interests of the loan owners on whose
14 behalf they appeared. But *Montierth* and *Guberland* made the opposite ruling, consistent with a number
15 of Ninth Circuit decisions regarding MERS and loan servicers and their role in the consumer mortgage
16 industry. *See In re Mortgage Elec. Registration Sys., Inc.*, 754 F.3d 772, 776-77 (9th Cir. 2014);
17 *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1038-39 (9th Cir. 2011). The
18 requirements of the Nevada recording statutes are also consistent with those in Kentucky, which the
19 Sixth Circuit Court of Appeals held did not require a separate recording anytime a party purchased a
20 loan, so long as the beneficiary of record remained the same entity, as is the case here. *See Higgins v.*
21 *BAC Home Loans Servicing, LP*, 793 F.3d 688, 689 (6th Cir. 2015). Thus, any argument suggesting
22 that Fannie Mae must have been assigned the Deed of Trust itself to have a property interest must be
23 rejected.

24 2. The Evidence Unequivocally Proved Fannie Mae Owned the Loan.

25 Plaintiff makes various arguments claiming that the evidence supporting Fannie Mae’s
26 property interest is either inadmissible or insufficient for summary judgment. But these challenges
27 fail as a matter of law. The evidence includes business records, the sworn declaration of Fannie Mae’s
28 employee, and Fannie Mae’s Servicing Guide, all of which are admissible under the rules of evidence

1 and applicable law—particularly NRCP 56, which permits a party moving for summary judgment to
2 establish facts with affidavits.

3 The Ninth Circuit held that materially the same evidence was admissible and sufficient to
4 establish an Enterprise’s property interest. *See Berezovsky*, 869 F.3d at 933; *Elmer*, 707 F. App’x at
5 428. Those decisions recognized that the “database printouts” of the Enterprises are “admissible
6 business records,” and that such records, along with declaration testimony and the Enterprise’s Guide
7 provisions are sufficient to prove an Enterprise’s undisputed ownership of a mortgage loan under
8 Nevada law. *Berezovsky*, 869 F.3d at 933, n.8. In *Elmer*, “Freddie Mac provided a record from its
9 internal database stating . . . the loan’s “funding date”[, which] was . . . well before the [foreclosure]
10 sale[, and] Freddie Mac’s employee explained that the record indicates that Freddie Mac acquired
11 ownership of the loan . . . and has owned it ever since.” *Elmer*, 707 F. App’x at 428. Ditech has
12 provided the same type of evidence here—Enterprise business records providing the loan acquisition
13 date, which was before the HOA Sale, and an employee declaration explaining the records. The
14 submitted business records are “*reliable* and uncontroverted evidence of [Fannie Mae’s] interest in the
15 property on the date of the foreclosure.” *Id.* (emphasis added).

16 This Ninth Circuit precedent should be highly persuasive as federal courts and Nevada courts
17 have adopted the same standard for what evidence is sufficient for summary judgment. *See Wood v.*
18 *Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio*
19 *Corp.*, 475 U.S. 574 (1986) for Nevada’s standard for summary judgment). Rather than submitting
20 evidence to create a genuine dispute of material fact, Plaintiff attacks the admissibility and sufficiency
21 of Ditech’s evidence, but each argument fails as a matter of law.

22 *First*, Plaintiff contends that the statute of frauds requires Ditech to proffer evidence in the
23 form of a “writing” to prove Fannie Mae’s ownership interest in the Property. Opp. at 12-13, 15. To
24 the extent Plaintiff believes the statute of frauds requires Ditech to produce a writing showing Fannie
25 Mae’s purchase of the Loan, Ditech has provided that writing in the form of Fannie Mae’s business
26 records which memorialize Fannie Mae’s acquisition of the Loan in November 2004. MSJ Ex. B. In
27 addition, compliance with the statute of frauds has no relevance for the issue of loan ownership. The
28 statute of frauds requires that a transfer of interests in land be made in writing, not that such writing

1 constitute a publicly recorded assignment of a deed of trust. Moreover, the Uniform Commercial Code
2 limits the statute of frauds defense “to only those cases where there is a definite possibility of fraud.”
3 *Azevedo v. Minister*, 471 P.2d 661 (Nev. 1970). Here, there is no question of fraud in the sale of the
4 Loan; no one other than Fannie Mae is claiming ownership of the Loan.

5 *Second*, there is no requirement that Ditech produce additional, duplicative evidence, such as
6 a written agreement or other documents proving that Fannie Mae purchased the Loan. *See Opp.* at 13-
7 14. Plaintiff’s argument to the contrary ignores the business records and testimony confirming that
8 Fannie Mae purchased the Loan in November 2004. MSJ Ex. B. Indeed, Ditech must provide
9 *sufficient*—not *all*—evidence of Fannie Mae’s ownership of the Loan, which the business records and
10 declaration establish and explain thoroughly. The Nevada Supreme Court has embraced the federal
11 rules’ counsel against “needlessly presenting cumulative evidence.” *See State v. Dist. Ct. (Armstrong)*,
12 127 Nev. 927, 934, 267 P.3d 777, 781 (2011) (citing Fed. R. Evid. 403, noting it is the counterpart to
13 NRS 48.035). Here, the business records and testimony confirm that Fannie Mae purchased the Loan
14 prior to the HOA Sale. Thus, the rules of evidence do not require Ditech to produce additional,
15 superfluous evidence to confirm the facts that it has already established through admissible,
16 uncontroverted evidence. *See U.S. ex rel. O’Donnell v. Countrywide Home Loans, Inc.*, 822 F.3d 650,
17 653–54, n.3 (2d Cir. 2016) (recognizing that sworn testimony is sufficient to prove Freddie Mac’s
18 ownership of a loan).

19 *Third*, Plaintiff attacks the admissibility of Fannie Mae’s employee declaration, arguing that it
20 is not based on personal knowledge. *Opp.* at 15, 20, 22. Plaintiff misapprehends the governing
21 standard for testimony admitting business records. The declaration is executed by a corporate
22 representative—as a result, the declarant did not need to have “direct, personal knowledge of each and
23 every fact discussed in [his] affidavit or deposition,” because the corporation “appear[ed] vicariously”
24 through him. *Hijack v. Menlo Logs., Inc.*, 2008 WL 465274, at *4 (N.D. Tex. Feb. 21, 2008).

25 To introduce business records, the standard for being a “qualified witness . . . is broadly
26 interpreted to require only that the witness understand the record-keeping system.” *United States v.*
27 *Childs*, 5 F.3d 1328, 1334 (9th Cir. 1993). Thus, a qualified witness need not be “the custodian of
28 [the] documents offered into evidence,” *id.*; or the individual to have entered data into a database, *U-*

1 *Haul Int'l, Inc. v. Lumbermens Mut. Cas. Co.*, 576 F.3d 1040, 1044-45 (9th Cir. 2009); or “certify he
2 or she has first-hand knowledge of the facts set forth in the records,” *In re Hudson*, 504 B.R. 569, 575
3 (B.A.P. 9th Cir.). Instead, all that is required is that the declarant be “qualified to testify about the
4 business practices and procedures for inputting the underlying data. It is not necessary for each
5 individual who entered a record of payment into the database to testify as to the accuracy of each piece
6 of data entered.” *U-Haul Int'l*, 576 F.3d at 1043. For example, the witness “need not have personal
7 knowledge of the actual creation of the document ... Nor is there any requirement under Rule 803(6)
8 that the records be prepared by the party who has custody of the documents and seeks to introduce
9 them into evidence.” *Phoenix Assocs. III v. Stone*, 60 F.3d 95, 101 (2d Cir. 1995) (citation omitted).
10 Plaintiff’s argument to the contrary “ignores the realities of modern business litigation, where many
11 business records are kept in databases, and parties query these databases in order to provide responses
12 to discovery requests.” *Health All. Network, Inc. v. Cont’l Cas. Co.*, 245 F.R.D. 121, 129 (S.D.N.Y.
13 2007), *aff’d*, 294 F. App’x 680 (2d Cir. 2008).

14 *Fourth*, Plaintiff’s suggestion that Fannie Mae’s employee needed to attest to Fannie Mae’s
15 possession of the note at the time of the HOA Sale, Opp. at 14, 22, 25, raises a completely irrelevant
16 issue. The question of who *possessed the note* would answer whether Fannie Mae had the ability to
17 enforce the note at that time as the *holder* of the note. But that fact is has no bearing on the claims
18 here, which turn instead on who was the *owner* of the note. Fannie Mae is not attempting to foreclose
19 on the Property in this litigation, and so Fannie Mae does not need to be able to enforce the note at
20 this time, much less at the time of the HOA Sale.

21 Under Nevada law, the owner and the holder of a note may be two different entities. A transfer
22 of a note has no bearing on ownership, but instead “vests in the transferee any right of the transferor
23 to enforce the instrument.” NRS 104.3203. Thus, “[a] person may be a person entitled to enforce [a
24 promissory note] even though the person is not the owner of the [note].” NRS 104.3301(2).
25 Accordingly, “the status of holder merely pertains to one who may enforce the debt and is a separate
26 concept from that of ownership.” *Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL
27 6743044, at *3 n.9 (Nev. Dec. 20, 2011). Because the parties’ claims and defenses turn on who *owned*
28 ...

1 the Loan at the time of the HOA Sale, there is no need for Ditech to prove that Fannie Mae possessed
2 the note at that time.

3 **B. The Federal Foreclosure Bar Is Automatic and Requires FHFA's**
4 **Affirmative Consent to Extinguish Fannie Mae's Property Interest**

5 Plaintiff argues that this “Court should imply FHFA’s consent to the HOA foreclosure sale”
6 because FHFA failed “to create a procedure by which the purchaser at a nonjudicial foreclosure sale
7 could obtain that consent.” Opp. at 27. Plaintiff’s argument is baseless, as the Federal Foreclosure
8 Bar works automatically without any action by FHFA, the Enterprises, or their servicers. Indeed, as
9 the Nevada Supreme Court acknowledges, the Federal Foreclosure Bar “does not require [the FHFA]
10 to *actively resist* foreclosure,” rather, “[t]he Federal Foreclosure Bar cloaks the FHFA’s ‘property with
11 Congressional protection unless or until the Agency *affirmatively relinquishes it.*’” *Christine View*,
12 417 P.3d at 368 (quoting *Berezovsky*, 869 F.3d at 929).

13 Any implication by Plaintiff that proactive measures must be taken to protect Fannie Mae’s
14 property interest would invert the default rule provided in the statutory text, as if Congress had decreed
15 that Fannie Mae’s property interests *are* subject to extinguishment by foreclosure *unless* FHFA,
16 Fannie Mae, or its servicers affirmatively act to prevent the extinguishment of a particular property
17 interest. This is not what the statute says, and courts are not free to rewrite a statute’s text. *See Conn.*
18 *Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (“[I]n interpreting a statute a court should always
19 turn first to one, cardinal canon before all others . . . that a legislature says in a statute what it means
20 and means in a statute what it says.”).

21 Moreover, had FHFA consented to the extinguishment of Fannie Mae’s property interest,
22 Plaintiff, as the purchaser at the HOA Sale, would presumably have evidence of that consent. Even if
23 Plaintiff could point to indicia of FHFA’s implicit consent or Fannie Mae’s implicit or explicit consent
24 (and it cannot), such evidence would be inapposite—it is *FHFA’s affirmative consent* that matters.
25 But Plaintiff presents no evidence of this fact, and instead leaves undisputed Ditech’s evidence that
26 FHFA never consented to the extinguishment of Fannie Mae’s interest in the Property.

27 ...

28 ...

C. Ditech May Invoke the Federal Foreclosure Bar

Plaintiff argues that Ditech may not invoke the Federal Foreclosure Bar and that the Federal Foreclosure Bar does not apply because FHFA is not a party in this case. Opp. at 26-28. As explained in Ditech’s Motion for Summary Judgment, the Nevada Supreme Court has held that “the servicer of a loan owned by a regulated entity may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [Fannie Mae] nor the FHFA need be joined as a party.” *Nationstar v. SFR*, 396 P.3d at 758. The Nevada Supreme Court reinforced the point when it held that the Federal Foreclosure Bar preempts the State Foreclosure Statute—“this court has already addressed [the HOA]’s arguments by necessary implication in *Nationstar Mortg.* This court held that the servicer of a loan owned by a regulated entity may argue that the Federal Foreclosure Bar preempts NRS 116.3116, even though the FHFA was not a party to the case.” *Christine View*, 417 P.3d at 366. Moreover, the Ninth Circuit has cited *Nationstar* and also held that servicers may raise the Federal Foreclosure Bar to defend property interests of Fannie Mae and Freddie Mac in litigation. See *Flagstar*, 699 F. App’x at 658. Plaintiff makes no attempt to address these authorities, and the Court must reject Plaintiff’s argument to the contrary.

V. Plaintiff Cannot Use Bona Fide Purchaser Status as a Shield.

Plaintiff’s purported interest in the Property is subject to the Deed of Trust regardless of whether Plaintiff is a bona fide purchaser (it is not). An HOA-sale purchaser’s status as a bona fide purchaser is irrelevant in super-priority tender and federal preemption cases. But, even if bona fide purchaser status could protect an HOA-sale purchaser from a super-priority tender or federal preemption, Plaintiff is not entitled to that protection because it is not a bona fide purchaser.

A. Plaintiff Had Inquiry Notice of Bank of America’s Tender.

The burden of establishing bona fide purchaser status rests with the party claiming such status – here, Plaintiff. *Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the putative bona fide purchaser “was required to show that legal title had been transferred to her before she had notice of the prior conveyance to appellant”). Plaintiff failed to meet this burden because it does not set forth any evidence that Plaintiff discharged its inquiry duty by making a “due investigation” into whether any entity satisfied the super-priority portion of the HOA’s lien before the

1 sale. In fact, Plaintiff's Opposition contains only blanket assertions that it is, in fact, a bona fide
2 purchaser without any supporting evidence. Because Plaintiff failed to conduct any investigation prior
3 to the HOA Sale, it is presumed to have knowledge of that tender, thereby defeating its claim that it is
4 a bona fide purchaser of free and clear title to the Property.

5 The Nevada Supreme Court has explained that "[a] recital in an instrument of record charges
6 subsequent purchasers with notice of all material facts which an inquiry suggested by that recital would
7 have disclosed." *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 497, 471 P.2d 666, 668 (1970).
8 "When anything appears in" an instrument of record "sufficient to put a prudent man on inquiry which
9 if prosecuted with ordinary diligence would lead to actual knowledge of some right or title in conflict
10 with the title he is about to purchase, it is his duty to make inquiry, and if he does not do so he is
11 chargeable with actual knowledge of what the inquiry would have disclosed." *Id.*

12 Here, the recorded Deed of Trust contains a Planned Unit Development Rider with the
13 following provision, which put Plaintiff on inquiry notice of Bank of America's super-priority tender:
14 "If Borrower does not pay [HOA] dues and assessments when due, then Lender may pay them." MSJ
15 Exhibit A (emphasis added). This provision put Plaintiff on inquiry notice of Bank of America's
16 super-priority tender. *See Allison Steel*, 86 Nev. at 498. Consequently, Plaintiff is charged with
17 "actual knowledge of what the inquiry" into whether Bank of America tendered the super-priority
18 amount would have disclosed unless it discharged its duty of inquiry. *See id.* Plaintiff's duty of
19 inquiry required the level of investigation that a "reasonable man in his position [would make] that
20 would advise him of the existence of prior unrecorded rights." *See Berge v. Fredericks*, 95 Nev. 183,
21 189, 591 P.2d 246, 251 (1979). Plaintiff did nothing to satisfy its duty of inquiry, which is fatal to its
22 bona fide purchaser claim.

23 Plaintiff – required to show that it made "a due investigation" and was unable to discover Bank
24 of America's super-priority tender to "rebut the presumption of notice" – did not produce one single
25 piece of evidence that it made such an investigation. *See Berge*, 95 Nev. at 189. Instead, Plaintiff
26 offers self-serving guesses as to the results of the investigation Plaintiff did not conduct in its
27 opposition and Mr. Haddad's affidavit attempting to support that opposition, which was attached to
28 Plaintiff's Motion for Summary Judgment. *See* Pltf. MSJ, Exhibit 1. These "gossamer threads" of

1 “speculation” and “conjecture” are insufficient to survive summary judgment. *See Wood*, 121 Nev. at
2 730.

3 **B. Plaintiff Knew it Was Purchasing an Encumbered Interest at the HOA’s**
4 **Foreclosure Sale.**

5 The actual reason Plaintiff did not investigate whether the super-priority lien was satisfied
6 before the sale is obvious – it did not think that information was relevant at the time because it knew
7 it was purchasing an encumbered interest in the Property. Another trust managed by Eddie Haddad –
8 the manager of Plaintiff – filed for Chapter 11 bankruptcy several months before the HOA’s
9 foreclosure sale here. In the Chapter 11 Petition, Haddad listed as assets eleven properties that he
10 purchased at association foreclosure sales. Def. Opp. Ex. A. For each property, Haddad declared that
11 the senior deed of trust remained fully enforceable after the respective association’s foreclosure. *Id.*
12 Later in the bankruptcy, Haddad filed a Motion to Use Cash Collateral, in which he described his
13 business model as follows: “Mr. Haddad funds the Trust, which then purchases **junior liens** through
14 [homeowners association] sales held at Nevada Legal News, and **thus acquires ownership of the**
15 **properties, subject to the first mortgage lien on the properties.**” Def. Opp. Ex. B (emphasis added),
16 at 2. Haddad continued by stating that “[e]ach of the above-references properties was purchased
17 through auction via a secondary, utility, or HOA lien, **and is thus subject to the first mortgage.**” *Id.*
18 (emphasis added).

19 Plaintiff cannot qualify as a bona fide purchaser, as it had actual and constructive knowledge
20 of the senior Deed of Trust and inquiry notice of Bank of America’s super-priority tender, and it did
21 not believe it was purchasing the Property free and clear of the Deed of Trust at the HOA’s foreclosure
22 sale.

23 **C. The Bona Fide Purchaser Doctrine Cannot Protect Plaintiff From Super-Priority**
24 **Tender.**

25 The Nevada Supreme Court has held that the bona fide purchaser doctrine is irrelevant in cases
26 where, like here, the senior mortgagee tendered the super-priority amount before the foreclosure sale.
27 *See Golden Hill*, 2017 WL 6597154, at *1 n.1; *BAC Home Loans Servicing, LP v. Aspinwall Court*
28 *Trust*, Case No. 69885 (Order of Reversal and Remand) (unpublished). In *Golden Hill*, the HOA-

1 sale purchaser contended that the satisfaction of the association’s super-priority lien could not affect
2 its purportedly free and clear title because “it was a bona fide purchaser.” *See id.* The Nevada Supreme
3 Court rejected this argument – “[the HOA-sale purchaser] has not explained how its putative BFP
4 status could have revived the already-satisfied superpriority component of the HOA’s lien.” *See id.*

5 Here, “rather than having the” HOA foreclose on its super-priority lien, Bank of America chose
6 to submit payment for the exact amount of that lien before the sale through a “perfect tender.” *See*
7 *Ferrell Street*, 2018 WL 2021560, at *1. That “perfect tender” extinguished the HOA’s super-priority
8 lien. *See id.*, at *2. Consequently, Plaintiff took title to the Property subject to the Deed of Trust
9 regardless of whether it was a bona fide purchaser, as that doctrine could not “revive[] the already-
10 satisfied superpriority component of the HOA’s lien.” *See Golden Hill*, 2017 WL 6597154, at *1 n.1.;
11 *see also Allison Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 499, 471 P.2d 666, 669 (1970) (in the
12 absence of a statute, a purchaser acquires no better title than the debtor could have conveyed at the
13 time the lien attached). Bank of America is thus entitled to summary judgment.

14 **D. Plaintiff Is Not a Bona Fide Purchaser, But Even If It Were, the Federal**
15 **Foreclosure Bar Still Protects Fannie Mae’s Lien.**

16 Plaintiff argues that Nevada’s bona fide purchaser laws protect it from any claim based on
17 Fannie Mae’s interest in the Property, relying, again, on the fact that Fannie Mae’s name did not appear
18 in the public records at the time of the HOA Sale. *Opp.* at 17-19. Plaintiff is incorrect. Not only is
19 Plaintiff *not* a bona fide purchaser, but if state law were reinterpreted to make it one, the state bona
20 fide purchaser laws would be preempted by the Federal Foreclosure Bar.

21 *First*, Plaintiff is not a bona fide purchaser because it had “actual knowledge, constructive
22 notice of, or reasonable cause to know that there exists . . . adverse rights, title, or interest to, the real
23 property.” NRS 111.180. The Deed of Trust was recorded prior to the HOA Sale and stated that the
24 note, along with the Deed of Trust, “can be sold one or more times without prior notice to Borrower.”
25 *See* MSJ Ex. A. In fact, the face of the Deed of Trust identifies it as a “NEVADA-Single Family-
26 Fannie Mae/Freddie Mac UNIFORM INSTRUMENT,” indicating that an Enterprise might have an
27 interest in the Deed of Trust. *Id.* Thus, Plaintiff was on notice that unnamed other parties, including
28 an Enterprise, might have an interest in the Property. In this case, Fannie Mae had such an interest. It

1 is immaterial whether the state statutes render an *unrecorded* deed of trust invalid against a subsequent
2 bona fide purchaser—as discussed *supra*, the Deed of Trust embodying Fannie Mae’s interest was
3 recorded at the time of the HOA Sale.

4 Furthermore, Plaintiff could and should have anticipated that there was a significant chance
5 that a property it purchased at an HOA foreclosure sale was subject to an interest owned by one of the
6 Enterprises. Fannie Mae and Freddie Mac have a large, well-publicized, and well-known role in the
7 national housing market, especially in the aftermath of the recent housing crisis. In 2008, the
8 Enterprises’ “mortgage portfolios had a combined value of \$5 trillion and accounted for nearly half of
9 the United States mortgage market.” *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 599-600 (D.C.
10 Cir. 2017). Since 2012, “Fannie and Freddie, among other things, collectively purchased at least 11
11 million mortgages.” *Id.* Accordingly, “[t]he position held in the home mortgage business by Fannie
12 Mae and Freddie Mac make[s] them *the dominant force* in the market.” *Town of Babylon v. FHFA*,
13 699 F.3d 221, 225 (2d Cir. 2012) (emphasis added); *see Nomura Holding Am., Inc.*, 873 F.3d 85, 105
14 (2d Cir. 2017) (same). Any purchaser of a property sold at an HOA sale in recent years should expect
15 that there is a significant likelihood that Fannie Mae or Freddie Mac own the loan secured by the deed
16 of trust that the purchaser hopes to secure in the course of an HOA sale.

17 In addition, Plaintiff cannot avoid the duty to inquire imposed before one can claim bona fide
18 purchaser status. Plaintiff is presumed to know the law, and at the time of the HOA Sale the Federal
19 Foreclosure Bar had been enacted, providing that foreclosures could *not* extinguish the property of
20 Fannie Mae or Freddie Mac during conservatorship. *See Atkins v. Parker*, 472 U.S. 115, 130 (1985)
21 (“All citizens are presumptively charged with knowledge of the law.”). Therefore, a buyer of property
22 at such a foreclosure sale would have been, at a minimum, on inquiry notice that under prevailing
23 law—state as well as federal—a deed of trust owned by an Enterprise could continue to encumber the
24 Property after the HOA Sale. Indeed, parties engaged in a regulated business are particularly unable
25 to claim ignorance of any relevant law. *See del Junco v. Conover*, 682 F.2d 1338, 1342 (9th Cir.
26 1982).

27 *Second*, if Nevada’s bona fide purchaser statutes were read to protect Plaintiff from Fannie
28 Mae’s property interest because Fannie Mae’s servicer appeared as the Deed of Trust’s record

1 beneficiary, the bona fide purchaser statutes would thus be preempted by the Federal Foreclosure Bar.
2 Indeed, in citing another opinion from this District, the Nevada Supreme Court recently recognized
3 that “authority suggest[s] that the Federal Foreclosure Bar would preempt Nevada’s law on bona fide
4 purchasers.” *Guberland*, 2018 WL 3025919 at *2 n.3 (Nev. June 15, 2018) (unpublished disposition)
5 (citing *JPMorgan Chase Bank, N.A. v. GDS Fin. Servs.*, No. 2:17-cv-02451-APG-PAL, 2018 WL
6 2023123, at *3 (D. Nev. May 1, 2018)).

7 Indeed, the conflict between the Federal Foreclosure Bar and the bona fide purchaser statutes,
8 as Plaintiff would interpret them, is obvious. The Federal Foreclosure Bar automatically bars any
9 nonconsensual extinguishment through foreclosure of any interest in property held by Fannie Mae
10 while in conservatorship. However, Plaintiff’s re-interpreted bona fide purchaser laws would allow
11 state HOA lien sales to extinguish Fannie Mae’s property interests whenever the associated deed of
12 trust appeared in the name of Fannie Mae’s servicer, an arrangement (as discussed *supra*) otherwise
13 permitted under Nevada law. Federal law thus precludes what state law would purportedly permit:
14 extinguishment of the Fannie Mae conservatorship’s deed-of-trust interest.

15 Finally, the Nevada Supreme Court’s *Shadow Wood* decision does not support Plaintiff’s claim
16 to bona fide purchaser status. Opp. at 18 (citing *Shadow Wood Homeowners Assoc. v. N.Y. Bancorp,*
17 *Inc.*, 366 P.3d 1005 (Nev. 2016)). In *Shadow Wood*, the Court examined whether an entity challenging
18 the validity of an HOA foreclosure sale was entitled to equitable relief under state law. In *Shadow*
19 *Wood*, the court did not need to resolve who had interests at the time of the HOA foreclosure sale, but
20 instead employed its balancing test to determine whether the previous owner of a property could have
21 the foreclosure sale set aside. See 366 P.3d at 1116.

22 Here, the equitable balancing test described in *Shadow Wood* is irrelevant to the existence of Fannie
23 Mae’s property interest at the time of the HOA Sale because a federal statute dictates that result.
24 Accordingly, the factors considered by the Nevada Supreme Court in evaluating the equitable claim
25 under state law at issue in *Shadow Wood* are not relevant here. The Federal Foreclosure Bar protected
26 the deed of trust from extinguishment, so *Shadow Wood* is inapposite.

27 ...

28 ...

1 **VI. *Shadow Wood* Unequivocally Held that Foreclosure Deed Recitals are Not Conclusive**
2 **or Relevant to the Issues in this Case.**

3 The *Shadow Wood* Court held the “conclusive” deed recitals found in HOA foreclosure deeds
4 do not bar mortgagees or homeowners from challenging the validity of an HOA foreclosure sale.
5 *Shadow Wood Homeowners Ass’n, Inc. v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, at 21
6 (Nev. Jan. 28, 2016). The Court noted that the deed recitals outlined in NRS 116.3116 only concern
7 “default, notice, and publication of the” notice of sale, and thus do not provide any presumption
8 regarding other aspects of the foreclosure, such as tender or the commercial reasonableness of the sale.
9 *Id.* at 10. The Court further held that the recitals are not conclusive to even the matters recited, like
10 whether the homeowner was in default. *Id.* at 11 (“[W]hile it is possible to read a conclusive recital
11 statute like NRS 116.31166 as conclusively establishing a default justifying a foreclosure when, in
12 fact, no default occurred, such a reading would be breathtakingly broad and is probably legislatively
13 unintended.”). The Court thus rejected the HOA-sale purchaser’s argument that the conclusive recitals
14 alone defeated the action to set aside the foreclosure sale. *Id.* at 15.

15 In its Opposition, Plaintiff makes the same argument the *Shadow Wood* Court rejected.
16 However, Bank of America asserts that the sale of the Property was invalid and, even if it was valid,
17 Plaintiff’s interest is subordinate to the Deed of Trust because the State Foreclosure Statute is
18 preempted by the Federal Foreclosure Bar and because Bank of America extinguished the super-
19 priority portion of the HOA’s lien. As the Nevada Supreme Court made clear in *Shadow Wood*, the
20 conclusive recitals are irrelevant to these arguments.

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

For these reasons, the Court should deny Plaintiff's Motion, grant Defendants' motion for summary judgment, and enter a declaration that Plaintiff's interest in the Property, if any, is subject to the Deed of Trust.

DATED this 15th of August, 2018.

AKERMAN LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 15th day of August, 2018, I caused to be served a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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Master Trust Revolving Home Equity Loan
Asset Backed Notes, Series 2004-T and
Green Tree Servicing, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 133 MCLAREN,

Plaintiff,

vs.

GREEN TREE SERVICING, LLC; THE BANK
OF NEW YORK MELLON FKA THE BANK
OF NEW YORK, AS SUCCESSOR TRUSTEE
TO JP MORGAN BANK, N.A., AS TRUSTEE
FOR THE CERTIFICATE HOLDERS OF
CWABS MASTER TRUST, REVOLVING
HOME EQUITY LOAN ASSET BACKED
NOTES, SERIES 2004-T; NATIONAL
DEFAULT SERVICING CORPORATION;
CTC REAL ESTATE SERVICES; CHARLES J.
WIGHT; AND TARA J. WIGHT,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-14-693882-C

Dept. No.: XXX

JOINT PRETRIAL MEMORANDUM

JOINT PRETRIAL MEMORANDUM

Trial of this matter is scheduled to commence on a stack beginning January 2, 2019. This pretrial memorandum is submitted jointly by the parties pursuant to EDCR 2.67. The EDCR 2.67 conference occurred on October 26, 2018, with Nikoll Nikci, Esq. on behalf of Saticoy Bay LLC Series 113 McLaren, Jared M. Sechrist, Esq. on behalf of The Bank of New York Mellon fka The Bank of New York, as successor Trustee to JPMorgan Chase Bank, N.A, as Trustee for the Certificateholders of CWABS Master Trust Revolving Home Equity Loan Asset Backed Notes, Series 2004-T and Green Tree Servicing LLC, now known as Ditech Financial LLC ("Green Tree") (collectively defendants), and Michael Van Luven, Esq. attending on behalf of Hillpointe Park Maintenance District.

A. Statement of Facts**Stipulated Facts:**

1. This matter concerns title to the real property located at 133 McLaren Street, Henderson, Nevada 89074; Parcel No. 178-16-215-068 (hereinafter "Property").
2. The Property is subject to the Declaration of Covenants, Conditions and Restrictions and Grants of Easements for Hillpointe Park Maintenance District ("the CC&Rs") recorded on January 25, 1991, as instrument number 91012500894.
3. On or about November 16, 2004, Charles J. Wight and Tara J. Wight obtained a home loan from Countrywide Home Loans, Inc. in the amount of \$220,000.00 ("the Loan") to purchase the Property.
4. On November 16, 2004, Charles J. Wight and Tara J. Wight executed two deeds of trust. The First Deed of Trust in the amount of \$220,000.00 within which Countrywide Home Loans, Inc. was named as Lender and Mortgage Electronic Registration Systems, Inc. was acting as beneficiary and nominee for Lender and Lender's successors and assigns. This deed of trust was recorded on November 23, 2004, as instrument number 20041123-0002449, as an encumbrance to the Property (the "First Deed of Trust"). The former owner used the funds from the First Deed of Trust to purchase the Property.
5. The Second Deed of Trust in the amount of \$27,500.00 within which Countrywide Home Loans, Inc. was named as Lender and Mortgage Electronic Registration Systems, Inc. was

1 acting as beneficiary and nominee for Lender and Lender's successors and assigns. This deed of trust
2 was recorded on November 23, 2004, as instrument number 20041123-0002450, as an encumbrance
3 to the Property ("Second Deed of Trust"). The former owner used the funds from the Second Deed of
4 Trust to purchase the Property.

5 6. On May 28, 2013, MERS assigned the beneficial interest in the First Deed of Trust to
6 defendant Green Tree Servicing, LLC. The assignment was recorded on May 28, 2013 in the Official
7 Records of the Clark County Recorder as instrument number 201305280000641.

8 7. On October 29, 2013, MERS assigned the beneficial interest in the Second Deed of
9 Trust to defendant The Bank of New York Mellon fka The Bank of New York, as successor Trustee
10 to JPMorgan Chase Bank, N.A, as Trustee for the Certificateholders of CWABS Master Trust
11 Revolving Home Equity Loan Asset Backed Notes, Series 2004-T. The assignment was recorded on
12 October 29, 2013 in the Official Records of the Clark County Recorder as instrument number
13 201310290000710.

14 8. Defendant The Bank of New York Mellon fka The Bank of New York, as successor
15 Trustee to JPMorgan Chase Bank, N.A, as Trustee for the Certificateholders of CWABS Master Trust
16 Revolving Home Equity Loan Asset Backed Notes, Series 2004-T is the current record beneficiary of
17 the Second Deed of Trust.

18 9. On January 14, 2011, Nevada Association Services, Inc. ("NAS"), as agent for
19 Hillpointe Park Maintenance District ("HOA"), recorded a Notice of Delinquent Assessment Lien,
20 Instrument No. 201101140001247.

21 10. On September 9, 2011, NAS, as agent for the HOA, recorded a Notice of Default and
22 Election to Sell as Instrument No. 201109090000728.

23 11. After recording the notice of default, on September 19, 2011, NAS, on behalf of the
24 HOA, mailed the notice of default to the Wights, MERS, Countrywide Home Loans, Inc., and other
25 interested parties via first class mail and certified mail.

26 12. NAS, on behalf of the HOA, recorded a Notice of Foreclosure Sale on October 29,
27 2013, as Instrument No. 201310290003584 setting the sale for November 22, 2013.

28 ///

1 13. On October 29, 2013, NAS, on behalf of the HOA, mailed the notice of sale to the
2 Wights, MERS, Green Tree Servicing, LLC, Countrywide Home Loans, Inc., and other interested
3 parties via first class mail and certified mail.

4 14. On October 29, 2013, NAS, on behalf of the HOA, posted the notice of trustee's sale
5 on the Property.

6 15. On October 31, 2013, NAS, on behalf of the HOA, posted the notice of sale in three
7 public places in Clark County: Nevada Legal News; the Clark County Courthouse; and the Clark
8 County Building.

9 16. On October 31, 2013, NAS, on behalf of the HOA, posted the notice of sale in three
10 public places in Henderson, Clark County: City Hall; Paseo Verde Library; and the Library, 100 west
11 Lake Mead Blvd., Henderson.

12 17. NAS published the notice of sale in Nevada Legal News on three dates: November 1,
13 2013; November 8, 2013; and November 15, 2013.

14 18. NAS, on behalf of the HOA, then recorded a foreclosure deed against the Property on
15 November 26, 2013, Instrument No. 201311260001363, stating that it sold the HOA's interest to
16 Saticoy Bay LLC Series 113 McLaren ("Saticoy") for \$10,200.00 on November 22, 2013.

17 19. The Trustee's Deed Upon Sale contains the following recitals:

18 This conveyance is made pursuant to the powers conferred upon agent by Nevada
19 Revised Statutes, the Hillpointe Park Maintenance governing documents (CC&Rs) and
20 that certain Notice of Delinquent Assessment Lien, described herein. Default occurred
21 as set forth in a Notice of Default and Election to Sell, recorded on 9/9/2011 as instrument
22 # 0000728 Book 20110909 which was recorded in the office of the recorder of said
23 county. Nevada Association Services, Inc. has complied with all requirements of law
24 including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of
25 Delinquent Assessment and Notice of Default and the posting and publication of the
26 Notice of Sale. Said property was sold by said agent, on behalf of Hillpointe Park
27 Maintenance at public auction on 11/22/2013, at the place indicated on the Notice of
28 Sale. Grantee being the highest bidder at such sale, became the purchaser of said property
 and paid therefore to said agent the amount bid \$10,200.00, in lawful money of the United
 States, or by the satisfaction, pro tanto, of the obligations then secured by the Delinquent
 Assessment Lien.

27 20. At the time of the HOA Sale on November 22, 2013, Green Tree was the servicer of
28 the loan and the record beneficiary of the First Deed of Trust.

21. At the time of the HOA Sale on November 22, 2013 The Bank of New York Mellon fka The Bank of New York, as successor Trustee to JPMorgan Chase Bank, N.A, as Trustee for the Certificateholders of CWABS Master Trust Revolving Home Equity Loan Asset Backed Notes, Series 2004-T was the servicer and record beneficiary of the Second Deed of Trust.

22. Defendants' expert, Matthew Lubaway, has created an expert report which defendants have disclosed in this matter.

23. Mr. Lubaway is qualified as an expert witness to testify as to the fair market value of the property.

24. Mr. Lubaway used a sales comparison approach for calculating the fair market value of the property.

25. Mr. Lubaway's method of valuation did not consider what properties at similarly situated HOA foreclosure sales sold for at auction.

26. Based on Mr. Lubaway's retrospective fair market valuation, the fair market value of the property at the time of the HOA foreclosure sale was \$140,000.00.

B. Claims for Relief

Plaintiff Saticoy has plead the following causes of action against Defendants:

1. Injunctive Relief;
2. Quiet Title; and
3. Declaratory Relief.

Green Tree has asserted the following counterclaims and cross-claims:

1. Declaratory Judgment against All Counter-Defendants (Saticoy Bay Series 133 McLaren, the HOA, and NAS);
2. Quiet Title against the Plaintiff;

C. Affirmative Defenses

Green Tree has asserted the following affirmative defenses to Plaintiff's causes of action:

1. Plaintiff's Complaint fails to state a claim for relief against Green Tree.
2. Plaintiff is barred from any recovery against Green Tree because Plaintiff has not been damaged by the actions alleged in the Complaint.

1 3. At all times, Green Tree acted in accordance with reasonable standards, in good faith,
2 and with ordinary care, and its actions did not contribute to the alleged damages.

3 4. Plaintiff is precluded from recovery against Green Tree because Plaintiff failed to
4 mitigate properly any damages it might have suffered as a result of the conduct alleged in the
5 Complaint.

6 5. Plaintiff's damages, if any, should be offset, in whole or in part, against any damages
7 caused by Plaintiff to Green Tree as a result of Plaintiff's conduct.

8 6. Any damages Plaintiff may have sustained were proximately caused by the acts of
9 persons other than Green Tree and, therefore, Plaintiff is not entitled to any relief from Green Tree.

10 7. Plaintiff's damages, if any, resulted from the acts or omissions of third parties over
11 whom Green Tree had no control. The acts of such third parties constitute intervening or superseding
12 causes of the harm, if any, suffered by Plaintiff.

13 8. Plaintiff is barred from any recovery against Green Tree by the principles of equity,
14 including waiver, laches, and estoppel, so as to preclude in whole or in part the relief sought in the
15 Complaint.

16 9. Green Tree has been required to retain the services of an attorney to defend this claim
17 and has been damaged as a result thereof, in the amount of its attorneys' fees and costs incurred and
18 to be incurred. Green Tree is entitled to recover those fees and costs from Plaintiff.

19 10. Green Tree incorporates by reference those affirmative defenses enumerated in Rule 8
20 of the Nevada Rules of Civil Procedure. In the event subsequent investigation or discovery reveals
21 the applicability of such defenses, Green Tree hereby reserves its right to seek leave of the Court to
22 amend its answer to specifically assert the same. Such defenses are herein incorporated by reference
23 with the specific purpose of not waiving the same.

24 11. The HOA foreclosure sale is void because it was not commercial reasonable and the
25 facts and circumstances regarding the sale of the property to Plaintiff violated the homeowner's
26 association's obligation of good faith and duty to act in a commercially reasonable manner. Thus,
27 Plaintiff's claim of free and clear title to the property is barred.

28 ///

1 12. The homeowner's association lien foreclosure sale is void because the homeowners'
2 association failed to comply with the requirements of NRS 116 et seq. and other applicable laws.
3 Thus, Plaintiff's claim of free and clear title to the Property is barred.

4 13. The HOA foreclosure sale is void because the provisions of NRS 116.31162-116.31168
5 fail to provide notice of satisfaction of the conditions precedent required for the existence of
6 superpriority lien rights and, as such, are unconstitutionally vague and violate the Due Process Clause
7 of the United States and Nevada Constitutions.

8 14. The HOA foreclosure sale is void because the "opt-in" notice provisions of NRS
9 116.3116 et seq. do not require that reasonable and affirmative steps be taken to give actual notice to
10 lenders and other holders of recorded security interests prior to a deprivation of their property rights
11 and, as such, violate the Due Process Clauses of the Fifth and Fourteenth Amendments of the United
12 States Constitution and the Due Process Clause of the Nevada Constitution.

13 15. Pursuant to Rule 11 of the Nevada Rules of Civil Procedure, all possible affirmative
14 defenses may not have been alleged insofar as sufficient facts were not available after reasonable
15 inquiry upon filing of the answer and, therefore, Green Tree reserves its right to amend the affirmative
16 defenses at the time of trial in accordance to proof.

17 BoNYM has asserted the following affirmative defenses to Plaintiff's Complaint:

18 16. Plaintiff's Complaint fails to state a claim for relief against BoNYM.

19 17. To the extent that Plaintiff relies on and accurately interpret NRS 116.3116 to support
20 its claim, the statute, and Chapter 116, are void for vagueness as applied to this matter.

21 18. A deed of trust beneficiary cannot be deprived of its property interest in violation of
22 the Procedural Due Process Clause of the Fourteenth Amendment of the United States Constitution
23 and Article 1, Sec. 8, of the Nevada Constitution.

24 19. The superpriority lien was satisfied prior to the homeowners' association foreclosure
25 under the doctrines of tender, estoppel, laches, or waiver.

26 20. The homeowners' association foreclosure sale was not commercially reasonable, and
27 the circumstances of sale of the property violated the homeowners' association's obligation of good
28 faith under NRS 116.1113 and duty to act in a commercially reasonable manner.

1 21. Plaintiff's claims are barred in whole or in part because of its failure to take reasonable
2 steps to mitigate its damages, if any.

3 22. Plaintiff lacks standing to bring some or all of its claims and causes of action.

4 23. BoNYM avers the affirmative defense of unclean hands.

5 24. BoNYM avers that the Plaintiff is not entitled to any relief for which it prays.

6 25. BoNYM avers the affirmative defense of failure to do equity.

7 26. BoNYM was not provided proper notice of the "superpriority" assessment amounts and
8 the homeowners' association foreclosure sale, and any such notice provided to Defendants failed to
9 comply with the statutory and common law requirements of Nevada and with state and federal
10 constitutional law.

11 27. The homeowners' association foreclosure sale is void for failure to comply with the
12 provisions of NRS Chapter 116, and other provisions of law.

13 28. Plaintiff purchased the property with record notice of the interest of the deeds of trust
14 recorded against the property.

15 29. Chapter 116 of the Nevada Revised Statutes is facially unconstitutional because its
16 "opt-in" notice provisions do not mandate that reasonable and affirmative steps be taken to give actual
17 notice to a record lien holder before depriving that lien holder of its property rights, in violation of the
18 Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and
19 of the Nevada Constitution.

20 30. Pursuant to NRCP 11, BoNYM reserves the right to assert additional affirmative
21 defenses at the time of trial.

22 Plaintiff has asserted the following affirmative defenses to Green Tree's causes of action in the
23 Counterclaim:

24 31. Counterclaimant's Complaint fails to state a claim against this
25 plaintiff/counterdefendant.

26 32. Counterclaimant's damages, if any, were caused by their own acts and omissions.

27 33. The counterclaimants have failed to mitigate their damages.

28 34. Counterclaimants are guilty of laches and unclean hands.

- 1 35. Counterclaimant's claims are barred by the applicable statute of limitations.
- 2 36. The counterclaimants failed to exercise due care.
- 3 37. The counterclaimant's claims are barred by the doctrine of waiver.
- 4 38. The counterclaimants gave its consent, expressed or implied to the acts, omissions, and
- 5 conduct alleged of this answering counterdefendant.
- 6 39. The counterclaimants ratified the alleged acts of this answering counterdefendant.
- 7 40. The counterclaimants expressly, impliedly and/or equitable released all rights of this
- 8 answering counterdefendant.
- 9 41. The plaintiff is a bona fide purchaser for value without notice of any claims of any
- 10 party or defects in title.
- 11 42. Counterclaimants assumed the risk of the damages of which it now complains.
- 12 43. Counterclaimant's claims are barred by the doctrine of estoppel.
- 13 44. Counterdefendant is a bona fide purchaser for value without notice of any claims of
- 14 any party or defects in title.
- 15 45. Saticoy Bay reserves the right to amend the affirmative defenses at the time of trial in
- 16 accordance to proof.

17 HOA has asserted the following affirmative defenses to Green Tree's causes of action in the

18 Counterclaim:

- 19 1. Green Tree's claims are barred by the statute of limitations.
- 20 2. Green Tree fails to state a claim upon which relief can be granted.
- 21 3. Green Tree failed to mitigate its damages.
- 22 4. Green Tree is barred from recovery by the equitable doctrines of laches, unclean hands,
- 23 and failure to do equity.
- 24 5. Green Tree materially breached the obligations contract complained of prior to the
- 25 commencement of this action.
- 26 6. Green Tree's claim was filed in bad faith and lacks merit.
- 27 7. HOA acted in good faith.
- 28 8. HOA's conduct was privileged.

1 9. Green Tree is barred from recovery due to its own negligence.

2 10. Green Tree is barred from recovery due to its own comparative fault.

3 11. Green Tree's claim fails because it was aware of and understood the risk inherent in
4 the actions complained of, and thus assumed those risks.

5 12. Green Tree fails to show that HOA's actions or inactions were a proximate cause for
6 which Green Tree seeks recovery.

7 13. Green Tree suffered no damages.

8 14. Green Tree's claim fails because any damages resulted from Green Tree's own acts
9 and omissions.

10 **D. Abandoned Claims or Defenses**

11 No claims or defenses have been abandoned by either party at this time.

12 **E. Proposed Amendments to the Pleadings**

13 **Saticoy's View:**

14 Saticoy does not anticipate any amendments to the pleadings at this time; however, it reserves
15 its right to make any and all trial amendments as supported by the evidence and allowed by law.

16 **Defendants' View:**

17 **Green Tree:**

18 Green Tree does not anticipate any amendments to the pleadings at this time, but reserves the
19 right to amend to proof during trial if supported by the evidence and allowed by law.

20 **BoNYM:**

21 BoNYM does not anticipate any amendments to the pleadings at this time, but reserves the
22 right to amend to proof during trial if supported by the evidence and allowed by law.

23 **Counterdefendant's View:**

24 **HOA:**

25 HOA does not anticipate any amendments to the pleadings at this time, but reserves the right
26 to amend to proof during trial if supported by the evidence and allowed by law.

27 ///

28 ///

F. List of Exhibits

The parties designate the following joint trial exhibits:

No.	Exhibit	Bates No.
1.	Declaration of Covenants, Conditions and Restrictions, Instrument No. 91012500374	GTS(Wight)0153 - GTS(Wight)0208
2.	Deed of Trust, Instrument No. 20041123-0002449	GTS(Wight)0001 - GTS(Wight)0028
3.	Deed of Trust, Instrument No. 20041123-0002450	GTS(Wight)0029 - GTS(Wight)0043
4.	Notice of Delinquent Assessment Lien, Instrument No. 20110114-0001247	GTS(Wight)0047
5.	Notice of Default and Election to Sell under Homeowners Association Lien, Instrument No. 201109090000728	GTS(Wight)0048 - GTS(Wight)0049
6.	Corporate Assignment of Deed of Trust, Instrument No. 20130528-0000641	GTS(Wight)0050 - GTS(Wight)0051
7.	Notice of Foreclosure Sale, Instrument No. 20131029-0003584	GTS(Wight)0055 - GTS(Wight)0056
8.	Foreclosure Deed, Instrument No. 20131126-0001363	GTS(Wight)0057 - GTS(Wight)0059
9.	Substitution of Trustee and Full Reconveyance, Instrument No. 20050105-0000375	GTS(Wight)0044 - GTS(Wight)0046
10.	Substitution of Trustee, Instrument No. 201309230003002	GTS(Wight)0052
11.	Assignment of Deed of Trust, Instrument No. 20131029-0000710	GTS(Wight)0053 - GTS(Wight)0054
12.	Copies of documents entitled Notice of Default and Election to Sell	GTS(Wight)0060 - GTS(Wight)0093
13.	Copies of documents entitled Notice of Foreclosure Sale	GTS(Wight)0094 - GTS(Wight)0110
14.	Copies of documents related to excess proceeds of foreclosure sale	GTS(Wight)0111 - GTS(Wight)0127
15.	Miles Bauer Affidavit and Accompanying Exhibits	GTS(Wight)0128 - GTS(Wight)0146
16.	Wire Payout Request	GTS(Wight)0209
17.	Bank of America Loan Payment History	GTS(Wight)0210 - GTS(Wight)0218
18.	Bank of America's servicing records showing prior investor information	GTS(Wight)0241 - GTS(Wight)0242

No.	Exhibit	Bates No.
19.	MERS System Rules in effect at time of HOA sale	GTS(Wight)0509 - GTS(Wight)0577
20.	Documents produced by Nevada Association Services, Inc. in response to subpoena	GTS(Wight)0578 - GTS(Wight)1007
21.	Portion of bench trial testimony of Chris Yergensen and Paterno Jurani from <i>TRP Fund IV LLC v. Bank of America, N.A. et al.</i> , Case No. A-14-695770-C	GTS(Wight)1008 - GTS(Wight)1153
22.	Deposition of David Stone from <i>Bank of America, N.A. v. One Queensridge Place Homeowner's Association Inc.</i> , case no. 2:13-cv-01221-GMN-NJK	GTS(Wight)1154 - GTS(Wight)1207
23.	Trial Transcript from <i>7510 Perla Del Mar Ave Trust v. Bank of America, N.A. et al.</i> , case number A-13-686277-C	GTS(Wight)1208 - GTS(Wight)1435
24.	Newsletter from Nevada Association Services, Inc. dated March 2008	GTS(Wight)1436 - GTS(Wight)1437
25.	Affidavit of Custodian of Records of Nevada Association Records Inc. and newsletter dated November 19, 2010	GTS(Wight)1438 - GTS(Wight)1440
26.	Portion of bench trial transcript from <i>Paradise Harbor Trust Place v. US Bank National Association</i> , case no. A707392	GTS(Wight)1441 - GTS(Wight)1528
27.	Deposition of Eddie Haddad from <i>Carrington Mortgage Services, LLC v. Saticoy Bay LLC Series 6709 Brick House et al.</i> , case number 2:15-cv-01852 APG-PAL	GTS(Wight)1529 - GTS(Wight)1563
28.	Minutes of the Senate Committee on Commerce and Labor, February 20, 2003	GTS(Wight)1564 - GTS(Wight)1586
29.	Deposition of Eddie Haddad from <i>U.S. Bank National Association, as Trustee, v. Carolina at Southern Highlands Homeowners Association et al.</i> , case number 2:16-cv-03009-RFB-CWH in the United States District Court for the District of Nevada	GTS(Wight)1587 - GTS(Wight)1629
30.	Transcript of Bench Trial from <i>Paradise Harbor Trust Place v. U.S. National Bank Association</i> , case number A707392	GTS(Wight)1630 - GTS(Wight)1867
31.	Transcript of Bench Trial from <i>Saticoy Bay LLC Series 10371 Calypso Cave v. Amalgamated Bank et al.</i> , case number A-13-679171-C	GTS(Wight)1868 - GTS(Wight)2092
32.	Various bankruptcy filings from bankruptcy of Paradise Harbor Place Trust in the United States Bankruptcy Court for the District of Nevada, case number 12-20213-btb	GTS(Wight)2093 - GTS(Wight)2142
33.	Notice of Servicing Transfer to Green Tree	GTS(Wight)2143 - GTS(Wight)2146
34.	Promissory note	GTS(Wight)2147 - GTS(Wight)2150

No.	Exhibit	Bates No.
35.	Payoff Quote	TBD
36.	Declaration of Graham Babin	GTS(Wight)0243 - GTS(Wight)0348
37.	Screenshots from Bank of America's Servicing Records showing Fannie Mae ownership of Loan	GTS(Wight)0147 - GTS(Wight)0149
38.	Fannie Mae Lender Letter LL-2015-04	GTS(Wight)0150
39.	Statement on Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations from the Federal Housing Finance Agency	GTS(Wight)0151
40.	Statement on HOA Super-Priority Lien Foreclosures from the Federal Housing Finance Agency	GTS(Wight)0152
41.	Fannie Mae MBS Processed Schedule of Mortgages	GTS(Wight)0349 - GTS(Wight)0501
42.	Fannie Mae's business records showing loan was not securitized at time of HOA sale	GTS(Wight)0502 - GTS(Wight)0505
43.	Fannie Mae Lender Letter	GTS(Wight)0506
44.	Statement on Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations from the Federal Housing Finance Agency	GTS(Wight)0507
45.	Statement on HOA Super-Priority Lien Foreclosures from the Federal Housing Finance Agency	GTS(Wight)0508
46.	Fannie Mae Servicing Guide, an interactive version of which is publicly available at: https://www.fanniemae.com/content/guide/servicing/index.html . ¹ A static, PDF copy of the most recent version of the Guide is available at https://www.fanniemae.com/content/guide/svc041118.pdf , and a static, PDF copy of the version of the March 2012 Servicing Guide in effect at the time of the HOA sale is available at https://www.fanniemae.com/content/guide/svc031412.pdf	N/A
47.	Fannie Mae Selling Guide, an interactive version of which is publicly available at: https://www.fanniemae.com/content/guide/selling/index.html . ²	N/A

¹ There are two places to find the prior versions of the servicing guide: (1) Go to the link in the above footnote and click "Show All" on the left side of the page under "PDF Version." (2) Go to <https://www.fanniemae.com/singlefamily/guides>, click on "Allregs.com" on right side of page under "Fannie Mae Single-Family Guides via AllRegs."

² To access prior versions of the Selling Guide, go to <https://www.fanniemae.com/singlefamily/guides>, and click on "Allregs.com" on right side of page under "Fannie Mae Single-Family Guides via AllRegs."

1 The parties stipulate to the authenticity and admissibility of exhibits **1 through 14 and 20** and
2 reserve all rights to enter appropriate objections at the time of trial to the remaining joint exhibits.

3 The parties reserve the right to offer any and all discovery responses by all parties to include:
4 Responses to Requests for Admission; Responses to Interrogatories; Responses to Requests for
5 Production of Documents. The parties reserve the right to offer any and all documents disclosed by
6 any party to this action including, without limitation, the documents disclosed in the Pretrial
7 Disclosures of all parties pursuant to NRCP 16.1(a)(3).

8 **G. List of Witnesses**

9 **Plaintiff's Witnesses:**

10 1. Iyad "Eddie" Haddad, person most knowledgeable for Oliver Sagebrush Drive Trust
11 c/o Law Offices of Michael F. Bohn, Esq., Ltd.
12 2260 Corporate Circle, Suite 480
Henderson, Nevada 89074

13 2. Susan Moses, Brandon Wood or other corporate representative of Nevada
14 Association Services, Inc.
15 6224 West Desert Inn Road
Las Vegas, Nevada 89146

16 **Green Tree:** Green Tree expects to call the following witnesses at trial:

- 17 1. Shawn Look, Matt Labrie, Jessica Woodbridge, Diane Deloney, or other Corporate
18 Representative for Bank of America, N.A.³
19 800 Samoset Drive, Mail Code DE5-024-02-08
Newark, DE, 19713
- 20 2. Christy Christensen or another Corporate Representative for
21 Ditech Financial LLC f/k/a Green Tree Servicing LLC
22 c/o Melanie Morgan, Esq. and/or Jared Sechrist, Esq.
AKERMAN LLP
23 1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
24 Telephone: (702) 634-5000

25 ///

26 ///

27
28 _____
³ No party is to engage in ex parte communications without Akerman's consent.

3. Corporate Representative and/or board members and/or employees of
Hillpointe Park Maintenance
c/o Edward E. Boyack
BOYACK ORME & ANTHONY
7432 W. Sahara Avenue, Suite 101
Las Vegas, Nevada 89117
4. Susan Moses and/or another
Corporate Representative and/or employees of Nevada Association Services, Inc.
c/o Brandon E. Wood, Esq.
6625 S. Valley View Blvd. Suite 300
Las Vegas, Nevada 89118
5. Rock Jung, Esq.
Wright Finlay & Zak
7785 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117
Telephone: (702) 475-7694
6. Felicia Miller or another representative for
Federal National Mortgage Association (“Fannie Mae”)
c/o Darren Brenner, Esq. and/or Jared Sechrist, Esq.
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
7. Iyad “Eddie” Haddad and/or another Corporate Representative and/or
Employee of Saticoy Bay LLC Series 133 McLaren
c/o Michael F. Bohn, Esq.
Law Offices of Michael F. Bohn, Esq. LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119

HOA’s Witnesses:

HOA reserves the right to call any other party’s listed witnesses in rebuttal.

H. Contested Issues of Law

1. Whether under the Supremacy Clause, the Federal Foreclosure Bar preempts the State Foreclosure Statute, such that the HOA Sale did not extinguish Fannie Mae’s interest

Green Tree’s position is that the Federal Foreclosure Bar preempts the State Foreclosure Statute, such that the HOA Sale did not extinguish Fannie Mae’s interest.

The HOA takes no position as it sold the property without guarantee or warranty.

///

1 2. Whether Bank of America’s payment to the HOA, through NAS, in the amount of
2 \$276.75, satisfied the superpriority portion of the statutory HOA lien

3 Green Tree’s position is the \$276.75 payment unconditionally satisfied the superpriority
4 portion of the statutory HOA lien and NAS's rejection of the payment was unjustified. Green Tree
5 contends the \$267.75 payment was a valid tender and, pursuant to the Nevada Supreme Court's
6 published opinion *Bank of America, N.A. v. SFR Investments Pool I, LLC*, 427 P.3d 113, 121 (Nev.
7 2018), preserved the First Deed of Trust as a first position encumbrance on the Property.

8 The HOA’s position is the purported payment was insufficient to satisfy the superpriority lien.

9 3. Whether the inadequacy of the HOA foreclosure-sale price is “palpable and great,” and
10 there is “very slight additional evidence of unfairness.”

11 Green Tree’s position is that additional evidence of unfairness is shown by NAS's rejection of
12 Bank of America's payment of the superpriority portion of the HOA's lien and violations of the relevant
13 CC&R provisions.

14 The HOA’s position is the price was adequate due to market forces at the time of the sale, and
15 the nature of the foreclosure proceedings. Further, the HOA’s position is a “fair market value” analysis
16 is improper and contrary to the statutory scheme governing HOA foreclosure sales as set forth by the
17 Nevada legislature.

18 4. Whether the HOA wrongfully foreclosed.

19 The HOA’s position is that the foreclosure sale was proper.

20 Green Tree's position is that the HOA did not foreclose on its superpriority lien.

21 5. If the foreclosure sale is valid.

22 Green Tree's position is that the HOA did not foreclose on its superpriority lien.

23 6. If the First Deed of Trust is extinguished as a result of the foreclosure sale.

24 Green Tree's position is that the HOA did not foreclose on its superpriority lien so the HOA
25 foreclosure sale did not extinguish the First Deed of Trust.

26 ///

27 ///

28 ///

I. Time Required for Trial

2 -3 days.

J. Other Matters

None.

DATED this 13th day of December, 2018**LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.****AKERMAN LLP**/s/ Michael F. Bohn/s/ Jared Sechrist

MICHAEL F. BOHN, ESQ.

MELANIE D. MORGAN, ESQ.

Nevada Bar No.: 1641

Nevada Bar No. 8215

ADAM R. TRIPPIEDI, ESQ.

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Nevada Bar No.: 12294

Nevada Bar No. 10439

2260 Corporate Circle, Suite 480

1635 Village Center Circle, Suite 200

Henderson, NV 89074

Las Vegas, Nevada 89134

*Attorneys for plaintiff/counterdefendant
Saticoy Bay LLC Series 133 McLaren**Attorneys for The Bank of New York Mellon fka
The Bank of New York, as successor Trustee to
JPMorgan Chase Bank, N.A, as Trustee for the
Certificateholders of CWABS Master Trust
Revolving Home Equity Loan Asset Backed Notes,
Series 2004-T and Green Tree Servicing, LLC***BOYACK ORME & ANTHONY**/s/ Michael Van Luven

EDWARD D. BOYACK, ESQ.

Nevada Bar No. 005229

MICHAEL VAN LUVEN, ESQ.

Nevada Bar No. 13975

7432 W. Sahara Avenue, Suite 101

Las Vegas, Nevada 89117

*Attorneys for Cross-Defendant Hillpointe
Park Maintenance District*

298

20041123-0002449

Assessor's Parcel Number:
178-16-215-068
After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

Fee: \$41.00
N/C Fee: \$25.00

11/23/2004 13:53:41
T20040137070

Requestor:
OLD REPUBLIC TITLE COMPANY OF NEVADA

Frances Deane BGN
Clark County Recorder Pgs: 28

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
JEANETTE HUTSON
~~Recording Requested By:~~
D. DEL BALZO

COUNTRYWIDE HOME LOANS, INC.

10190 COVINGTON CROSS DR
#190
LAS VEGAS
NV 89144

34

[Space Above This Line For Recording Data]

5120003256-KLS 0008663384511004
[Escrow/Closing #] [Doc ID #]

DEED OF TRUST

MIN 1000157-0004394368-3

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 NOVEMBER 12, 2004 , together with all Riders to this document.

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

VMP -6A(NV) (0307) CHL (07/03)(d)

Page 1 of 16

VMP Mortgage Solutions - (800)521-7291

Initials: *ad* *cl*

Form 3029 1/01

* 2 3 9 9 1 *

* 0 8 6 6 3 3 8 4 5 0 0 0 0 1 0 0 6 A *

(B) "Borrower" is
CHARLES J WIGHT, AND TARA J WIGHT, HUSBAND AND WIFE AS JOINT
TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
COUNTRYWIDE HOME LOANS, INC.

Lender is a
CORPORATION

organized and existing under the laws of NEW YORK
4500 Park Granada
Calabasas, CA 91302-1613

Lender's address is

(D) "Trustee" is
CTC REAL ESTATE SERVICES

400 COUNTRYWIDE WAY MSN SV-88
SIMI VALLEY, CA, NV 93065

(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 NOVEMBER 12, 2004
The Note states that Borrower owes Lender
TWO HUNDRED TWENTY THOUSAND and 00/100

Dollars (U.S. \$ 220,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 01, 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 checked="" 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.

Initials: SN CEL

(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

DOC ID #: 0008663384511004

irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of

[Type of Recording Jurisdiction]

CLARK

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of

133 MCLAREN STREET, HENDERSON

[Street/City]

Nevada 89074-0916 ("Property Address"):

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

VMP-6A(NV) (0307) CHL (07/03)

Page 4 of 16

Initials: *dw* *cl*

Form 3029 1/01

SA0331

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

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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

Initials: W CS
Form 3029 1/01

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

Initials: 
Form 3029 1/01

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

Initials: 
Form 3029 1/01

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.

Initials 

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.

Initials: 

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,

Initials: 

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).

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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.

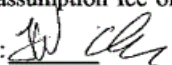
If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. 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. \$ 300.00 .

Initials: 
Form 3029 1/01

DOC ID #: 0008663384511004

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

Witnesses:

_____(Seal)
CHARLES J. WIGHT -Borrower

_____(Seal)
TARA J. WIGHT -Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

New York
STATE OF ~~NEVADA~~
COUNTY OF *Kings*

This instrument was acknowledged before me on November 14, 2006 by
Charles J. Wight and Tara J. White

FRANK ALBERGO
Commissioner of Deeds
City of New York No. 2-10432
Certificate Filed in Kings County
Commission Expires *12-01-05*

Frank Albergo

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

[Space Above This Line For Recording Data]

FIXED/ADJUSTABLE RATE RIDER

(LIBOR Twelve Month Index - Rate Caps)

PARCEL ID #:
178-16-215-068
Prepared By:
JEANETTE HUTSON

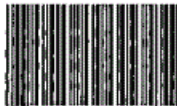
5120003256-KLS
[Escrow/Closing #]

0008663384511004
[Doc ID #]

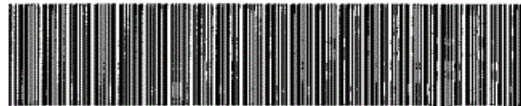
CONV
● ARM Fixed Period LIBOR Rider
1U652-XX (04/01)(d)

Page 1 of 4

Initials: on cey



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SA0344

THIS FIXED/ADJUSTABLE RATE RIDER is made this TWELFTH day of NOVEMBER, 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 COUNTRYWIDE HOME LOANS, INC.

("Lender") of the same date and covering the property described in the Security Instrument and located at:
133 MCLAREN STREET, HENDERSON, NV 89074-0916

[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 5.000 %. 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 DECEMBER, 2009, 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."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for twelve 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 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 & ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.000 % or less than 2.250 %. 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 10.000 %.

(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.

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.

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)
 CHARLES J. WIGHT -Borrower


 _____ (Seal)
 TARA J. WIGHT -Borrower

 _____ (Seal)
 -Borrower

 _____ (Seal)
 -Borrower

PLANNED UNIT DEVELOPMENT RIDER

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

PARCEL ID #:
178-16-215-068

Prepared By:
JEANETTE HUTSON

5120003256-KLS 0008663384511004
[Escrow/Closing #] [Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this TWELFTH day of
NOVEMBER, 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

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

VMP -7R (0405)

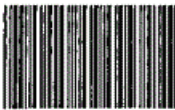
CHL (06/04)(d)

Page 1 of 4

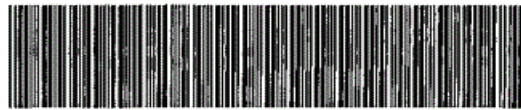
Initials *HW* *CL*

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

Form 3150 1/01



* 2 3 9 9 1 *



* 0 8 6 6 3 3 8 4 5 0 0 0 0 1 0 0 7 R *

SA0348

DOC ID #: 0008663384511004

undersigned (the "Borrower") to secure Borrower's Note to
COUNTRYWIDE HOME LOANS, INC.

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

133 MCLAREN STREET
HENDERSON, NV 89074-0916
[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
THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD
THAT AFFECT THE PROPERTY

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

[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 maintain property insurance coverage on the Property is deemed satisfied to the extent
that the required coverage is provided by the Owners Association policy.

Initials: 

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.

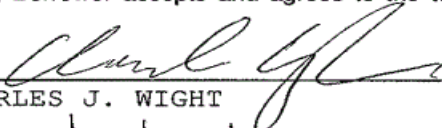
E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial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

Initials 

DOC ID #: 0008663384511004

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



CHARLES J. WIGHT (Seal)
- Borrower



TARA J. WIGHT (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

SECOND HOME RIDER

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

PARCEL ID #:
178-16-215-068

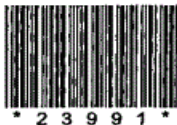
Prepared By:
JEANETTE HUTSON

5120003256-KLS 0008663384511004
[Escrow/Closing #] [Doc ID #]

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

VMP® -365R (0405) CHL (06/04)(d) Page 1 of 3
VMP Mortgage Solutions, Inc. (800)521-7291

Initials: *W* *cel*
Form 3890 1/01



SA0352

DOC ID #: 0008663384511004

THIS SECOND HOME RIDER is made this TWELFTH day of
NOVEMBER, 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" whether there are one or more persons undersigned) to secure
Borrower's Note to
COUNTRYWIDE HOME LOANS, INC.

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

133 MCLAREN STREET, HENDERSON, NV 89074-0916

[Property Address]

In addition to the covenants and agreements made in the Security Instrument, Borrower and
Lender further covenant and agree that Sections 6 and 8 of the Security Instrument are deleted and
are replaced by the following:

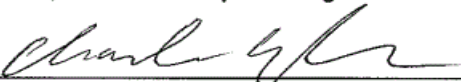
6. Occupancy. Borrower shall occupy, and shall only use, the Property as Borrower's second
home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at
all times, and shall not subject the Property to any timesharing or other shared ownership
arrangement or to any rental pool or agreement that requires Borrower either to rent the Property
or give a management firm or any other person any control over the occupancy or use of the
Property.

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 second home.

ch

DOC ID #: 0008663384511004

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



CHARLES J. WIGHT (Seal)
-Borrower



TARA J. WIGHT (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Order No. : 5120003256-KLS

EXHIBIT "A"

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

PARCEL I:

Lot Two (2) in Block Two (2) of SKYVIEW, as shown by map thereof on file in Book 47 of Plats, Page 69, in the Office of the County Recorder of Clark County, Nevada and as amended by Certificate of Amendment recorded November 1, 1990 in Book 901101 of Official Records, Clark County, Nevada records as Document No. 00544 and as amended by Certificate of Amendment recorded February 28, 1991 in Book 910228 as Document No. 01623.

PARCEL II:

A non-exclusive easement for ingress, egress and of enjoyment in and to the Common Area set forth and defined in the Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Hillpointe Park Maintenance District, recorded January 25, 1991 in Book 910125 as Document No. 00894, as the same may from time to time be amended and/or supplemented of Official Records.

APN # 178-16-215-068

N64181

Accommodation

Inst #: 201101140001247

Fees: \$14.00

N/C Fee: \$0.00

01/14/2011 09:05:00 AM

Receipt #: 642767

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: MJM Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on January 25, 1991, as instrument number 00894 Book 910125, of the official records of Clark County, Nevada, the Hillpointe Park Maintenance has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 133 McLaren Street Henderson, NV 89074 and more particularly legally described as: SKYVIEW, PLAT BOOK 47, PAGE 69, LOT 2, BLOCK 2 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
WIGHT, CHARLES J & TARA J

Mailing address(es):

135 Leverett Ave, Statten Island, NY 10308

135 Leverett Ave, Statten Island, NY 10308

*Total amount due through today's date is \$1,286.00.

This amount includes late fees, collection fees and interest in the amount of \$907.00.

* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: January 11, 2011


By: Autumn Fesel, of Nevada Association Services, Inc., as agent for Hillpointe Park Maintenance.

When Recorded Mail To:

Nevada Association Services, Inc.

TS #N64181

6224 W. Desert Inn Road, Suite A

Las Vegas, NV 89146

Phone: (702) 804-8885 Toll Free: (888) 627-554

(2)

APN # 178-16-215-068

NAS # N64181

North American Title # 34157

PropertyAddress: 133 McLaren Street

Inst #: 201109090000728

Fees: \$15.00

N/C Fee: \$0.00

09/09/2011 09:11:46 AM

Receipt #: 907765

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: GILKS Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER
HOMEOWNERS ASSOCIATION LIEN**

IMPORTANT NOTICE

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT
IS IN DISPUTE!**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in good standing by paying all your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$2,149.00 as of September 06, 2011 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions, the Hillpointe Park Maintenance (the Association) may insist that you do so in order to reinstate your account in good standing. In addition, the Association may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Association may mutually agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Hillpointe Park Maintenance, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of assessment on your property.

SA0357

NAS # N64181

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT
TAKE PROMPT ACTION.**

**NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being WIGHT, CHARLES J & TARA J, dated January 11, 2011, and recorded on January 14, 2011 as instrument number 0001247 Book 20110114 in the official records of Clark County, Nevada, executed by Hillpointe Park Maintenance, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on January 25, 1991, as instrument number 00894 Book 910125, as security has occurred in that the payments have not been made of homeowner's assessments due from November 01, 2009 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

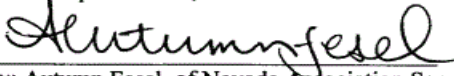
That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal Description: SKYVIEW, PLAT BOOK 47, PAGE 69, LOT 2, BLOCK 2 in the County of Clark

Dated: September 06, 2011




By: Autumn Fesel, of Nevada Association Services, Inc.
on behalf of Hillpointe Park Maintenance

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
(702) 804-8885
(888) 627-5544

SA0358

I hereby affirm that this document submitted for recording does not contain a social security number.

Signed:


NADINE HOMAN
ASST. SECRETARY

Inst #: 201305280000641

Fees: \$18.00

N/C Fee: \$0.00

05/28/2013 08:11:14 AM

Receipt #: 1630761

Requestor:

NATIONWIDE TITLE CLEARING

Recorded By: CYV Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Parcel#: 178-16-215-068

When Recorded Mail To:
Green Tree Servicing LLC
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 68231133

CORPORATE ASSIGNMENT OF DEED OF TRUST

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS, WHOSE ADDRESS IS PO BOX 2026, FLINT, MI, 48501, (ASSIGNOR), by these presents does convey, grant, assign, transfer and set over the described Deed of Trust together with all interest secured thereby, all liens, and any rights due or to become due thereon to GREEN TREE SERVICING LLC, WHOSE ADDRESS IS 7360 SOUTH KYRENE ROAD, T314, TEMPE, AZ 85283 (800)643-0202, A DELAWARE CORPORATION, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).

Said Deed of Trust is dated , made by CHARLES J. WIGHT AND TARA J. WIGHT and recorded as Instrument # 20041123-0002449, and/or Book , Page , in the Recorder's office of CLARK County, Nevada.

Dated this 16th day of May in the year 2013

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS

By:


NADINE HOMAN
ASST. SECRETARY

All Authorized Signatories whose signatures appear above are employed by NTC and have reviewed this document and supporting documentation prior to signing.

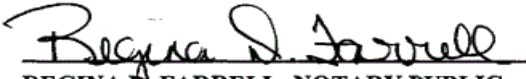
GTSAV 20225711 -- FNMA MIN 100015700043943683 MERS PHONE 1-888-679-6377 DOCR
T1613055309 [C] EFRMNV1

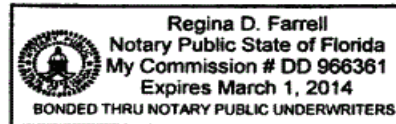


Parcel#: 178-16-215-068
Loan #: 68231133

**STATE OF FLORIDA
COUNTY OF PINELLAS**

The foregoing instrument was acknowledged before me on this 16th day of May in the year 2013, by Nadine Homan as ASST. SECRETARY for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS, who, as such ASST. SECRETARY being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.


REGINA D. FARRELL - NOTARY PUBLIC
COMM EXPIRES: 3/1/2014



Document Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
GTSAV 20225711 -- FNMA MIN 100015700043943683 MERS PHONE 1-888-679-6377 DOCR
T1613055309 [C] EFRMNV1



SA0360

Inst #: 201310290003584

Fees: \$18.00

N/C Fee: \$0.00

10/29/2013 03:32:39 PM

Receipt #: 1826707

Requestor:

TITLE SOLUTIONS, INC.

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 178-16-215-068

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/owner.aspx>)

TITLE OF DOCUMENT
(DO NOT Abbreviate)

Notice of Foreclosure Sale

Document Title on cover page must appear EXACTLY as the first page of the
document to be recorded.

RECORDING REQUESTED BY:

Nevada Association Services

RETURN TO: Name Nevada Association Services

Address 6224 W. Desert Inn Road

City/State/Zip Las Vegas, NV 89146

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly—do not use page scaling.

APN # 178-16-215-068
Hillpointe Park Maintenance

NAS # N64181

NOTICE OF FORECLOSURE SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, January 11, 2011. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 11/22/2013 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on January 25, 1991 as instrument number 00894 Book 910125 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on January 14, 2011 as document number 0001247 Book 20110114 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 133 McLaren Street, Henderson, NV 89074. Said property is legally described as: SKYVIEW, PLAT BOOK 47, PAGE 69, LOT 2, BLOCK 2, official records of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: WIGHT, CHARLES J & TARA J

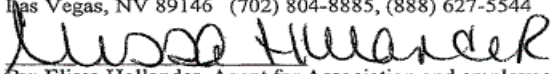
The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$2,667.87. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 9/9/2011 as instrument number 0000728 Book 20110909 in the official records of Clark County.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

October 25, 2013

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544


By: Elissa Hollander, Agent for Association and employee of
Nevada Association Services, Inc.

SA0362

Inst #: 201311260001363
Fees: \$18.00 N/C Fee: \$25.00
RPTT: \$576.30 Ex: #
11/26/2013 10:00:11 AM
Receipt #: 1854985
Requestor:
RESOURCES GROUP
Recorded By: ANI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Please mail tax statement and
when recorded mail to:
Saticoy Bay LLC Series 133 McLaren
P.O. Box 36208
Las Vegas, NV 89133

FORECLOSURE DEED

APN # 178-16-215-068
North American Title #45010-11-34157 /
N64181

NAS # N64181

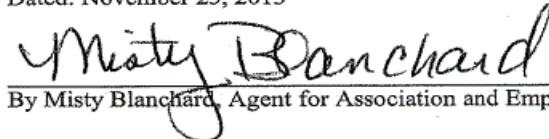
The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Hillpointe Park Maintenance), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded January 14, 2011 as instrument number 0001247 Book 20110114, in Clark County. The previous owner as reflected on said lien is WIGHT, CHARLES J & TARA J. Nevada Association Services, Inc. as agent for Hillpointe Park Maintenance does hereby grant and convey, but without warranty expressed or implied to: Saticoy Bay LLC Series 133 McLaren (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: SKYVIEW, PLAT BOOK 47, PAGE 69, LOT 2, BLOCK 2 Clark County

AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Hillpointe Park Maintenance governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 9/9/2011 as instrument # 0000728 Book 20110909 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Hillpointe Park Maintenance at public auction on 11/22/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$10,200.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: November 25, 2013



By Misty Blanchard, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA)
COUNTY OF CLARK)

On November 25, 2013, before me, Susana E. Puckett, personally appeared Misty Blanchard personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.
WITNESS my hand and seal.

(Seal)



(Signature)

Susana E. Puckett

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 178-16-215-068
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 RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3.a. Total Value/Sales Price of Property

\$ 10,200.00

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

c. Transfer Tax Value:

\$ 112,886.00

d. Real Property Transfer Tax Due

\$ 576.30

4. **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 disallowance 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 Misty Blanchard Capacity: Agent for HOA/NAS Employee

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Nevada Association Services

Address: 6224 W. Desert Inn Road

City: Las Vegas

State: Nevada Zip: 89146

BUYER (GRANTEE) INFORMATION

(REQUIRED)
Print Name: Saticoy Bay LLC Series 133 McLaren

Address: P.O. Box 36208

City: Las Vegas

State: Nevada Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: SATICOY BAY LLC SERIES 133 MCLAREN

Escrow # _____

Address: P.O. Box 36208

133 MCLAREN

City: LV

State: N.V.

Zip: 89133

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

SA0365

MILES BAUER AFFIDAVIT

State of California }
 } ss.
Orange County }

Affiant being first duly sworn, deposes and says:

1. I am a paralegal with the law firm of Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2. I am over 18 years of age, of sound mind, and capable of making this affidavit.

3. The information in this affidavit is taken from Miles Bauer's business records. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

4. Bank of America, N.A. (**BANA**) retained Miles Bauer to tender payments to homeowners associations (**HOA**) to satisfy super-priority liens in connection with the following loan:

Loan Number: ■■■3845

Borrower(s): Charles and Tara Wight

Property Address: 133 McLaren Street, Henderson, Nevada 89074

5. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of an October 25, 2011 letter from Andrew Pastwick, Esq., an attorney with Miles Bauer, to Hillpointe Park Maintenance, care of Nevada Association Services, Inc.

7. Based on Miles Bauer's business records, I've located no response to the above correspondence.

8. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of Statement of Account from Nevada Association Services, Inc. for a different property in the Hillpointe Park Maintenance homeowners' association used by Miles Bauer to determine a good faith payoff estimate.

9. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a December 16, 2011 letter from Rock K. Jung, an attorney with Miles Bauer, to Nevada Association Services, Inc. enclosing a check for \$276.75.

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10. Based on Miles Bauer's business records, on December 19, 2011, Nevada Association Services, Inc. refused delivery of the December 16, 2011 letter and the \$276.75 check. A copy of the delivery receipt from Miles Bauer's business records is attached as **Exhibit 4**. A copy of the voided check from Miles Bauer's business records is attached as **Exhibit 5**. A copy of a screenshot containing the relevant case management note confirming the check was returned is attached as **Exhibit 6**.

FURTHER DECLARANT SAYETH NOT.

Date: 2/17/15 AK KL
Declarant Adam Kendis

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached; and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 17th day of February, 2015,

by Adam Kendis, proved to me on the basis of satisfactory evidence to be
(Name of Signer)

the person who appeared before me.

Signature Amanda Maria Mendoza (Seal)
(Signature of Notary Public)

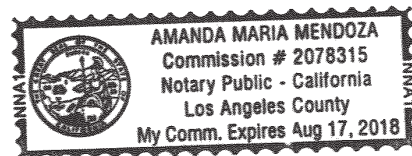


EXHIBIT 1

SA0369

DOUGLAS E. MILES *
Also Admitted in California and
Illinois

RICHARD J. BAUER, JR.*
JEREMY T. BERGSTROM

Also Admitted in Arizona
FRED TIMOTHY WINTERS*
KEENAN E. McCLENAHAN*
MARK T. DOMEYER*

Also Admitted in District of
Columbia & Virginia
TAMI S. CROSBY*
L. BRYANT JAQUEZ *

GINA M. CORENA
WAYNE A. RASH *

ROCK K. JUNG
VY T. PHAM *

KRISTA J. NIELSON
HADI R. SEYED-ALI *

JORY C. GARABEDIAN
THOMAS M. MORLAN

Admitted in California
BRIAN H. TRAN *

ANNA A. GHAJAR *

CORI B. JONES *

STEVEN E. STERN

Admitted in Arizona & Illinois

ANDREW H. PASTWICK

Also Admitted in Arizona and

California

CATHERINE K. MASON *

CHRISTINE A. CHUNG *

HANH T. NGUYEN *

THOMAS B. SONG *

S. SHELLY RAISZADEH *



MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052
Phone: (702) 369-5960
Fax: (702) 369-4955

* **CALIFORNIA OFFICE**
1231 E. DYER ROAD
SUITE 100
SANTA ANA, CA 92705
PHONE (714) 481-9100
FACSIMILE (714) 481-9141

October 25, 2011

Hillpointe Park Maintenance
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 133 McLaren Street, Henderson, NV 89074*
MBBW File No. 11-H1752

Dear Sirs:

This letter is in response to your Notice of Default with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. BANA is the beneficiary/servicer of the first and second deed of trust loans secured by the property.

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...
any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

SA0370

133 McLaren Street, Henderson, NV 89074

Page two of two

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

Subsection 2b of NRS 116.3116 clearly provides that an HOA lien "is prior to all other liens and encumbrances on a unit except: a first security interest on the unit..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 9 months before institution of an action to enforce the lien.

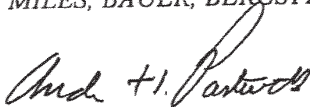
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated September 6, 2011. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

Please let me know what the status of any HOA lien foreclosure sale is, if any. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0468. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BANA.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Andrew Pastwick, Esq.

SA0371

EXHIBIT 2

SA0372

1723 Talon Ave

Hillpointe Park
Account No.: TAL1723
NAS# N 62347

**Assessments, Late Fees, Interest,
Attorneys Fees & Collection Costs**
Dates of Delinquency: 04/10-06/11

	Amount Present rate	Amount Prior rate	Amount Prior rate	Amount Prior rate	Amount Prior rate	Amount NAS FEES	Amount NAS COSTS
Balance forward	117.25	0.00	0.00	0.00	0.00	0.00	0.00
Quarterly Assessment Amount	92.25	0.00	0.00	0.00	0.00	0.00	0.00
No. of Quarters Delinquent	5	0	0	0	0	0	0
Total Assessments due	461.25	0.00	0.00	0.00	0.00	0.00	0.00
Late fee amount	25.00	0.00	0.00	0.00	0.00	0.00	0.00
No. of Months Late Fees Incurred	6	0	0	0	0	0	0
Total Late Fees due	150.00	0.00	0.00	0.00	0.00	0.00	0.00
Interest due	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Special Assessment Due	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Special Assessment Late Fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Special Assessment Interest Due	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Violations	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mgmt. Co. Intent to Lien	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Transfer Fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Management Co.Fee	175.00	0.00	0.00	0.00	0.00	0.00	0.00
Demand Letter	0.00	0.00	0.00	0.00	0.00	135.00	0.00
Notice of Delinquent							
Assessment Lien	0.00	0.00	0.00	0.00	0.00	325.00	0.00
Release of Notice of							
Delinquent Assessment Lien	0.00	0.00	0.00	0.00	0.00	30.00	0.00
Certified Mailing	0.00	0.00	0.00	0.00	0.00	72.00	87.30
Recording Costs	0.00	0.00	0.00	0.00	0.00	0.00	57.00
Intent to Notice of Default	0.00	0.00	0.00	0.00	0.00	75.00	0.00
Notice of Default Fees	0.00	0.00	0.00	0.00	0.00	400.00	0.00
Title Report	0.00	0.00	0.00	0.00	0.00	0.00	400.00
Notice of Sale Fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Posting & Publication Cost	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Postponement of Sale	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Conduct Foreclosure Sale	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Payment Plan Fee	0.00	0.00	0.00	0.00	0.00	30.00	0.00
Payment Plan Breach Letters	0.00	0.00	0.00	0.00	0.00	25.00	0.00
NAS Attorney fees	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Escrow demand fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Collection on Violations	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Prepare and Record Transfer Deed	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Substitution of Agent Doc Fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Subtotals	\$903.50	\$0.00	\$0.00	\$0.00	\$0.00	\$1,092.00	\$544.30

GRAND TOTAL: \$2,163.05

BM

<u>Credits & Payments</u>	<u>Date</u>
Payments to HOA	(150.75)
	(0.00)
	(0.00)
	(0.00)
	(0.00)
	(0.00)
	(0.00)
	(0.00)
Payment to Mgmt Co	(75.00)
Misc Fees Credit	(0.00)
NAS Fees	(135.00)
NAS Costs	(16.00)

SA0374

EXHIBIT 3

SA0375

DOUGLAS E. MILES *
Also Admitted in California and
Illinois

RICHARD J. BAUER, JR. *
JEREMY T. BERGSTROM

Also Admitted in Arizona
FRED TIMOTHY WINTERS *
KEENAN E. McCLENAHAN *
MARK T. DOMEYER *

Also Admitted in District of
Columbia & Virginia
TAMI S. CROSBY *

L. BRYANT JAQUEZ *
GINA M. CORENA

WAYNE A. RASH *
ROCK K. JUNG

VY T. PHAM *

KRISTA J. NIELSON

HADI R. SEYED-ALI *

JORY C. GARABEDIAN

THOMAS M. MORLAN

Admitted in California

BRIAN H. TRAN *

ANNA A. GHAJAR *

CORI B. JONES *

STEVEN E. STERN

Admitted in Arizona & Illinois

ANDREW H. PASTWICK

Also Admitted in Arizona and
California

CATHERINE K. MASON *

CHRISTINE A. CHUNG *

HANH T. NGUYEN *

THOMAS B. SONG *

S. SHELLY RAISZADEH *

SHANNON C. WILLIAMS *

ABTIN SHAKOURI *

LAWRENCE R. BOIVIN *



MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250

Henderson, NV 89052

Phone: (702) 369-5960

Fax: (702) 369-4955

* **CALIFORNIA OFFICE**
1231 E. DYER ROAD
SUITE 100
SANTA ANA, CA 92705
PHONE (714) 481-9100
FACSIMILE (714) 481-9141

December 16, 2011

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

Re: *Property Address:* 133 McLaren Street
LOAN #: [REDACTED] 3845
MBBW File No. 11-H1752

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. It is our understanding that Nevada Association Services (NAS) is now unwilling to provide our office with HOA payoff ledgers due to their concern of violating the Fair Debt Collection Practices Act (FDCPA). According to NAS, the FDCPA applies to NAS and how it conducts its business. Thus, if the homeowner is still the title owner and is a consumer as defined under the FDCPA, NAS is prohibited from supplying us payoff information unless BANA has written authorization from the homeowner.

BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

SA0376

any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment.

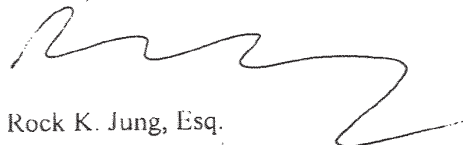
Despite your refusal to provide HOA payoff ledgers, our client still wishes to make a good-faith attempt to fulfill BANA's obligations as the 1st lienholder by tendering to NAS an accurate estimate of the Super Priority Amount. This good-faith estimate is based on prior payoff ledgers provided by NAS to our firm regarding the same HOA in question. Thus, assuming that the HOA assessment amounts haven't changed recently, we will be able to give an accurate estimate of the Super-Priority Amount and tender said amount to NAS. Based on the most recent HOA payoff ledger provided by NAS in regards to this particular HOA, we estimate the Super-Priority Amount to be \$276.75.

Our client has authorized us to make payment to you in the amount of \$276.75 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to NEVADA ASSOCIATION SERVICES in the sum of \$276.75, which represents the maximum 9 months' worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 133 McLaren Street have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

SA0377

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct
 Payee: NEVADA ASSOCIATION SERVICES, Check #: 12250 Date: 12/9/2011 Amount: 276.75 Initials: SRN

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
12/9/2011	133Mclaaren	To Cure HOA Deficiency	276.75			

Miles, Bauer, Bergstrom & Winters, LLP
 Trust Account
 1231 E. Dyer Road, #100
 Santa Ana, CA 92705
 Phone: (714) 481-9100

Bank of America
 1100 N. Green Valley Parkway
 Henderson, NV 89074
 16-66/1220
 1020
 11-H11752
 Loan # 3845

12250
 Date: 12/9/2011
 Amount \$**** 276.75

Pay \$*****Two Hundred Seventy-Six & 75/100 Dollars
 to the order of

NEVADA ASSOCIATION SERVICES, INC.
 6224 W. Desert Inn Rd., Ste. A
 Las Vegas, NV 89146

Check Valid After 90 Days

Security features. Details on back.



SA0378

EXHIBIT 4

SA0379

On this day, December 16, 2011, Nevada Association Services, Inc. received: (1) letters accompanying each of the checks listed below that address the purpose of the tender and the effect of accepting said checks and (2) the following checks for the following addresses:

Amount	Address	Ref#	MBBW#
\$276.75	133 McLaren Street	N/A	11-H1752

By signing below you acknowledge and confirm receipt of said checks.

RUN # 907
FIRM MILES, BAUER, BERGSTROM, WINTERS LLP
ADDR 2200 PASEO VERDE PKWY. # STE. #250 Las Vegas, NV 89101
PH # 702-369-5960

384-0305 • Fax 384-8638
1118 Fremont St
Las Vegas, NV 89101

ATTN: Alex B. DATE: 12/16/11

CASE NAME NO. NO. CK # \$

DOCUMENTS REF # 121611 N/A Limit of Liability: \$100.00 per form

☐ Return Copy ☐ Return Original ☐ Call When Completed/Problem (Extra Fee)

1. 2. 3.

RECEIVED
DEC 20 2011
MILES BAUER,
BERGSTROM & WINTERS LLP

☐ DISTRICT
☐ ARB ☐ DISC.
☐ M/C ☐ D.A.
☐ JUDGE ☐ INDEX

☐ FAMILY
☐ M/C ☐ D.A.
☐ JUDGE ☐ INDEX

☐ JUSTICE
☐ CIVIL ☐ EVICT
☐ CRIM ☐ S.C.
☐ TRAF ☐ D.A.

☐ MUNI CT
☐ RECORDER
☐ CONSTABLE
☐ SHERIFF
☐ FEDERAL
☐ BANKRUPTCY
☐ SECTRY OF STATE
☐ HEARINGS OFFICER
☐ APPEALS OFFICER

☐ NEXT DAY ☐ REGULAR ☐ SPECIAL (4 HRS) ☐ EXPEDITED (2 HRS)

Statute Expires
May be subject to an additional charge.
LAST DATE 1/1/12 (SPECIFY DATE/TIME)
RETURN DATE 1/1/12

Received by Per June Gerb
Date 12-19-11 Time 4:11
☐ NOT COMPLETE DUE TO Not Acceptable

SA0380

EXHIBIT 5

SA0381

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct
 Payee: NEVADA ASSOCIATION SERVICES, 11-H1752 Initials: SRN
 Date: 12/9/2011 Amount: 276.75

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
12/9/2011	133McIaaren	To Cure HOA Deficiency	276.75			
VOID						

Miles, Bauer, Bergstrom & Winters, LLP
 Trust Account
 1231 E. Dyer Road, #100
 Santa Ana, CA 92705
 Phone: (714) 481-9100

Bank of America
 1100 N. Green Valley Parkway
 Henderson, NV 89074
 16-66/1220
 1020
 11-H1752
 Loan # 3845

Pay \$*****Two Hundred Seventy-Six & 75/100 Dollars
 to the order of

NEVADA ASSOCIATION SERVICES
 6224 W. Desert Inn Rd., Ste. A
 Las Vegas, NV 89146

12250
 Date: 12/9/2011
 Amount \$**** 276.75

Check Void After 90 Days

VOID

ACCOUNTING

SA0382

EXHIBIT 6

SA0383

File Edit View Help		Matters	
Matter ID:	11-H1752		
Client Sort:	BANK OF AMERICA, N.A. (CWF)		
Desc.: Wright, Charles & Tara BANA v. Wright HOA // 178-16-215-068			
General	Notes	Billing	Contracts
Matters	Events	Inquiry	Settlement
Civil	Contract Info	Custom	Deed Info
New Invoice			
1/1/2004	1/28/2015	(all)	Date
10/21/2011: EMF AWB re: New Referral	10/21/2011: RCVD REFERRAL: OPENED 10/21/11	10/25/2011: 10/25 EMT CLIENT WITH INITIAL LETTERS ATTACHED: FU	10/26/2011: EMF AP re: initial letters to borrower & HOA
11/1/2011: EMF Clnt re: 2nd is walk	11/8/2011: EMF AP re: status update, no payoff yet	11/15/2011: 11/8 EMT CLIENT RE HOA UPDATE BUT NO PD: FU 11/22	11/22/2011: 11/22 EMT CLIENT HOA UPDATE WITH ESTIMATED PO
11/23/2011: EMF AP re: status update, NAS file, estimated figures	11/30/2011: EMT Clnt re: attached estimated payoff	12/16/2011: EMF RKJ re: Payoff Funds, 11-H1752, 133 McLaren St	12/28/2011: 12/16 CHECK SENT TO HOA: FU 12/28 SEE IF CHECK WAS
12/30/2011: EMF AP re: Status of Payoff Funds (Rejected), 11-H1752, 133 McLaren St	1/5/2012: EMT CLNT re: sent invoice	3/14/2012: EMF CLNT re: invoice submitted for payment processing	4/1/2012: EMT Mgmt Co re: check not yet cleared, requesting check be cashed [cc]
9/28/2012: 11-H1752, scanned items from physical file PDF	1/9/2013: REJECTED FILE: FU 2/21 MONITOR	2/22/2013: REJECTED FILE: FU 3/28 MONITOR	3/28/2013: EMT Lori Garcia w/group 3 invoices
4/1/2013: EMF Clnt re: Close files	4/11/2013: EMF Matt Compton re: will work on closed monitor invoices this week		

A - AS400LS - [24 x 80]

File Edit View Communication Actions Window Help

Host: AS400LS Port: 992 Workstation ID:

FCT101-03 NBKHJJP 1st Mortgage Account Status 12:30:46 3/14/16
 STD360 Bank of America Home Loan SelfServ
 Account Number: REDACTED 3845 Mortgagor Name: CHARLES J & TARA J WIGHT
 PROPERTY ADDRESS MAILING ADDRESS
 133 MCLAREN STREET 730 Green Valley Rd
 HENDERSON, NV 89074 Jackson NJ 08527

ORIGINAL INFORMATION

Original Principal:	220000.00	Sale Price:	REDACTED
Discount Held:	REDACTED	Appraisal Date (MMYYC):	REDACTED
Date of Mort/Cont:	REDACTED	Appraisal Amount:	REDACTED
DueDay/1st Pymt Due:	REDACTED	Loan Purpose Code:	133
Maturity Date (MMYYC):	REDACTED	Property Type:	35
Loan Term/Remaining Term	REDACTED	Number of Units:	1
Interest Rate:	REDACTED		
Annual Percentage Rate:	REDACTED	DFees: REDACTED DCost:	REDACTED
State Code:	29	Grace Days:	15
FNMA County Code:	3	Census Tract:	53.15
Prepayment Penalty Cde/Trm:	0 / 000	Last Activity Date:	REDACTED
Times Loan Assumed:	0	Last Analysis Date (MMY):	REDACTED
Date Last Assumed (MMYYC):	REDACTED		
Previous Owners Name: WILLIAM & DIANE K. RIDDELL		Loan Pgm ID:	768
MIC/LGC (Y/N): N Original LTV: REDACTED		Prompt ID# for Desc	
F3-Exit F2-Prev Scrn		F12-Bypass HELP	

MA A 03/018

128 I902 - Session successt

A - AS400LS - [24 x 80]

File Edit View Communication Actions Window Help

Host: AS400LS Port: 992 Workstation ID:

LINTRD1 LOAN TRANSFER DISPLAY SCREEN 3/14/16

ACCT#: REDACTED 3845 MORTGAGOR: RLS COMP CODE:

INVESTOR	ACCT#/ TRNPTD	TRNDTE/ PTD	OLD INV-BLK NEW INV-BLK	ESCROW BALANCE	PRINCIPAL BALANCE	PURCHASE PRIN. BAL
086633845	1204	11/24/04	0000010 000	.00	220,000.00	220,000.00
086633845	1204	12/01/04	0000139 024	702.95	220,000.00	220,000.00
086633845	1204	11/30/04	0000139 024	702.95	220,000.00	220,000.00
086633845	1204	12/01/04	0000043 030	702.95	220,000.00	220,000.00
086633845	1204	12/08/04	0000043 030	702.95	220,000.00	220,000.00
086633845	1204	12/01/04	2001512 303			

CA03=Exit

MA A 03/009

128 I902 - Session successt

A - AS400LS - [24 x 80]

File Edit View Communication Actions Window Help

Host: AS400LS Port: 992 Workstation ID:

ATR110C Attorney Referrals 3/14/16 12:30:17
Investor Information Maintenance Mode: DISPLAY

Investor Number : 2001512
Investor Name : FNMA SCH/SCH MBS ARM
Reporting Type : 2
Investor Auto Refer . . : Y
FITNO/VITNO Maintained at Investor Level(Y/N): Y
Foreclosure In Name Of : BANK OF AMERICA, N.A.

Title In Name Of . . . : FEDERAL NATIONAL MORTGAGE ASSOCIATION

REG Investor : 0
Investor Class : _____

F3=Exit F12=Cancel

MA A 01/001

128 I902 - Session successt

Lender Letter LL-2015-04

September 16, 2015

To: All Fannie Mae Single-Family Servicers

Nevada HOA Litigation

Servicer Reliance on HERA: Nevada Properties

On September 18, 2014, the Nevada Supreme Court held that a homeowners association's non-judicial foreclosure of a "super-priority" lien could extinguish an existing first deed of trust. See *SFR Investments v. U.S. Bank* (Nev. 2014). In response, the Federal Housing Finance Agency (FHFA), Fannie Mae, Freddie Mac, and various GSE servicers have asserted in litigation that the Housing and Economic Recovery Act of 2008 (HERA), prohibits the extinguishment of GSE liens absent FHFA's consent as conservator of the GSEs.

FHFA's Statement on Servicer Reliance on HERA

For reference, attached is the Servicer Reliance on HERA in Foreclosures Involving Homeownership Associations statement issued by FHFA on August 28, 2015, regarding servicers' reliance on HERA in connection with Nevada "super-priority" lien foreclosures and related HOA litigation.

Servicer Obligation to Escalate All Non-Routine Litigation

Fannie Mae reminds the servicer to escalate via submission of the *Non-Routine Litigation Form* ([Form 20](#)) as specified in *Servicing Guide E-1.3-01, General Servicer Responsibilities for Non-Routine Matters all non-routine litigation involving actions that challenge the validity, priority, or enforceability of a Fannie Mae mortgage loan or that seek to impair Fannie Mae's interest in an acquired property.*

Additionally, *Servicing Guide E-1.3-02, Reporting Non-Routine Litigation to Fannie Mae* specifies servicers must report non-routine litigation to Fannie Mae within two business days of the servicer receiving notice of the litigation.

The servicer should contact its Servicing Consultant, Portfolio Manager, or Fannie Mae's Credit Portfolio Management's Servicer Support Center at 1-888-FANNIE5 (1-888-326-6435) with any questions regarding this Lender Letter.

Malloy Evans
Vice President
Credit Portfolio Management



Federal Housing Finance Agency

August 28, 2015

Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations

As noted in the December 22, 2014 and April 21, 2015 statements on certain super-priority liens, the Federal Housing Finance Agency has an obligation to protect Fannie Mae's and Freddie Mac's property rights. FHFA will aggressively do so by bringing or supporting actions to contest common ownership association (commonly known as HOAs) foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law.

This statement confirms that FHFA supports the reliance on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of the Enterprises to preclude the purported involuntary extinguishment of an Enterprise's property interest by an HOA foreclosure sale.

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency



Statement

Statement on HOA Super-Priority Lien Foreclosures

FOR IMMEDIATE RELEASE

4/21/2015

Title 12 United States Code Section 4617(j)(3) states that, while the Federal Housing Finance Agency acts as Conservator, “[no] property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency.” This law precludes involuntary extinguishment of Fannie Mae or Freddie Mac liens while they are operating in conservatorships and preempts any state law that purports to allow holders of homeownership association (HOA) liens to extinguish a Fannie Mae or Freddie Mac lien, security interest, or other property interest.

As noted in our December 22, 2014 statement on certain super-priority liens, FHFA has an obligation to protect Fannie Mae’s and Freddie Mac’s rights, and will aggressively do so by bringing or supporting actions to contest HOA foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law. Consequently, FHFA confirms that it has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens.

12/22/2014: [Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens](#)

###

The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.6 trillion in funding for the U.S. mortgage markets and financial institutions. Additional information is available at www.FHFA.gov, on

Twitter [@FHFA](#), YouTube and [LinkedIn](#).

Contacts:

Media: Corinne Russell (202) 649-3032 / Stefanie Johnson (202) 649-3030

Consumers: [Consumer Communications](#) or (202) 649-3811

© 2015 Federal Housing Finance Agency

GTS(Wight)0152

SA0390

9 1 0 1 2 5 0 0 3 7 4

50

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Mark Lemmons, Esq.
LIONEL SAWYER & COLLINS
1600 Valley Bank Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS AND
GRANT OF EASEMENTS FOR

HILLPOINTE PARK MAINTENANCE DISTRICT

HL/6363-1-7
C10991/01/4

SA0391

9 1 0 1 2 5 0 0 3 9 -

HILLPOINTE PARK MAINTENANCE DISTRICT

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND
GRANT OF EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS is made and entered into by and among Pacific-Hillsboro Limited Partnership, a Nevada limited partnership ("Pacific-Hillsboro"), Pacific-Hillsboro Limited Partnership II, a Nevada limited partnership ("Pacific-Hillsboro II") and Covington Technologies, a California corporation ("Covington"), with reference to the following facts:

a) Covington is the owner of the real property located in Clark County, Nevada, more particularly described in Exhibit A attached hereto and incorporated herein ("Parcel 2").

b) Pacific-Hillsboro II is the owner of the real property located in Clark County, Nevada, more particularly described in Exhibit B attached hereto and incorporated herein ("Parcel 3").

c) Pacific-Hillsboro is the owner of the real property located in Clark County, Nevada, more particularly described in Exhibit C attached hereto and incorporated herein ("Parcel 4").

d) Parcel 2, Parcel 3 and Parcel 4 are hereinafter collectively referred to as the "Development".

9 1 0 1 2 5 0 0 8 9 1

e) Covington intends to develop and improve Parcel 2 and offer single family residences constructed thereon for sale to the public ("Jasmine Point").

f) Pacific-Hillsboro II intends to develop and improve Parcel 3 and offer single family residences constructed thereon for sale to the public ("Terracina").

g) Pacific-Hillsboro intends to develop and improve Parcel 4 and offer single residences constructed thereon for sale to the public ("Skyview").

h) Within six months from the date hereof, Covington will cause the property described in Exhibit D attached hereto and incorporated herein to be conveyed to the Hillpointe Park Maintenance District, a Nevada non-profit corporation (the "District"), Declarants will cause the property described in Exhibit D-1 attached hereto and incorporated herein to be conveyed to the District, Pacific-Hillsboro will cause the property described in Exhibit E attached hereto and incorporated herein to be conveyed to the District and Pacific-Hillsboro II will cause the property described in Exhibit F attached hereto and incorporated herein to be conveyed to the District.

i) The property described in Exhibits D, D-1, E and F will be held as District Property (hereinbelow defined in Section 1.07) for the use and enjoyment of owners and residents of Jasmine Point, Terracina and Skyview.

j) Before conveying any interest in the Development, Declarants (hereinbelow defined in Section 1.02) desire to subject

9 1 0 1 2 5 0 0 8 9 4

the Development to certain covenants, conditions and restrictions for the benefit of Declarants and any and all present and future owners of portions of the Development, in accordance with a common plan and scheme of improvement and development.

NOW, THEREFORE, Declarants hereby declare and establish the following general plan for the protection and benefit of the Development, and have fixed and do hereby fix the following protective covenants, conditions and restrictions upon each and every ownership interest in the Development under and pursuant to which covenants, conditions and restrictions each such ownership interest shall hereafter be held, used, occupied, leased, sold, encumbered, conveyed or transferred. Each and all of the covenants, conditions and restrictions set forth herein are for the purpose of protecting the value and desirability of the Development, and each and every Lot (hereinbelow defined in Section 1.10), and inure to the benefit of, run with, and shall be binding upon and pass with each and every ownership interest therein and shall inure to the benefit of and apply to and bind respective successors in interest of Declarants.

ARTICLE I

DEFINITIONS

Section 1.01. "Bylaws" shall mean and refer to the Bylaws of the District as they may from time to time be amended.

Section 1.02. "Declarants" shall mean and refer to Covington, Pacific-Hillsboro, Pacific-Hillsboro II, and their respective successors if the rights and obligations of Declarants or any of

9 1 0 1 2 5 0 0 3 9 4

them should be assigned to, and accepted and assumed by, any successor or successors.

Section 1.03. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and Grant of Easements as it may from time to time be amended.

Section 1.04. "Delegate" shall mean a natural person selected pursuant to Section 3.02 hereof, to represent all of the Owners within a Delegate District to vote on their behalf, as further provided in this Declaration and in the Bylaws. All provisions of this Declaration and the Bylaws pertaining to the election, removal, qualification or action of Delegates shall be equally applicable to all alternate Delegates elected pursuant to Section 3.02 hereof.

Section 1.05. "Delegate District" shall mean a geographical area in the Development in which a single Delegate shall represent the collective voting power of all Owners within such geographical area.

Section 1.06. "District" shall mean and refer to the Hillpointe Park Maintenance District, a Nevada non-profit corporation, its successors and assigns.

Section 1.07. "District Property" shall mean and refer to all easements and real property (including improvements thereon and interests therein) which may be owned by the District, specifically including the property described in Exhibits D, D-1, E and F.

Section 1.08. "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested

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notice from the District of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws.

Section 1.09. "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Lot who has requested notice from the District of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws.

Section 1.10. "Lot" shall mean and refer to any plot of land in the Development (other than District Property or any property owned by any non-profit corporation for the common use and enjoyment of Owners) shown upon any recorded final map of the Development, the Owner of which is required by this Declaration to be a member of the District.

Section 1.11. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage, and the terms may be used interchangeably herein.

Section 1.12. "Mortgagee" shall mean and refer to a beneficiary under or holder of a deed of trust as well as a mortgagee, and the terms may be used interchangeably herein.

Section 1.13. "Mortgagor" shall mean and refer to the trustor of a deed of trust as well as a mortgagor, and the terms may be used interchangeably herein.

Section 1.14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable title in fee simple (or legal title if equitable title has merged) to any Lot, including contract sellers. Owner shall not include a person

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or entity having an ownership interest merely as security for the performance of an obligation. The trustor of a deed of trust encumbering a Lot where fee simple title is vested in a trustee shall be considered to be the Owner.

ARTICLE II

PROPERTY RIGHTS

Section 2.01. Owners' Easements of Enjoyment Every Owner shall have a right and easement of ingress and egress and of enjoyment in and to the District Property which shall be appurtenant to and shall pass with the title to each Lot, subject to:

(a) The right of the District to charge reasonable fees for the use of any recreational facility situated upon the District Property.

(b) The right of Declarants to use the District Property for sales, development and related activities pertaining to the Development together with the right of Declarants to transfer such easements to others.

(c) The right of the District to impose fines and to suspend an Owner's right to use any recreational facilities for nonpayment of any regular or special assessment by the District, or if an Owner is otherwise in breach of obligations imposed under this Declaration, the Bylaws, or the rules and regulations set forth in the Bylaws.

(d) The right of the District to dedicate or transfer all or any part of the District Property to any public agency,

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authority or utility subject to such conditions as may be agreed to by the Owners. The granting of easements for utilities or for other purposes consistent with the intended use of the District Property, and the granting of easements for maintenance purposes, shall not be deemed to be a dedication or transfer requiring the vote or written consent of the Owners.

(e) The right of the District to transfer all or any part of the District Property to a corporation to which all the Owners are members and which was established as the successor to the District and its obligations hereunder and to replace the District upon its termination.

(f) The right to adopt uniform rules and regulations regarding use, maintenance and upkeep of the District Property.

Section 2.02. Delegation of Use Any Owner may delegate, in accordance with the Bylaws, the right of enjoyment of the District Property and facilities to family members, tenants or contract purchasers who reside on or in the Lot owned by such Owner, provided, however, that if any Owner delegates such right of enjoyment to tenants or contract purchasers, neither the Owner nor Owner's family members shall be entitled to use such facilities by reason of ownership of that Lot during the period of delegation. Guests of an Owner may use such facilities only in accordance with rules and regulations adopted by the District, which rules and regulations may limit the number of guests who may use such facilities. The District may also promulgate rules and regulations limiting the use of the District Property to one co-Owner and such

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co-Owner's immediate family with respect to any lot held in co-ownership.

ARTICLE III

HILLPOINTE PARK MAINTENANCE DISTRICT

Section 3.01. Membership in the District All Owners shall be members of the District.

Section 3.02. Delegate Districts and Selection of Delegates
The Development shall consist of three Delegate Districts (Jasmine Point, Terracina and Skyview). The Delegate (and alternate Delegate) to represent any Delegate District shall be elected, removed and instructed by Owners in such Delegate District in accordance with the voting procedures set forth below. In electing such Delegate, each Owner shall be entitled to cast the number of votes equal to the number of lots owned by such Owner.

(a) Voting. Those Owners appearing in the official records of the District on the date forty-five (45) days prior to the scheduled date of any meeting of the Owners required or permitted to be held under this Declaration, as record Owners of Lots located in the Delegate District shall be entitled to notice of any such meeting in accordance with Section 3.02(e) below. If there is more than one record Owner of any Lot, any and all of the Owners owning such Lot may attend any meeting of the Owners, but the vote attributable to the Lot so owned shall not be increased by reason thereof. Co-Owners owning the majority interest in a Lot may from time to time designate in writing one of their number to vote. Fractional votes shall not be allowed, and the vote for each

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Lot shall be exercised, if at all, as a unit. Where no voting co-Owner is designated, or if the designation has been revoked, the vote for the Lot shall be exercised as the co-Owners owning the majority interests in the Lot mutually agree. However, no vote shall be cast for any Lot if the co-Owners present in person or by proxy cannot agree to said vote or other action. Unless the District receives a written objection in advance from a co-Owner, it shall be conclusively presumed that the voting co-Owner is acting with the consent of all other co-Owners.

(b) Proxies. Every Owner entitled to attend, vote at or exercise consents with respect to any meeting of the Owners may do so either in person or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the District prior to the meeting to which it is applicable. Any proxy may be revoked at any time by written notice to the District or by attendance in person by such Owner at the meeting for which such proxy was given. In any event, no proxy shall be valid beyond the maximum period permitted by law.

(c) Vote Appurtenant to Lot. The right to vote in any such Delegate District may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that any Owner may give a revocable proxy in the manner described above, may assign his right to vote to a contract purchaser, a lessee or tenant actually occupying his Lot or to a Mortgagee of the Lot concerned, for the term of the lease or Mortgage, and any sale, transfer or conveyance of such Lot to a new Owner or Owners shall

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operate automatically to transfer the appurtenant vote to the new Owner, subject to any assignment of the right to vote to a contract purchaser, lessee or Mortgagee as provided herein.

(d) Meetings; Selection and Removal of Delegate. There shall be a meeting of the Owners each year in which the term of office of the Delegate representing such Delegate District expires. At each such meeting, the Owners shall elect a Delegate (and alternate Delegate) to represent them. The Delegate shall be elected by a majority of a quorum of the Owners in such Delegate District. Except where inconsistent with the provisions of Section 3.06 below (in which event the provisions of Section 3.06 shall control), such Delegate shall continue in office for a term of two (2) years or until a successor is elected, whichever is later, unless such Delegate is removed, with or without cause, pursuant to Section 3.07 below.

(e) Notice of Meetings. Meetings of Owners shall be held at a convenient location in or near the Delegate District as designated in the notice of the meeting. Written notice of meetings shall state the place, date and time of the meeting and those matters which, at the time the notice is given, are to be presented for action by the Owners. Notice of any meeting at which Delegates are to be elected shall include the names of all those who are nominees at the time the notice is given to Owners. The Secretary of the District shall cause notice of meetings to be sent to each Owner within the Delegate District, no later than ten (10) days prior to the meeting. special meeting of the Owners in such

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Delegate District may be called at any reasonable time and place by written request (1) by any Declarant, for so long as the Declarant is an Owner, (2) by the Delegate representing Owners in such Delegate District, or (3) by the Owners in a Delegate District having not less than twenty percent (20%) of the total voting power within such Delegate District. To be effective, such written request shall be delivered to either the President or Secretary of the District. Such officers shall then cause notice to be given to Owners entitled to vote that a meeting will be held at a time and place fixed by the Board of Directors of the District (the "Board") not less than ten (10) days, nor more than thirty (30) days after receipt of the written request. Notice of special meetings shall specify the general nature of the business to be undertaken and that no other business may be transacted.

(f) Quorum. The presence at any meeting, in person or by written proxy, of Owners entitled to vote at least twenty-five percent (25%) of the total votes within a Delegate District shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Owners present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirement shall be the presence, in person or by written proxy, of Owners entitled to vote at least ten percent (10%) of the total votes within such Delegate District. If ten percent (10%) of the total votes within such Delegate District is

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not present at the adjourned meeting, in person or by written proxy, the Owners present, either in person or by written proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the adjourned meeting was called, at which meeting those Owners present, either in person or by written proxy, shall constitute a quorum. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is not fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Owners in the manner prescribed for annual or special meetings, as applicable. The Owners present at each meeting shall select a chairman to preside over the meeting and a secretary to transcribe minutes of the meeting. Unless otherwise expressly provided, any action authorized hereunder may be taken at any meeting of such Owners upon the affirmative vote of Owners having a majority of a quorum of the voting power present at such meeting in person or by proxy.

Section 3.03. Suspension of Membership Rights The Board shall have the authority to suspend the membership rights of any Owner, including the right to vote at any meeting of the members of the Delegate District, for any period during which the payment of any assessment against such Owner and the Lot owned by such Owner remains delinquent, it being understood that any suspension for nonpayment of any assessment shall not constitute a waiver or

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discharge of the Owner's obligation to pay the assessments provided for herein.

Section 3.04. Voting by Delegates Each Delegate District shall elect one (1) Delegate (and one (1) alternate Delegate) to the District to exercise the voting power of all of the Class A and Class B members in such Delegate District. If a Declarant furnishes voting instructions to a Delegate in connection with Class A or Class B votes attributable to Lots owned by or subject to a proxy in favor of Declarant, the Delegate shall cast such votes in the manner specified by such voting instructions. The chairman of any meeting at which a Delegate or alternate Delegate is elected shall certify in writing to the Board the name and address of the Delegate or alternate Delegate elected, the time and place of the meeting at which the election occurred and the Delegate District which the Delegate represents. Each Delegate shall be entitled to cast the Class A and Class B votes representing Lots in his Delegate District only during such periods as the Owners of such Lots are entitled to cast votes for the election of a Delegate as provided herein. If a Delegate is not present at a duly called meeting of the Delegates ("Absent Delegate"), then the alternate for such Absent Delegate may attend the meeting and exercise all rights, powers and votes to which the Absent Delegate would be entitled. If the Absent Delegate should arrive prior to the adjournment of any such meeting, the alternate shall no longer be entitled to act in the place of the Absent Delegate; provided that such relinquishment of authority by the

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alternate shall not invalidate any matter previously voted on or acted upon by the alternate in his temporary capacity as Delegate.

Section 3.05. Delegate Qualifications Delegates must be (i) an authorized agent or employee of a Declarant or (ii) a member of the District. If the member is a corporation, partnership, or other such entity, the authorized agent of such corporation, partnership or other entity shall be eligible for election as a Delegate. With the exception of Delegates who are agents or employees of a Declarant, upon termination of any Delegate's membership in the District, such Delegate shall be disqualified from serving the remainder of his term as Delegate, and the position of Delegate for such Delegate District shall be deemed vacant.

Section 3.06. Delegate Terms Each Delegate shall serve a term of two (2) years. The office of a Delegate shall be deemed vacant upon the death, resignation, removal or judicial adjudication of mental incompetence of the Delegate, or upon the Delegate's failure to satisfy all the qualifications of a Delegate as specified in Section 3.05, or in case the Owners in any Delegate District fail to elect a Delegate. Delegate vacancies caused by any reason other than the removal of a Delegate shall first be filled by the alternate Delegate, and if there is no alternate Delegate, by a vote of a majority of the Board. Subject to the foregoing, including eligibility and vacancy provisions herein, each such person shall serve the remainder of the unexpired term

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of office of the predecessor Delegate, or until a successor is elected at a meeting of the Owners in such Delegate District.

Section 3.07. Removal of Delegates A Delegate may be removed without cause by the vote in person or by proxy at any duly constituted meeting of at least a majority of a quorum of the Owners in the Delegate District; provided, that in no event shall a Delegate be removed unless the votes cast in favor of such removal equal the lesser of (i) the number of votes which elected such Delegate to his current term, or (ii) a majority of the total voting power of the Owners in such Delegate District.

Section 3.08. Classes of Voting Membership/Delegate Vote Entitlement The District shall have two (2) classes of voting membership as follows:

(a) Class A. Class A members shall originally be all Owners (with the exception of Declarants for so long as there exists a Class B membership). Each Delegate shall be entitled to cast one vote for each Lot subject to assessment and owned by Class A members in such Delegate District.

(b) Class B. The Class B members shall be Declarants. Each Delegate shall be entitled to cast four (4) votes for each Lot subject to assessment and owned by the Class B Members in such Delegate District. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earliest:

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(1) The fifth anniversary of the most recent close of escrow for the sale of a Lot by Declarants to a member of the home-purchasing public; or

(2) The date on which the termination of the Class B membership is approved by the vote of a majority of the total voting power of the District.

Section 3.09. Allocation of Delegate Votes Whenever a specified action is presented to the Delegates for approval, written notice of the substance of the specified action shall be given to the Delegates at least thirty (30) days prior to the date on which the specified action shall be discussed at a meeting of the Delegates. During the thirty (30) day period prior to the meeting, the Delegates shall submit the specified action to a vote of the Owners within their respective Delegate Districts. As long as there exists a Class B membership, all specified actions shall require the approval of Delegates casting the specified percentage of the voting power of all classes of membership. Upon termination of the Class B membership all specified actions shall require the approval of (1) the specified percentage of the voting power of the Delegates, and (2) such specified percentage of the voting power of the Delegates attributable to Owners other than Declarant. When voting on a specified action, each Delegate shall cast all of the Class A and Class B votes which he represents as follows:

(a) The Delegate shall cast votes attributable to Owners actually voting (whether in person, by proxy, or written ballot) in

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such Delegate District "for" or "against" such specified action in the same manner as such votes were cast by the voting Owners;

(b) The Delegate shall cast votes attributable to Owners within the Delegate District who have not voted on such Specified Action ("Absentee Votes") as follows:

(1) If fifty-one percent (51%) or more of the votes in the Delegate District attributable to Owners other than Declarant have been cast, then any Absentee Votes attributable to Owners other than Declarant shall be cast "for" and "against" the specified action in the same proportions as the votes actually cast by the Owners other than Declarant.

(2) If less than fifty-one percent (51%) of the votes in the Delegate District attributable to Owners other than Declarant have been cast, then the Absentee Votes attributable to Owners other than Declarant shall be voted "for" or "against" the specified action in such proportions as the Delegate shall, in his or her discretion, determine appropriate.

(3) Absentee Votes attributable to a Declarant shall be cast in the same proportion as the votes actually cast by the Declarant.

Section 3.10. Voting Reports In order to verify compliance with the foregoing voting requirements, each ballot cast by a Delegate shall contain such Delegate's certification of the following information: (i) the total number and classification of votes in the Delegate District; (ii) the total number and classification of votes cast "for" and "against" the specified

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action on behalf of Declarant; (iii) the total number of votes cast "for" and "against" the specified action on behalf of Owners other than Declarant; (iv) the total number and classification of Absentee Votes in such Delegate District attributable to Declarant and the total number of Absentee Votes attributable to Owners other than Declarant; and (v) the total number and classification of votes cast by such Delegate "for" and "against" the specified action. The inspector of the election shall tabulate the total number and classification of votes cast by all Delegates in each of the foregoing categories in order to determine whether the necessary approvals have been obtained. It will be conclusively presumed for all purposes of District business that each Delegate casting votes on behalf of the Owners of Lots in his Delegate District will have acted with the authority and consent of all such Owners. All agreements and determinations lawfully made by the District in accordance with the voting procedures established herein, and in the Bylaws, shall be deemed to be binding upon all members, Owners and their respective successors and assigns.

Section 3.11. Transfer of Membership Except as permitted by this Declaration or the Bylaws, a membership in the District shall not be transferred, pledged or assigned. Any attempted transfer, other than as permitted above, shall be deemed a prohibited transfer, shall be void, and shall not be reflected as a transfer upon the District's books and records.

Section 3.12. Duty of District The District shall have the sole and exclusive right and duty to manage, operate, control,

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repair, replace and restore the District Property, all as more fully set forth in the Bylaws.

Section 3.13. Non-Liability of Members In discharging their duties and responsibilities, the members' actions shall be on behalf of and as the representatives of the District which shall, in turn, be on behalf of and as the representative of the Owners, and no member shall be individually or personally liable for performance or failure of performance of such member's duties and responsibilities unless an act or omission involves intentional misconduct, fraud or a knowing violation of law.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS TO DISTRICT

Section 4.01. Creation of Liens and Personal Obligations

Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the District such (i) regular assessments, and (ii) special assessments as may be established in the Bylaws. The regular and special assessments, together with interest, costs, late payment charges and reasonable attorneys' fees, shall be a charge on the Lots, as the case may be, and appurtenances thereto, and shall be a continuing lien upon the Lot and appurtenances thereto against which each such assessment is made. Each such assessment, together with interest, costs, late payment charges and reasonable attorneys' fees, shall also be the personal obligation of each person who was an Owner of a Lot at the time when the assessment fell due.

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Section 4.02. Rate of Assessments Both regular and special assessments of the District shall be borne equally by all Owners. Assessments shall be collected as determined by the District.

Section 4.03. Effect of Nonpayment of Assessments; Remedies of the District Any installment of a regular or special assessment shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. The Board shall be authorized to adopt a system pursuant to which any installment of a regular or special assessment not paid within thirty (30) days after the due date shall bear interest at the rate of up to twelve percent (12%) per annum, commencing thirty (30) days from the due date until paid. In addition, the Board may require the delinquent Owner to pay a reasonable late charge to compensate the District for increased bookkeeping, billing, and other administrative costs. The District may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the District Property or abandonment of such Owner's Lot. If any installment of an assessment is not paid within thirty (30) days after its due date, the Board may mail an acceleration notice to the Owner and to each first Mortgagee of a Lot which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4)

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that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then current fiscal year and sale of the Lot. If the delinquent installment or installments of any assessment and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of such assessment levied against such Owner and such Owner's Lot for the current fiscal year to be immediately due and payable without further demand and may enforce the collection of the full assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 4.04. Notice of Delinquent Assessment No action shall be brought to enforce any assessment lien created herein, unless a "Notice of Delinquent Assessment" is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot and a copy thereof has been recorded by the District. Said Notice of Delinquent Assessment must state (a) the amount of the delinquent assessment and interest, costs (including attorneys' fees) and penalties, (b) a description of the Lot against which the assessment was made, and (c) the name of the record Owner of the Lot. The Notice of Delinquent Assessment shall be signed and acknowledged by an officer of the District. The lien shall continue until fully paid or otherwise satisfied.

Section 4.05. Foreclosure Sale A sale to foreclose a District lien may be conducted by the District, its agent or attorney in accordance with the provisions of Covenants No. 6, 7

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and 8 of NRS 107.030 and 107.090, or in any other manner so consistent and permitted by law. The District shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage or convey the same. Upon completion of the foreclosure sale, an action may be brought by the District or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. No sale to foreclose an assessment lien may be conducted until (1) the District, its agent or attorney has first executed and recorded a notice of default and election to sell the Lot or cause its sale ("Notice of Default") to satisfy the assessment lien, and (2) the delinquent Owner or such Owner's successor in interest has failed to pay the amount of the delinquent assessment and interest, costs (including attorneys' fees) and expenses incident to its enforcement for a period of sixty (60) days. Such sixty (60) day period shall commence on the first day following the day upon which the Notice of Default is recorded and a copy thereof is mailed by certified mail with postage prepaid to the Owner or such Owner's successor in interest at his address, if the address is known, and otherwise to the address of the Lot. The Notice of Default must describe the deficiency in payment. The District, its agent or attorney shall, after the expiration of such sixty (60) day period and before the foreclosure sale, give notice of the time and place of the sale in

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the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed on or before the first publication or posting by certified mail with postage prepaid to the Owner or such Owner's successor in interest at his address if known, and otherwise to the address of the Lot.

Section 4.06. Curing of Default Upon the timely curing of any default for which a Notice of Delinquent Assessment was filed by the District, the officers thereof shall record an appropriate "Release of Lien", upon payment by the defaulting Owner of a reasonable fee to cover the cost of preparing and recording such release. A certificate executed and acknowledged by two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the District and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

Section 4.07. Priority of Assessment Lien The lien of the assessments, including interest and costs (including attorneys' fees), provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale

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or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. When the beneficiary of a first Mortgage of record or other purchaser of a Lot obtains title pursuant to a judicial or nonjudicial foreclosure of the first Mortgage, such person, his successors and assigns, shall be liable for assessments by the District chargeable to such Lot which became due prior to the acquisition of title to such Lot by such person. Such unpaid assessments shall be collectible from all of the Lots subject to assessment, including the Lot belonging to such person, his successors or assigns.

Section 4.08. Capital Contributions to the District Upon acquisition of record title to a Lot from a Declarant, each Owner shall pay to the District an amount equal to one-fourth (1/4) of the amount of the then annual assessment for that Lot as determined by the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the District or to Declarant if Declarant has previously advanced such funds to the District. Following the initial sale of each Lot by a Declarant, each buyer of any Lot in the Development and each subsequent buyer of such Lot, upon acquisition of record title to such Lot, shall pay to the District a transfer fee in such amount as may from time to time be determined by the Board.

Section 4.09. Obligations of Declarants Until the close of escrow for the first Lot sold by a Declarant to a member of the home-purchasing public, each Declarant shall pay a pro rata share of all costs and expenses incurred by the District. Thereafter,

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each Declarant shall pay annual assessments for each Lot owned by such Declarant at a rate equal to twenty-five percent (25%) of the annual assessment paid by Owners who have purchased a Lot from a Declarant.

ARTICLE V

ARCHITECTURAL CONTROL

Section 5.01. Required Approvals No building, fence, wall, or other structure or improvement shall be commenced, erected, placed, or altered upon any Lot, until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the District or by an architectural committee appointed by the District and composed of three (3) representatives. In the event the District or its designated committee fails to approve or disapprove such locations, plans and specifications, or other requests within sixty (60) days after the submission thereof to it, then such approval will not be required, provided that any structure or improvement so erected or altered conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Development. No alteration shall be made in the exterior color design or openings of any building or other construction undertaken unless prior written approval of the alteration shall have been obtained from the District or its designated committee. The grade, level or drainage characteristics

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of any Lot shall not be altered without the prior written approval of the District or its designated committee. The District or its designated committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Development generally. The District or its designated committee shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, topography, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. Anything herein to the contrary notwithstanding, approval by the District or its designated committee is not exclusive and all plans and specifications required to be approved by Clark County, and/or the City of Henderson, whether through the building permit process or otherwise, shall be so approved prior to the commencement of any work.

Section 5.02. Garages Garages shall not be converted into living area without the approval of the architectural committee.

Section 5.03. Roofs Nothing shall be mounted on a roof without the approval of the architectural committee. All satellite dishes, antennae, air conditioner and/or heating systems shall be

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ground-mou not extend above the wall surrounding any Lot.

Parking No boats, recreational vehicles, trucks, cars or trailers shall be parked on any street or development for more than twenty-four hours. If vehicles are parked on a Lot, they shall be screened from view.

Section 5.05. Front Yards Owners shall landscape and shall maintain, repair and replace such landscaping such that it is in a safe and attractive condition.

Section 5.06. Animals No animals, fowl, reptiles, poultry, fish or insects of any kind ("Animals") shall be raised, bred or kept on any Lot within the District, except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable local ordinance or any other provision of this Declaration. "Unreasonable quantities" shall ordinarily mean more than two (2) pets per household. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the District must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the Animal. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any Animals brought

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or kept within the District by an Owner or by members of his family, his tenants or his guests.

Section 5.07. Nuisances No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the District, and no odor shall be permitted to arise therefrom so as to render the District or any portion thereof unsanitary, unsightly, or offensive from any public or private street or from any other Lot. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Lot so as to be offensive or detrimental to any other Lot in the District or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably disturb other Owners or their tenants shall be located, used or placed on any portion of the District. Alarm devices used exclusively to protect the security of a Lot and its contents, shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

Section 5.08. Signs No sign, poster, billboard, advertising device or other display of any kind shall be displayed so as to be visible from outside any Lot without the approval of the architectural committee, except such signs of customary and

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reasonable dimensions as may be displayed on each Lot advertising the Lot for sale or lease.

Section 5.09. Interpretation All questions of interpretation or construction of any of the terms or conditions in this Article V shall be resolved by the District or its designated committee, and its decision shall be final, binding and conclusive on all of the parties affected.

Section 5.10. Violations In the event a violation of these restrictions exists, or in the event of the failure of any Owner to comply with a written directive or order from the District or its designated committee, then in such event, the District shall have the right and authority to perform the subject matter of such directive or order, including, if necessary, the right to enter upon the Lot, and the cost of such performance shall be charged to the Owner of the Lot in question, which cost shall be due within five (5) days after receipt of written demand therefor, and the amount thereof shall become a lien upon the Lot enforceable in the same manner as set forth in Article IV with respect to assessments.

Section 5.11. No Waiver The approval of the District or its designated committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the District, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and

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specifications, drawings or matter whatever, subsequently or additionally submitted for approval or consent.

Section 5.12. No Liability Neither Declarants nor the District or its designated committee, nor any member thereof, nor their duly authorized representatives shall be liable for any loss, damage or injury arising out of, or in any way connected with, the performance of duties under this Article V, unless due to fraud, intentional misconduct or a knowing violation of law.

Section 5.13. Temporary Structures No movable or permanent structure of any kind shall be placed on any Lot without the prior written permission of the District, except such temporary structures and facilities as may be placed by Declarants in the course of construction of improvements within the Development.

Section 5.14. Diligently Prosecuting Work The work of constructing and erecting any building or other structure shall be prosecuted diligently from the commencement thereof and the same shall be complete within a reasonable time, not to exceed twelve (12) months, in accordance with the requirements herein contained, provided, however, that the time for completion shall be extended by the period of delays in construction caused by strikes, inclement weather or other causes beyond the control of the Owner.

Section 5.15. Applicability to Declarants Nothing in this Article V regarding obtaining architectural approval shall apply to any Declarant.

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ARTICLE VI

UTILITY EASEMENTS

There is hereby created a blanket easement upon, across, over and under the Development, including District Property and each Lot, for purposes of ingress, egress, installation, replacement, repaid, and maintenance of utility and service lines and systems, by Declarants, their contractors and subcontractors and agents and employees of the providing utility or service company, including but not limited to, gas, electricity, communication, sewer, telephone, television, and water.

ARTICLE VII

INSURANCE

Section 7.02. Hazard Insurance The District shall obtain and maintain in effect for (i) any improvements located on District Property, insurance against loss by fire and the risks covered by a standard all risk of loss perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof, and (ii) all personalty owned by the District, insurance with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the District. Insurance proceeds for improvements to the District Property and personalty owned by the District shall be payable to the District. In the event of any loss, damage or destruction, the District may cause the same to be replaced, repaired or rebuilt. In the event the cost of such

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replacement, repair or rebuilding of the District Property (a) exceeds the insurance proceeds available therefor, or (b) no insurance proceeds are available therefor, the deficiency may be assessed to the Owners as a special assessment.

Section 7.02. Liability Insurance The District shall obtain and maintain in effect public liability insurance in the name of the District and against any liability for personal injury or property damage resulting from any occurrence in or about the District Property in an amount not less than \$1,000,000 with respect to the claim of one (1) person in one (1) accident or event and not less than \$2,000,000 with respect to claims of two (2) or more persons in one (1) accident or event, and not less than \$100,000 for damage to property.

Section 7.03. Inspection of Policies Copies of all insurance policies obtained by the District (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the District and open for inspection by Owners at any reasonable time. All such insurance policies shall (i) provide that they shall not be cancelled by the insurer without first giving at least ten (10) days prior notice in writing to the District and to each holder of a first mortgage listed on a schedule to the policies and (ii) contain a waiver of subrogation by the insurer(s) against the District.

Section 7.04. Premiums and Proceeds Insurance premiums for any such blanket insurance coverage obtained by the District and

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any other insurance deemed necessary by the District shall be an expense to be included in the repair and special assessments levied by the District. The District is granted the authority to negotiate and settle with insurance carriers.

Section 7.05. Bond: Additional Insurance The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and the officers of the District against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. However, fidelity bond coverage which names the District as an obligee must be obtained by or on behalf of the District for any person or entity handling funds of the District, including, but not limited to, officers, directors, trustees, employees or agents of the District, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the District at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum equal to one-fourth (1/4) of the annual assessments on all Lots in the Development, plus reserve funds.

ARTICLE VIII

CONDEMNATION

In the event the District Property or any portion thereof shall be taken for public purposes by condemnation as a result of

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any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the District.

The District is granted the authority to negotiate and settle with the condemning authority.

ARTICLE IX

MAINTENANCE AND LANDSCAPING RESPONSIBILITIES

Section 9.01. District Maintenance Before conveying the District Property to the District, Declarants shall landscape said property (including the installation of a sprinkler system). The District shall maintain, repair and replace the District Property and all improvements thereon. The District shall also maintain, repair and replace such landscape such that it is in a safe and attractive condition.

Section 9.02. Restoration of District Property Any restoration or repair of District Property after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and original plans and specifications unless otherwise approved by Eligible Mortgage Holders and Eligible Insurers or Guarantors of at least fifty-one percent (51%) of the Lots subject to Eligible Mortgage Holders and Eligible Insurers or Guarantors.

Section 9.03. Owner Maintenance Each Owner shall keep and maintain in good repair and appearance all portions of such Owner's

Lot and improvements thereon, including, but not limited to, any fence which is on the Lot line and the residence located on such Owner's Lot. The Owner of each Lot shall water, weed, maintain and care for the landscaping located on such Owner's Lot so that the same presents a neat and attractive appearance. No Owner shall, however, maintain or change any portion of such Owner's Lot which is covered by a maintenance easement in favor of the District or any other nonprofit owners' association.

Section 9.04. Right of Entry The District shall have the right to enter upon any Lot in connection with any maintenance, repair or construction in the exercise of the powers and duties of the District; provided the District first gives reasonable notice of such entry to the Owner of such Lot. Any damage caused by an entry upon a Lot shall be repaired at the expense of the entering party.

ARTICLE X

RIGHTS OF MORTGAGEES

Section 10.01. Payments of Taxes or Premiums by Mortgagees Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the District Property, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure new casualty insurance policies, or secure a new casualty insurance coverage on the lapse

of a policy covering District Property, and Mortgagees making such payments shall be entitled to immediate reimbursement thereof from the District. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee who requests the same to be executed by the District.

Section 10.02. Approval of First Mortgagees Unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each first Mortgage owned) have given their prior written approval, the District shall not be entitled to:

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the District Property or this Declaration (but the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this Section 10.02(a)).

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(c) By act or omission, change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of residences, the exterior maintenance of residences, the maintenance of the District Property, walks or common fences and driveways, or the upkeep of lawns and plantings in the Development.

(d) Fail to maintain fire and extended coverage insurance on the District Property on a current replacement cost

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basis in an amount not less than one hundred percent (100%) of the insurable value.

(e) Use hazard insurance proceeds for losses to any portion of the District Property for other than the repair, replacement or reconstruction of District Property.

Section 10.23. Notice to Eligible Mortgage Holders and Eligible Insurers or Guarantors Upon written request for notice delivered to the District identifying the name and address of the Eligible Mortgage Holder, Eligible Insurer or Guarantor and the Lot address, each Eligible Mortgage holder and each Eligible Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or any Lot on which there is a loan held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor.

(b) Any delinquency in the payment of District assessments or charges owed by an Owner subject to a loan held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the District.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders and Eligible Insurers or Guarantors as specified herein.

Section 10.04. Documents to be Available to Mortgagees The District shall make available to Owners, Mortgagees, and Eligible Insurers or Guarantors of any first Mortgage, current copies of the Declaration, Bylaws, other rules concerning the use of the District Property and its books, records and financial statements. The term "available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The holders of fifty-one percent (51%) or more of first Mortgages shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Any such financial statement so requested shall be furnished within a reasonable time following such request.

Section 10.05. Mortgagee Protection A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrance of any first Mortgage made for value which may then exist on any Lot, provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Lot or Unit in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale or note holder acquiring title in lieu thereof shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

ARTICLE XIENFORCEMENT

Section 11.01. Parties Entitled to Enforce The Declarant, (so long as Declarant owns a Lot in the Development), the District, the members of the District, and any Owner shall have the right to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration.

Section 11.02. Remedies Cumulative No right, power or remedy conferred upon or reserved to any person is exclusive of any other right, power or remedy set forth or reserved in this Declaration or otherwise afforded by law or in equity; but each and every right, power and remedy shall be cumulative to and concurrent with each and every other right, power and remedy now or hereafter provided in this Declaration, by law or in equity.

Section 11.03. No Waiver The failure by any person to enforce any provision of this Declaration shall not constitute or be deemed a waiver of the right of any other person to do so. Further, the failure by any person or all persons to enforce any provision of this Declaration shall not constitute or be deemed a waiver of the right to do so by any person on account of any subsequent occasion for any similar, identical or unrelated violation.

ARTICLE XIIGENERAL PROVISIONS

Section 12.01. Severability Invalidation of any one of these covenants or restrictions by judgment or a court order shall not effect any other provisions, which shall remain in full force and effect.

Section 12.02. Amendment

(a) Except as may otherwise be stated in this Declaration, this Declaration may be amended at any time and from time to time by an instrument in writing signed by members of the District entitled to exercise a majority of the voting power of the District. An amendment shall become effective upon the recording thereof with the Office of the County recorder of Clark County, Nevada.

(b) Anything contained herein to the contrary notwithstanding, no material amendment may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Lots. An Eligible Mortgage Holder who receives a written request to approve an amendment, addition, or deletion, who does not respond in writing within thirty (30) days of the request, shall be deemed to have approved the amendment, addition or deletion.

Section 12.03. Violation of Law Any violation of laws, ordinances or regulation of any state, county or other local

authority having jurisdiction over the Development is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

Section 12.04. Delivery of Notices and Documents Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, notice shall be deemed to have been given twenty four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to an Owner at the address of any Lot or to any other address last furnished by an Owner to the District.

Section 12.05. Acceptance; Binding Effect By acceptance of a deed, lease or document of conveyance, or acquiring any ownership interest in any of the real property included within this Declaration, each person binds such person and such person's heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendment hereto. In addition, each such person by so doing hereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby and evidences such person's intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration, as amended, shall run with the land and be binding on all subsequent and future owners, lessees,

grantees, purchasers, assignees and transferees of property subject to this Declaration. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

Section 12.06. Headings; Construction

(a) The headings and captions which have been used throughout this Declaration have been inserted for convenience of reference only and do not constitute words to be construed in interpreting this Declaration.

(b) Words of any gender used in this Declaration shall be construed to include any other gender and words in the singular number shall include the plural, and visa versa, unless the context requires otherwise.

(c) Words such as "herein", "hereof", "hereby", and "hereunder", when used in this Declaration shall refer to this Declaration as a whole unless a specific provision of this Declaration is expressly identified.

Section 12.07. Annexation to District Property Provided all Declarants agree, Declarants, or any of them, may transfer to the District additional District Property and the District shall accept title and the obligation to maintain and repair the same.

Section 12.08. Litigation; Attorney Fees In the event any person or entity shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of

suit and such attorneys' fees as the court may adjudge reasonable and proper.

Section 12.09. Declarant's Exemption Declarants are undertaking the work of construction of residential dwellings and incidental improvements upon the Development. The completion of that work, and the sale, rental and other disposal of the dwellings is essential to the establishment and welfare of the Development as a residential community. In order that said work may be completed and the Lots established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarants, their contractors or subcontractors from doing on the Lots whatever is reasonably necessary or advisable in connection with the completion of said work, or

(b) Prevent Declarants or their representatives from erecting, constructing and maintaining on any Lot such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing the Lots as a residential community and disposing of the same by sale, lease or otherwise, or

(c) Prevent Declarants from conducting on any Lot the business of completing said work and of establishing a plan of disposing of the Lots by sale, lease or otherwise, or

(d) Prevent Declarants from maintaining such sign or

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signs, flags, poles, banners, parking, advertisements and other facilities attendant to sales, leasing and other marketing activities on any of the Lots or the District Property as may be necessary for the sale, lease or disposition thereof.

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IN WITNESS WHEREOF, the undersigned, being the Declarants and legal owners of all of the real property comprising the Development, have executed this Declaration as of January 24, 1991.

COVINGTON TECHNOLOGIES,
a California corporation

By: [Signature]

Its: Development Manager

PACIFIC-HILLSBORO LIMITED PARTNERSHIP,
a Nevada limited partnership

By: Pacific Properties and
Development Corporation,
a Nevada corporation

By: [Signature]

Its: CHIEF OPERATING OFFICER

PACIFIC-HILLSBORO LIMITED PARTNERSHIP, II
a Nevada limited partnership

By: Pacific Properties and
Development Corporation,
a Nevada corporation

By: [Signature]

Its: CHIEF OPERATING OFFICER

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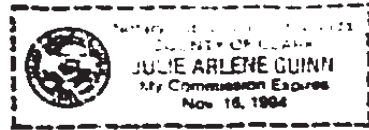
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STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

On this 18th day of JANUARY, 1991, personally appeared before, me, a notary public, RONALD R. EVANS, (personally known) (proven) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the instrument.

Julie Arlene Guinn
NOTARY PUBLIC



STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

On this 24th day of February, 1991, personally appeared before, me, a notary public, Rhonda L. Higdon, (personally known) (proven) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the instrument.

Rhonda L. Higdon
NOTARY PUBLIC



STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

On this 24th day of February, 1991, personally appeared before, me, a notary public, Rhonda L. Higdon, (personally known) (proven) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the instrument.

Rhonda L. Higdon
NOTARY PUBLIC



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EXHIBIT A

A portion of Section 16, Township 22 South, Range 62 East, M.D.B.&M., Clark County, Nevada, more particularly described as Parcel Two (2) as shown by map thereof in File 64 of Parcel Maps, Page 19, in the Office of the County Recorder of Clark County, Nevada, excepting therefrom Lot Fifty Three (53) in Block One (1) of Jasmine Pointe Subdivision, as shown by map thereof on file in Book 46 of Plats, page 26 in the Office of the County Recorder of Clark County, Nevada.

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EXHIBIT B

A portion of Section 16, Township 22 South, Range 62 East, M.D.B.&M., Clark County, Nevada, more particularly described as Parcel Three (3) as shown by map thereof in File 64 of Parcel Maps, Page 19, in the Office of the County Recorder of Clark County, Nevada.

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EXHIBIT C

A portion of Section 16, Township 22 South,
Range 62 East, M.D.B.&M., Clark County,
Nevada, more particularly described as Parcel
Four (4) as shown by map thereof in file 14 of
Parcel Maps, Page 19, in the Office of the
County Recorder of Clark County, Nevada.

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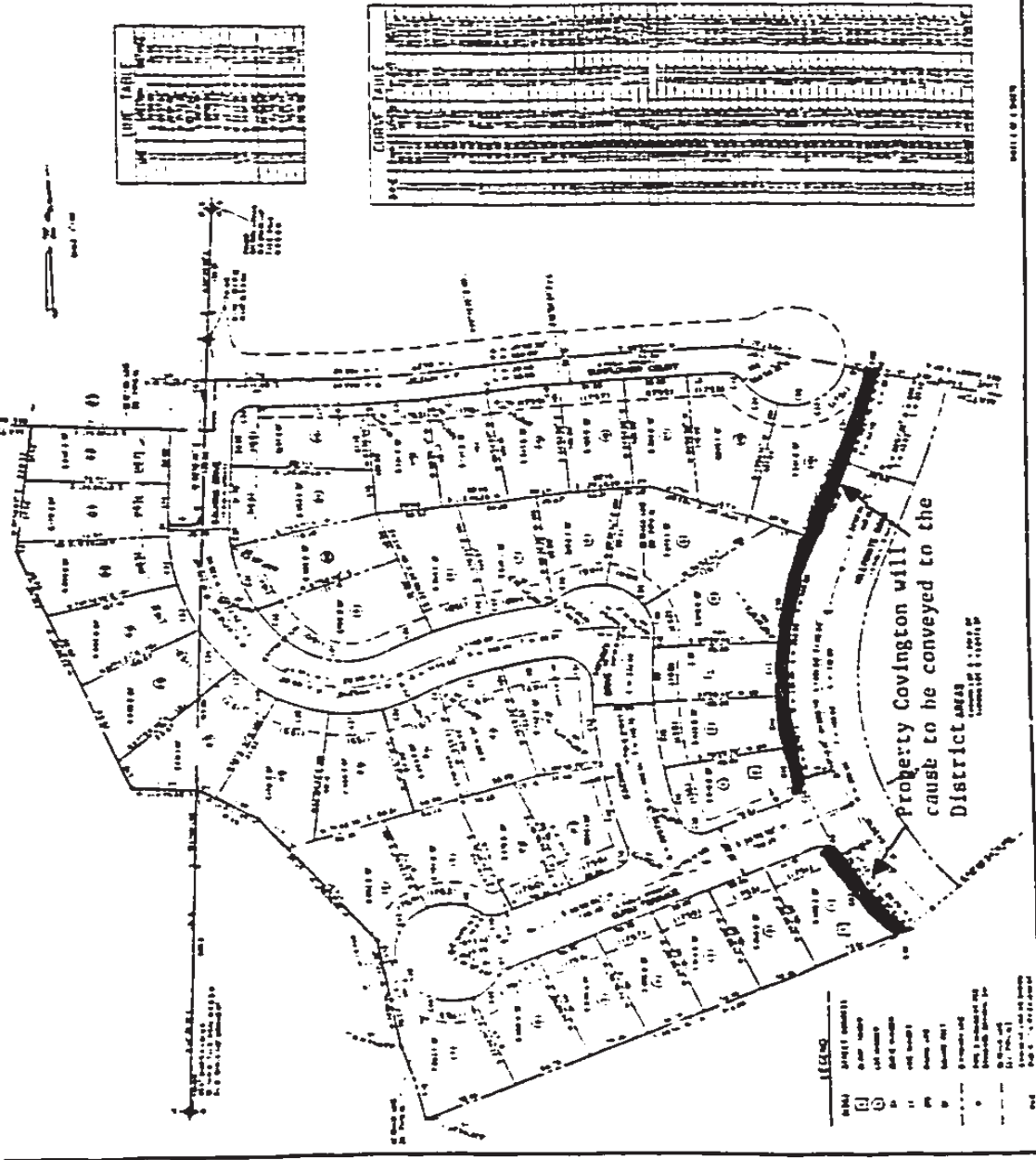
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RECORDER'S MEMO
POSSIBLE POOR RECORD DUE TO
QUALITY OF ORIGINAL DOCUMENT

EXHIBIT D
Page 1 of 2

JASMINE POINTE

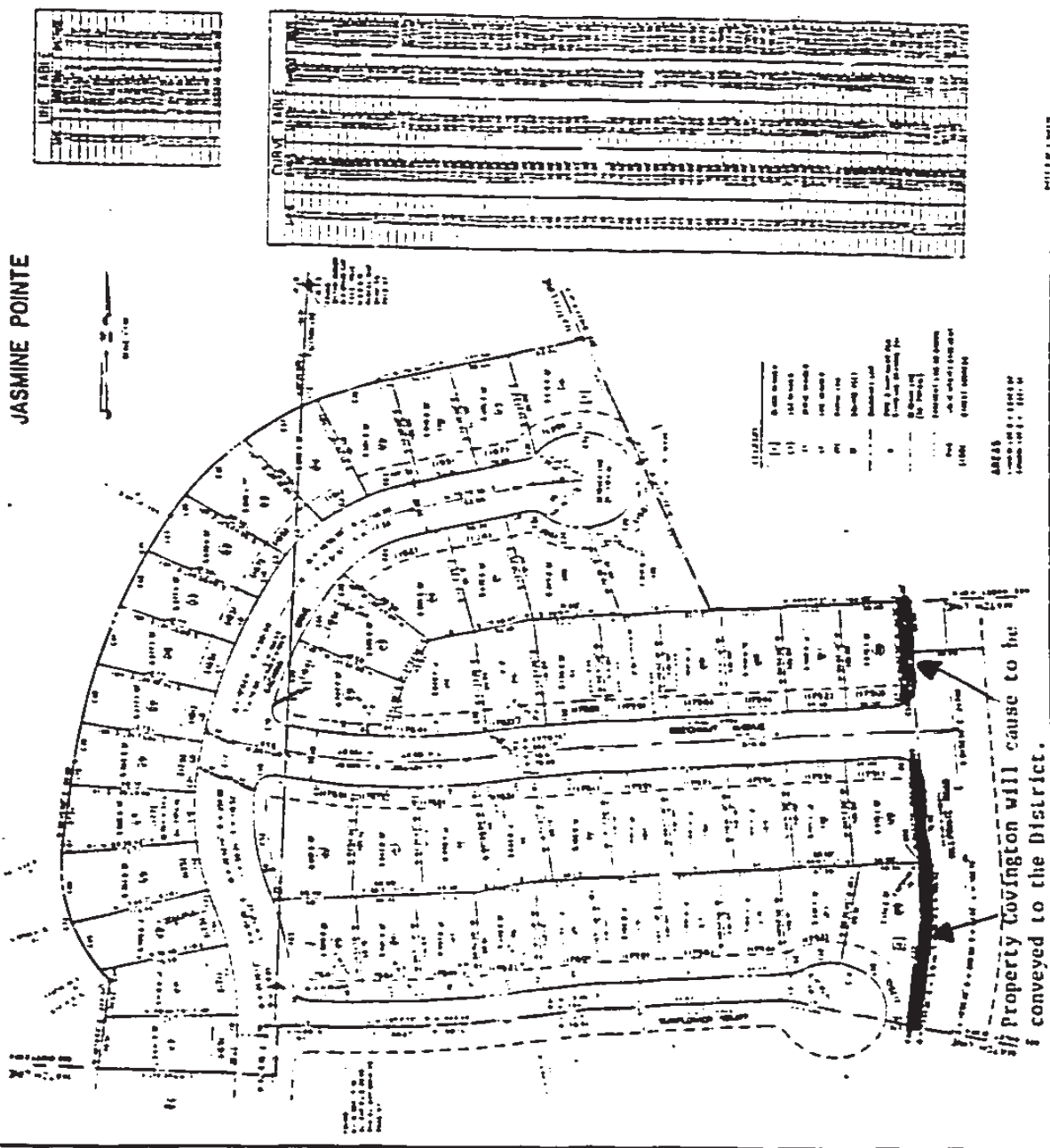


Map on File in Book 46 of Plans, Page 26

RECORDER'S MEMO

EXHIBIT D

JASMINE POINTE



Property Covington will cause to be
conveyed to the District.

Map on File in Book 416 of Plots, Page 26

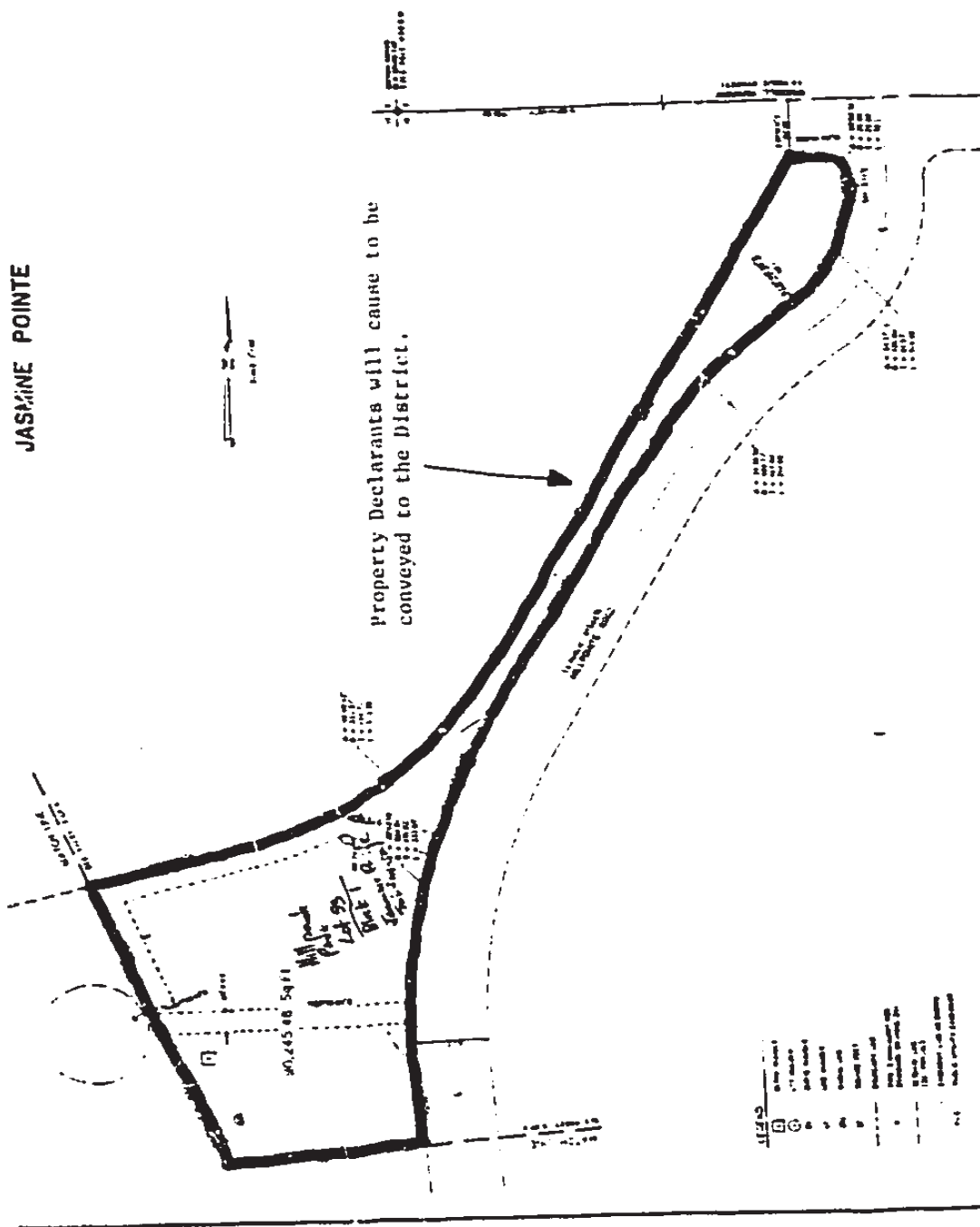
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EXHIBIT D-1

JASMINE POINTE



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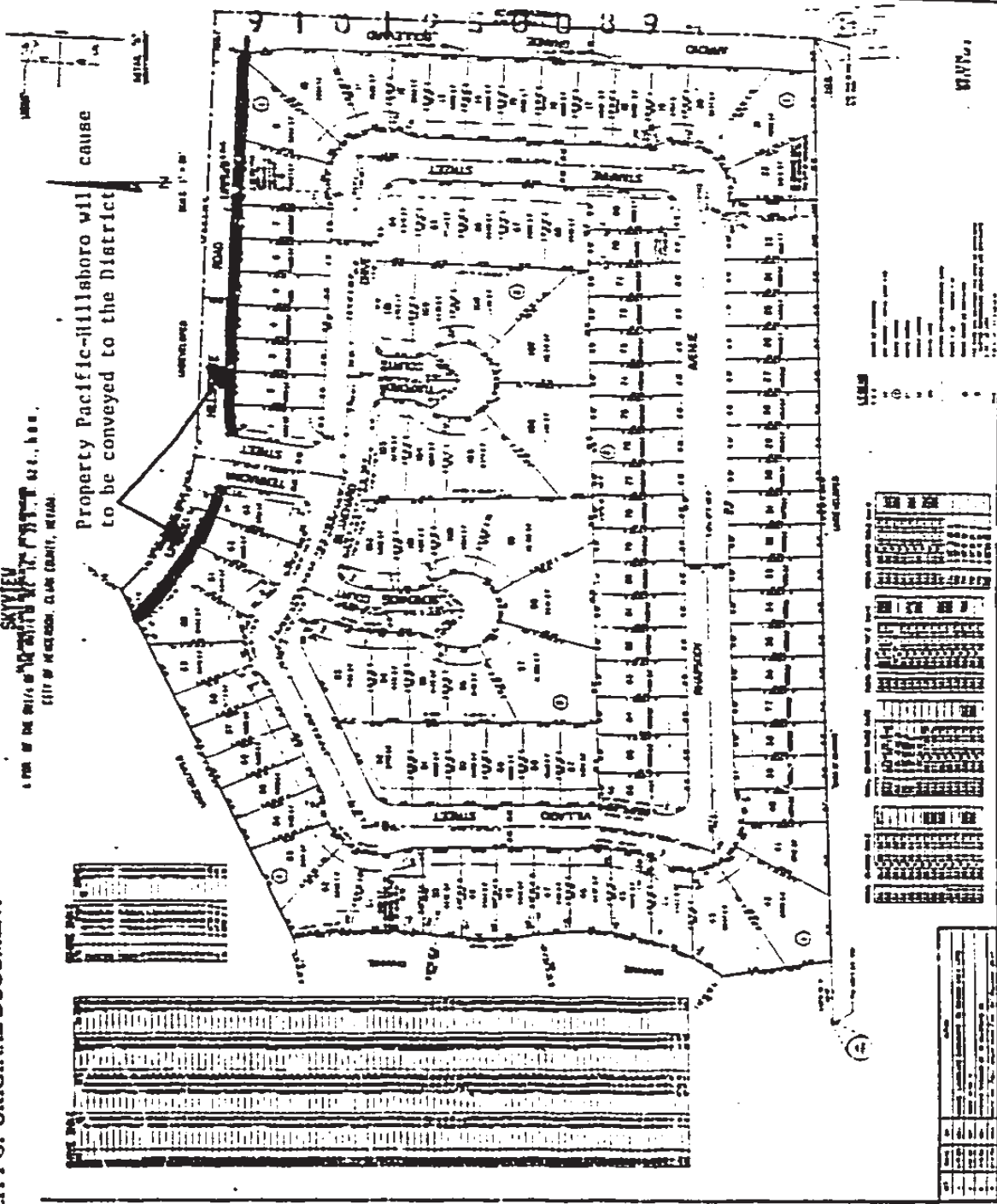
Map on File in Book 46 of Plans, Page 26

RECORDER'S MEMO
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QUALITY OF ORIGINAL DOCUMENT

EXHIBIT E

SKITVIEW
A PLAN OF THE CITY OF PACIFIC HILLSBORO, ORE., SHOWING
CITY OF HILLSBORO, ORE. (PART, WEST)

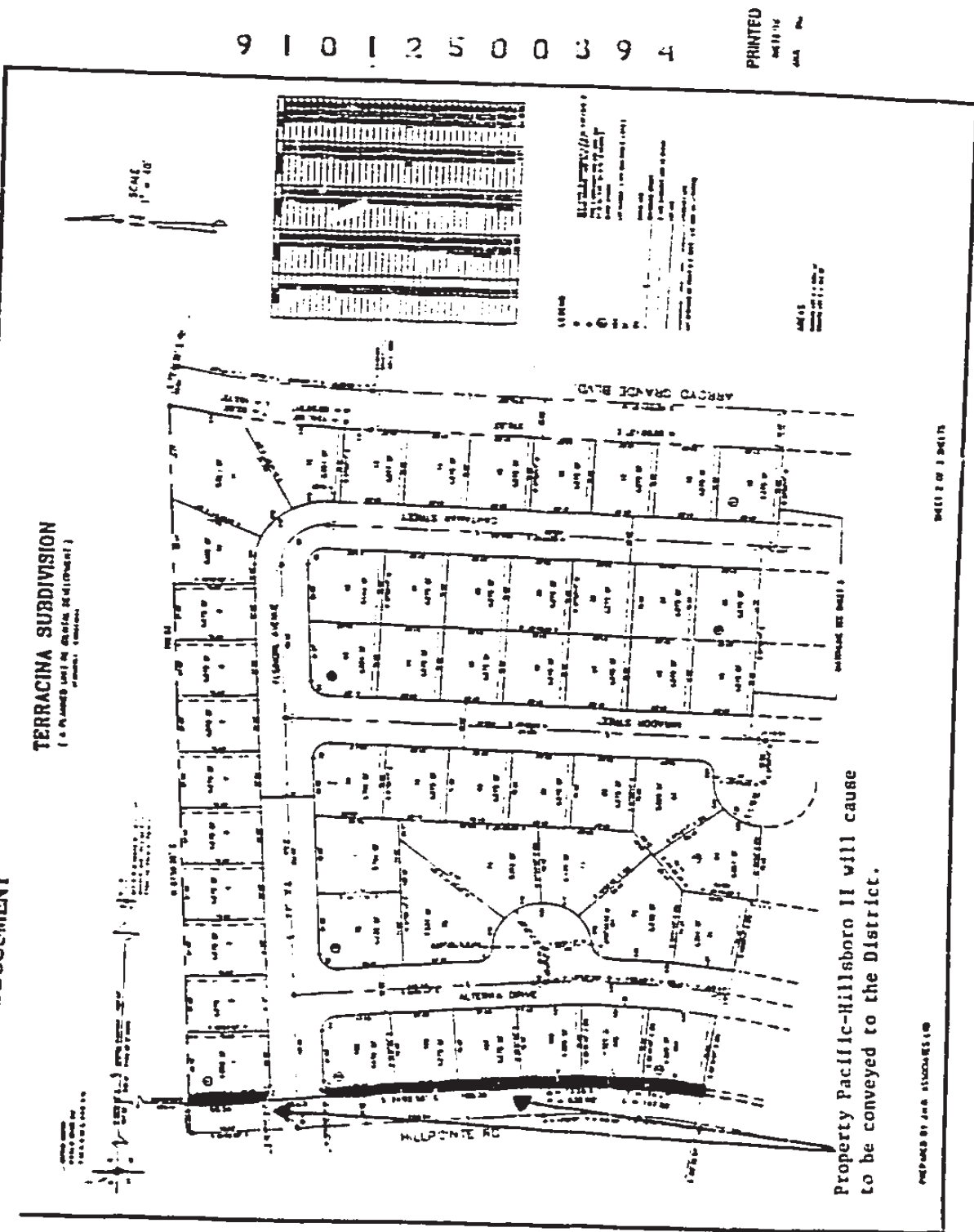
Property Pacific-Hillshoro will
cause
to be conveyed to the District



Mapon File 64 of Parcel Maps, Page 19

RECORDER'S MEMO
POSSIBLE POOR RECORD DUE TO
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EXHIBIT F
Page 1 of 2



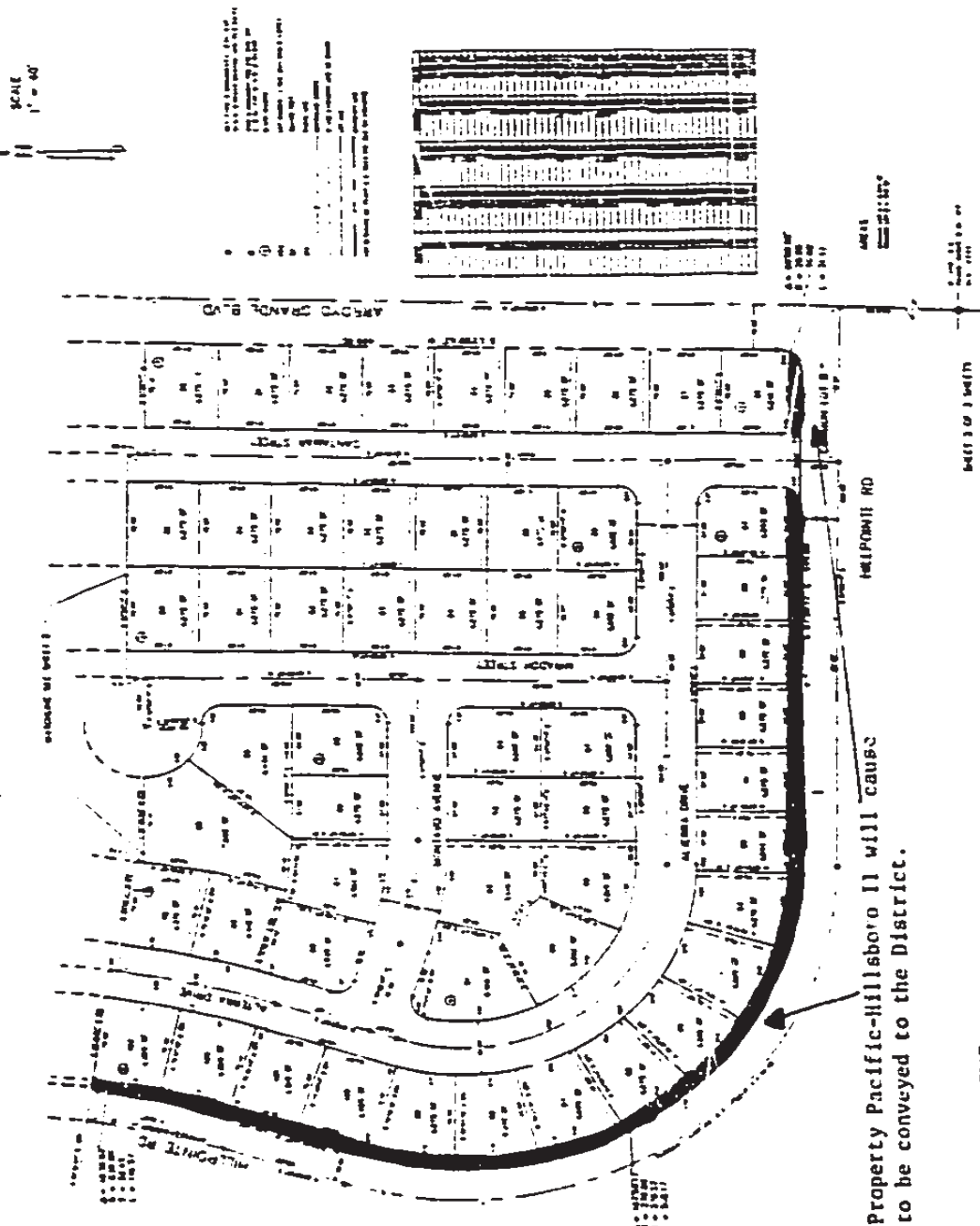
Map on File 64 of Parcel Maps, Page 19

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EXHIBIT F
Page 2 of 2

TERRACINA SUBDIVISION

(A PLANNED UNIT RESIDENTIAL DEVELOPMENT)



Property Pacific-Hillsboro II will cause
to be conveyed to the District.

PREPARED BY JIM ASSOCIATES

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
LIONEL SAWYER ET AL

01-25-9.	13:57	CJF	56
OFFICIAL RECORDS			
BOOK:	910125	INST:	00894
FEE:	60.00	RPTT:	.00

Map on File 64 of Parcel Maps, Page 19

WIRE PAYOUT REQUEST

Date: December 02, 2011

Wire Funds to: Miles, Bauer, Bergstrom & Winters LLP

Loan Number: [REDACTED] 3845

Vendor Number: CFC0016298

Amount of Payment: \$276.75

Reason for Payment: HOA Delinquency

Fee Code: 10157

Case Name: Hillpoint Park vs. CHARLES J & TARA J WIGHT

Property Address: 133 MCLAREN ST, HENDERSON, NV 89074

PAID
DEC 06 2011

Wire Funds to:
Bank Information: Bank of America
1100 North Green Valley Parkway
Henderson, NV 89074
(702) 654-6300

Account Name: Miles, Bauer, Bergstrom & Winters LLP
Client Trust Account

Account Number: [REDACTED]
ABA Routing Number: [REDACTED]

Requested by: Elisabeth Cortes

Approval signature for payment: Nicholas Ament



Page 4

Loan Number: 3845
 Statement Period: 01/1986 - 07/2015
 Date Prepared: 07/15/2015

Property Address:
 133 MCLAREN STREET
 HENDERSON, NV 89074

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
Beginning Balance				220,000.00		.00				.00

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Page 5

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
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Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
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SA0452

SA0453

SA0454



Page 11

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total

Fee Transaction Activity (01/1986 - 07/2015)

Transaction Date	Fee Description	Charges	Payments

SA0455



Page 12

Transaction Date	Fee Description	Charges	Payments
12/06/2011	HOA Special Assessment	276.75	.00
05/15/2013	HOA Special Assessment - Adjustment	-276.75	.00
06/27/2013	HOA Special Assessment	.00	276.75
07/05/2013	HOA Special Assessment - Adjustment	276.75	.00

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Investor Name . . . . : BAC CHL COUNTRYWIDE HOME LOANS
Reporting Type . . . . : 3
Investor Auto Refer . . : Y
FITNO/VITNO Maintained at Investor Level(Y/N): Y
Foreclosure In Name Of : BANK OF AMERICA, N.A.

Title In Name Of . . . : BANK OF AMERICA, N.A.

REO Investor . . . . : 0
Investor Class . . . . :

F3=Exit F12=Cancel

MA A 04/012
```

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128 B02 - Session successfully started
A - AS400LS - [24 x 80]
File Edit View Communication Actions Window Help
Host: AS400LS Port: 992 Workstation ID: Disconnect

ATR110C Attorney Referrals 2/11/16 09:34:52
Investor Information Maintenance Mode: DISPLAY

Investor Number . . . . : 0000139
Investor Name . . . . : PARK GRANADA 10212670.1 SR
Reporting Type . . . . : 1
Investor Auto Refer . . : Y
FITNO/VITNO Maintained at Investor Level(Y/N): Y
Foreclosure In Name Of : INACTIVE INVESTOR NUMBER

Title In Name Of . . . : INACTIVE INVESTOR NUMBER

REO Investor . . . . : 0
Investor Class . . . . :

F3=Exit F12=Cancel

MA A 08/022
```


A - AS400LS - [24 x 80]

File Edit View Communication Actions Window Help

Host: AS400LS Port: 992 Workstation ID: Disconnect

ATR110C Attorney Referrals 2/11/16 09:35:33

Investor Information Maintenance Mode: DISPLAY

Investor Number : 0000043
Investor Name : BANK ONE (PARK GRANADA LLC)
Reporting Type : 1 -
Investor Auto Refer . . : N
FITNO/VITNO Maintained at Investor Level(Y/N): Y
Foreclosure In Name Of : INACTIVE INVESTOR NUMBER

Title In Name Of . . . : INACTIVE INVESTOR NUMBER

REO Investor : @
Investor Class :

F3=Exit F12=Cancel

MA A 06/031

128 |B02 - Session successfully started

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