

IN THE SUPREME COURT OF NEVADA

SATICOY BAY, LLC 34
INNISBROOK,

Appellant,

vs.

THORNBURG MORTGAGE
SECURITIES TRUST 2007-3; FRANK
TIMPA; MADELAINE TIMPA;
TIMPA TRUST; RED ROCK
FINANCIAL SERVICES, LLC;
SPANISH TRAIL MASTER
ASSOCIATION; REPUBLIC
SERVICES; AND LAS VEGAS
VALLEY WATER DISTRICT,

Respondents.

Supreme Court Case No. 80111

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Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX VOLUME 1

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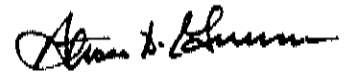
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CLERK OF THE COURT

1 **COMP**

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13 Attorney for plaintiff

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 SATICOY BAY LLC SERIES 34
17 INNISBROOK

18 Plaintiff,

19 vs.

20 THORNBURG MORTGAGE SECURITIES
21 TRUST 2007-3; and RECONTRUST
22 COMPANY, N.A. a division of BANK OF
23 AMERICA

24 Defendants.

CASE NO.: A-14-710161-C

DEPT NO.: XXXI

EXEMPTION FROM ARBITRATION:
Title to real property

25 **COMPLAINT**

26 Plaintiff, Saticoy Bay LLC Series 34 Innisbrook, by and through its attorney, Michael F. Bohn,
27 Esq. alleges as follows:

28 1. Plaintiff is the owner of the real property commonly known as 34 Innisbrook, Las Vegas,
Nevada.

2. Plaintiff obtained title by a foreclosure sale conducted on November 7, 2014 as evidenced by
foreclosure deed recorded on November 10, 2014.

3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments
due from the former owner to the Spanish Trails Master Association pursuant to NRS Chapter 116.

1 4. Thornburg Mortgage Securities Trust 2007-3 is the current beneficiary of a deed of trust which
2 was recorded as an encumbrance to the subject property on June 12, 2006.

3 5. Recontrust Company is the substituted trustee on the deed of trust.

4 6. The interest of each of the defendants has been extinguished by reason of the foreclosure sale,
5 which was properly conducted with adequate notice given to all persons and entities claiming an interest
6 in the subject property, and resulting from a delinquency in assessments due from the former owner, to
7 the Spanish Trails Master Association, pursuant to NRS Chapter 116.

8 7. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the
9 plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim
10 to the subject property.

11 8. The plaintiff is entitled to an award of attorneys fees and costs.

12 **THIRD CLAIM FOR RELIEF**

13 9. Plaintiff repeats the allegations contained in paragraphs 1 through 8.

14 10. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property
15 is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no
16 estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any
17 estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

18 11. The plaintiff is entitled to an award of attorneys fees and costs.

19 ///

20 ///

21 ///

1 WHEREFORE, plaintiff prays for Judgment as follows:

2 1. For a determination and declaration that plaintiff is the rightful holder of title to the property,
3 free and clear of all liens, encumbrances, and claims of the defendants.

4 2. For a determination and declaration that the defendants have no estate, right, title, interest or
5 claim in the property.

6 3. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest
7 or claim in the property; and

8 4. For such other and further relief as the Court may deem just and proper.

9 DATED this 20th day of November 2014.

10 LAW OFFICES OF
11 MICHAEL F. BOHN, ESQ., LTD.

12 By: / s / Jeff Arlitz, Esq. /
13 Michael F. Bohn, Esq.
14 Jeff Arlitz, Esq.
15 376 East Warm Springs Road, Ste. 140
16 Las Vegas, Nevada 89119
17 Attorney for plaintiff
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28

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

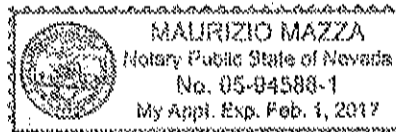
Iyad Haddad, being first duly sworn, deposes and says:

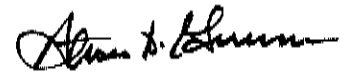
That he is the authorized representative of the plaintiff Limited Liability Company in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.

IYAD HADDAD

SUBSCRIBED and SWORN to before me
this 20 day of November, 2014

NOTARY PUBLIC in and for said
County and State




CLERK OF THE COURT

1 **ACOM**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 JEFF ARLITZ, ESQ.
6 Nevada Bar No.: 6558
7 jarlitz@bohnlawfirm.com
8 LAW OFFICES OF
9 MICHAEL F. BOHN, ESQ., LTD.
10 376 East Warm Springs Road, Ste. 140
11 Las Vegas, Nevada 89119
12 (702) 642-3113/ (702) 642-9766 FAX

13 Attorney for plaintiff

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 SATICOY BAY LLC SERIES 34
17 INNISBROOK

18 Plaintiff,

19 vs.

20 THORNBURG MORTGAGE SECURITIES
21 TRUST 2007-3; and RECONTRUST
22 COMPANY, N.A. a division of BANK OF
23 AMERICA; FRANK TIMPA and MADELAINE
24 TIMPA, individually and as trustees of the TIMPA
25 TRUST

26 Defendants.

CASE NO.: A710161
DEPT NO.: XXXI

EXEMPTION FROM ARBITRATION:
Title to real property

27 **AMENDED COMPLAINT**

28 Plaintiff, Saticoy Bay LLC Series 34 Innisbrook, by and through its attorney, Michael F. Bohn,
Esq. alleges as follows:

1. Plaintiff is the owner of the real property commonly known as 34 Innisbrook, Las Vegas,
Nevada.

2. Plaintiff obtained title by a foreclosure sale conducted on November 7, 2014 as evidenced by
foreclosure deed recorded on November 10, 2014.

3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments

1 due from the former owners, Frank and Madelaine Timpa to the Spanish Trails Master Association
2 pursuant to NRS Chapter 116.

3 4. Thornburg Mortgage Securities Trust 2007-3 is the current beneficiary of a deed of trust which
4 was recorded as an encumbrance to the subject property on June 12, 2006.

5 5. Recontrust Company is the substituted trustee on the deed of trust.

6 6. Frank and Madelaine Timpa individually and as trustees of the Timpa Trust are the former
7 owners of the property.

8 7. The interest of each of the defendants has been extinguished by reason of the foreclosure sale,
9 which was properly conducted with adequate notice given to all persons and entities claiming an interest
10 in the subject property, and resulting from a delinquency in assessments due from the former owner, to
11 the Spanish Trails Master Association, pursuant to NRS Chapter 116.

12 8. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the
13 plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim
14 to the subject property.

15 9. The plaintiff is entitled to an award of attorneys fees and costs.

16 **SECOND CLAIM FOR RELIEF**

17 10. Plaintiff repeats the allegations contained in paragraphs 1 through 9.

18 11. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property
19 is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no
20 estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any
21 estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

22 12. The plaintiff is entitled to an award of attorneys fees and costs.

23 **THIRD CLAIM FOR RELIEF**

24 13. Plaintiff repeats the allegations contained in paragraphs 1 through 12.

25 14. Defendants Frank and Madelaine Timpa individually and as trustee of the Timpa Trust were
26 served with a 3 day notice to quit.

27 15. The defendants have failed to vacate the premises despite the notice that have been served
28

1 upon him.

2 16. The defendants have remained in possession of said property up to and including the present
3 time.

4 17. The plaintiff is entitled to a Writ of Restitution of the restoring possession to the plaintiff.

5 18. Plaintiff is entitled to an award of attorneys fees and costs of suit.

6 WHEREFORE, plaintiff prays as follows:

7 **ON ACCOUNT OF THE FIRST CLAIM FOR RELIEF**

8 1. For a determination and declaration that plaintiff is the rightful holder of title to the property,
9 free and clear of all liens, encumbrances, and claims of the defendants.

10 2. For an award of attorneys fees and costs; and

11 3. For such other and further relief as the Court may deem just and proper.

12 **ON ACCOUNT OF THE SECOND CLAIM FOR RELIEF**

13 1. For a determination and declaration that the defendants have no estate, right, title, interest or
14 claim in the property.

15 2. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest
16 or claim in the property; and

17 3. For such other and further relief as the Court may deem just and proper.

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1 **ON ACCOUNT OF THE THIRD CLAIM FOR RELIEF**

- 2 1. For restitution and possession of the premises;
- 3 2. For reasonable attorneys fees and costs of Court; and
- 4 3. For such other and further relief as the Court may deem proper.

5 DATED this 25th day of November 2014.

6 LAW OFFICES OF
7 MICHAEL F. BOHN, ESQ., LTD.

8

9 By: / s /Michael F. Bohn, Esq. /
10 Michael F. Bohn, Esq.
11 Jeff Arlitz, Esq.
12 376 East Warm Springs Road, Ste. 140
13 Las Vegas, Nevada 89119
14 Attorney for plaintiff

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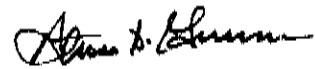
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AOS

**DISTRICT COURT , CLARK COUNTY
CLARK COUNTY, NEVADA**


CLERK OF THE COURT

**SATICOY BAY LLC SERIES 34
INNISBROOK**

Plaintiff

VS

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3; ET AL**

Defendant

CASE NO: A-14-710161-C

HEARING DATE/TIME: 01/08/2015 at 09:30am

DEPT NO:

AFFIDAVIT OF SERVICE

LORI E. KALATA_R-065366 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the ORDER TO SHOW CAUSE; AMENDED SUMMONS; AMENDED COMPLAINT, on the 10th day of December, 2014 and served the same on the 10th day of December, 2014, at 16:25 by:

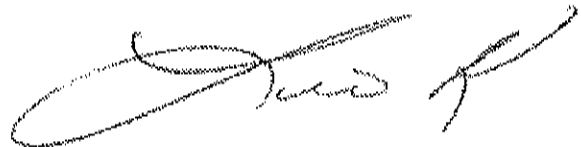
serving the servee FRANK TIMPA personally delivering and leaving a copy with CINDY, ROOMMATE Co-occupant, a person of suitable age and discretion residing at the defendant's usual place of abode located at (address) 34 INNISBROOK AVE., LAS VEGAS NV 89113

5'5" 200 LBS BROWN HAIR BROWN EYES HISPANIC FEMALE AGE 50

Pursuant to NRS 53.045

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

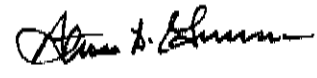
EXECUTED this 10 day of Dec, 2014.



LORI E. KALATA_R-065366

AOS

**DISTRICT COURT, CLARK COUNTY
CLARK COUNTY, NEVADA**


CLERK OF THE COURT

**SATICOY BAY LLC SERIES 34
INNISBROOK**

Plaintiff

VS

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3; ET AL**

Defendant

CASE NO: A-14-710161-C

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DEPT NO:

AFFIDAVIT OF SERVICE

LORI E. KALATA_R-065366 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the ORDER TO SHOW CAUSE; AMENDED SUMMONS; AMENDED COMPLAINT, on the 10th day of December, 2014 and served the same on the 10th day of December, 2014, at 16:25 by:

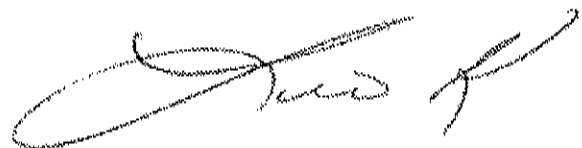
serving the servee MADELAINE TIMPA personally delivering and leaving a copy with CINDY, ROOMMATE Co-occupant, a person of suitable age and discretion residing at the defendant's usual place of abode located at (address) 34 INNISBROOK AVE., LAS VEGAS NV 89113

5'5" 200 LBS BROWN HAIR BROWN EYES HISPANIC FEMALE AGE 50

Pursuant to NRS 53.045

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

EXECUTED this 10 day of Dec, 2014.

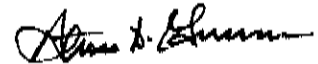


LORI E. KALATA_R-065366

AOS

THREE DAY NOTICE TO QUIT,

Electronically Filed
12/30/2014 02:12:35 PM



CLERK OF THE COURT

Plaintiff

VS

CASE NO:

HEARING DATE/TIME:

DEPT NO:

Defendant

**FRANK TIMPA; MADELAINE;
TIMPA TRUST; AND ALL
PERSONAL CLAIMING
POSSESSION OF THE PROPERTY**

AFFIDAVIT OF SERVICE

JACK RILEY R-045599 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the THREE DAY NOTICE TO QUIT, on the 10th day of November, 2014 and served the same on the 10th day of November, 2014, at 13:15 by:

posting and mailing a copy for the servee FRANK TIMPA; MADELAINE; TIMPA TRUST; AND ALL PERSONAL CLAIMING POSSESSION OF THE PROPERTY at (address) 34 INNISBROOK AVE., LAS VEGAS NV 89113

POSTED AND MAILED ON 11/10/2014

Pursuant to NRS 53.045

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



EXECUTED this 10 day of Nov, 2014.

JACK RILEY R-045599

Junes Legal Services - 630 South 10th Street - Suite A - Las Vegas NV 89101 - (702) 579-6300 - Fax (702) 259-0249 - Toll Free (888) 56Junes

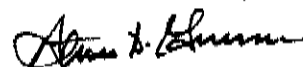
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AOS

**DISTRICT COURT , CLARK COUNTY
CLARK COUNTY, NEVADA**

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CLERK OF THE COURT

**SATICOY BAY LLC SERIES 34
INNISBROOK**

Plaintiff

VS

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3; ET AL**

Defendant

CASE NO: A-14-710161-C

HEARING DATE/TIME:

DEPT NO:

AFFIDAVIT OF SERVICE

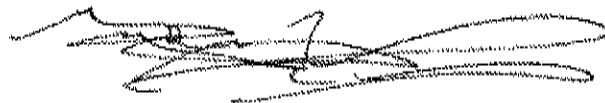
GREGORY BROWN R-013683 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the AMENDED SUMMONS; AMENDED COMPLAINT, on the 14th day of January, 2015 and served the same on the 20th day of January, 2015, at 09:26 by:

serving the servee RECONTRUST COMPANY, N.A. A DIVISION OF BANK OF AMERICA by personally delivering and leaving a copy at (address) 300 S. 4TH STREET #200, LAS VEGAS NV 89101 with LISA M. CUMMINGS as ADMINISTRATIVE ASSISTANT, an agent lawfully designated by statute to accept service of process;

Pursuant to NRS 53.045

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

EXECUTED this 20 day of Jan, 2015.



GREGORY BROWN R-013683

Jones Legal Services - 630 South 10th Street - Suite B - Las Vegas NV 89101 - (702) 579-6300 - Fax (702) 259-6249 - Toll Free (888) 56-Jones

15011401

JA0012

DISTRICT COURT
CLARK COUNTY

-----X
SATICOY BAY LLC SERIES 34
INNISBROOK,


CLERK OF THE COURT

Plaintiff(s),

Case No. A710161

-against-

AFFIDAVIT OF SERVICE

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3, et al.,

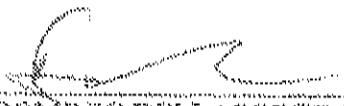
Defendant(s),

-----X
STATE OF NEW YORK)
S.S.:
COUNTY OF NEW YORK)


DOMINIC DELLAPORTE, being duly sworn, deposes and says that he is over the age of eighteen years, is employed by the attorney service, METRO ATTORNEY SERVICE INC., and is not a party to this action.

That on the 6th day of January, 2015, at approximately 10:13 AM, deponent served a true copy of the Amended Summons and Amended Complaint upon THORNBURG MORTGAGE SECURITIES TRUST 2007-3 at 4 Metrotech Center, Brooklyn, New York, by personally delivering and leaving the same with Jean D. Griffin, Legal Specialist II, who informed deponent that she is an agent authorized by appointment to receive service at that address.

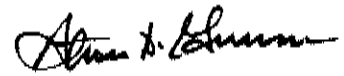
Jean D. Griffin is a black female, approximately 58 years of age, stands approximately 5 feet 7 inches tall, weighs approximately 140 pounds with brown hair and glasses.


DOMINIC DELLAPORTE #1320496
305 Broadway, 9th Floor, New York, NY 10007
212-822-1421

Sworn to before me this
6th day of January, 2015


NOTARY PUBLIC

EVAN COHAN
NOTARY PUBLIC & ATTORNEY AT LAW
NO. 02004096577
QUALIFIED IN ROCKLAND COUNTY
CERTIFICATE FILED IN NEW YORK COUNTY
COMMISSION EXPIRES JUNE 29, 2018


CLERK OF THE COURT

AACC
WRIGHT, FINLAY & ZAK, LLP
Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Shadd A. Wade, Esq.
Nevada Bar No. 11310
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 475-7964; Fax: (702) 946-1345
dnitz@wrightlegal.net
swade@wrightlegal.net
Attorneys for Defendant, Thornburg Mortgage Securities Trust 2007-3

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; RECONTRUST COMPANY,
N.A. a division of BANK OF AMERICA;
FRANK TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUST,

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant

vs.

SATICOY BAY LLC SERIES 34
INNISBROOK, a Nevada limited-liability
company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK

Case No.: A-14-710161-C
DEPT No.: XXXI

THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S ANSWER
AND COUNTER-CLAIMS

1 TIMPA, an individual; DOES I through X; and
2 ROE CORPORATIONS I through X, inclusive,
3 Counter-defendants.

4 COMES NOW Defendant/Counterclaimant, THORNBURG MORTGAGE SECURITIES
5 TRUST 2007-3, (hereinafter "THORNBURG" or "Defendant"), by and through its attorney of
6 record, the law firm of Wright, Finlay & Zak, LLP, and hereby submits its Answer to the
7 Plaintiff/Counterdefendant SATICOY BAY LLC SERIES 34 INNISBROOK's (hereinafter
8 "SATICOY") Complaint.

9 PARTIES

10 1. Defendant admits that a Foreclosure Deed was recorded in the Clark County
11 Recorder's Office as Book and Instrument Number 20141110-0002475 and Plaintiff is stated as
12 Grantee; however, Defendant denies the other allegations in paragraph 1 of the Complaint.

13 2. Defendant admits that a Foreclosure Deed was recorded in the Clark County
14 Recorder's Office as Book and Instrument Number 20141110-0002475, which refers to a
15 foreclosure sale held on November 7, 2014, and Plaintiff is stated as Grantee; however,
16 Defendant denies the other allegations in paragraph 2 of the Complaint.

17 3. Defendant admits that a Foreclosure Deed was recorded in the Clark County
18 Recorder's Office as Book and Instrument Number 20141110-0002475 and Plaintiff is stated as
19 Grantee; however, Defendant denies the other allegations in paragraph 3 of the Complaint.

20 4. Defendant admits the allegations contained in paragraph 4 of the Complaint.

21 5. Defendant denies the allegations contained in paragraph 5 of the Complaint.

22 6. Defendant does not possess enough information to admit or deny the allegations
23 contained in paragraph 6 of the Complaint; therefore, Defendant denies said allegations.

24 7. Defendant denies the allegations contained in paragraph 7 of the Complaint.

25 8. Defendant denies the allegations contained in paragraph 8 of the Complaint.

26 9. Defendant denies the allegations contained in paragraph 9 of the Complaint.

27
28 //

1 **SECOND CLAIM FOR RELIEF**

2 10. Answering paragraph 10, Defendant hereby repeats, re-alleges and incorporates
3 each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as
4 if set forth at length and in full.

5 11. Defendant avers that paragraph 11 states a request for relief to which no response
6 is required. To whatever extent a response is required, Defendant denies the remaining
7 allegations contained therein.

8 12. Defendant denies the allegations contained in paragraph 12 of the Complaint.

9 **THIRD CLAIM FOR RELIEF**

10 13. Answering paragraph 13, Defendant hereby repeats, re-alleges and incorporates
11 each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as
12 if set forth at length and in full.

13 14. Defendant does not possess enough information to admit or deny the allegations
14 contained in paragraph 14 of the Complaint; therefore, Defendant denies said allegations.

15 15. Defendant does not possess enough information to admit or deny the allegations
16 contained in paragraph 15 of the Complaint; therefore, Defendant denies said allegations.

17 16. Defendant does not possess enough information to admit or deny the allegations
18 contained in paragraph 16 of the Complaint; therefore, Defendant denies said allegations.

19 17. Defendant does not possess enough information to admit or deny the allegations
20 contained in paragraph 17 of the Complaint; therefore, Defendant denies said allegations.

21 18. Defendant denies the allegations contained in paragraph 18 of the Complaint.

22
23 **DEFENDANT ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:**

24 **FIRST AFFIRMATIVE DEFENSE**

25 **(Failure to State a Claim)**

26 Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be
27 granted.

1 **SECOND AFFIRMATIVE DEFENSE**

2 **(Priority)**

3 Plaintiff took title of the Property subject to Defendant's first priority Deed of Trust,
4 thereby forestalling any enjoinder/extinguishment of Defendant's interest in the Property.

5 **THIRD AFFIRMATIVE DEFENSE**

6 **(Assumption of Risk)**

7 Plaintiff, at all material times, calculated, knew and understood the risks inherent in the
8 situations, actions, omissions, and transactions upon which they now base their various claims
9 for relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and is
10 consequently barred from all recovery by such assumption of risk.

11 **FOURTH AFFIRMATIVE DEFENSE**

12 **(Commercial Reasonableness and Violation of Good Faith - NRS 116.1113)**

13 The HOA lien foreclosure sale by which Plaintiff took its interest was commercially
14 unreasonable if it eliminated Defendant's Deed of Trust, as Plaintiff contends. The sales price,
15 when compared to the outstanding balance of First Note and Deed of Trust and the fair market
16 value of the Property, demonstrates that the sale was not conducted in good faith as a matter of
17 law. The circumstances of sale of the property violated the HOA's obligation of good faith under
18 NRS 116.1113 and duty to act in a commercially reasonable manner.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 **(Equitable Doctrines)**

21 Defendant alleges that the Plaintiff's claims are barred by the equitable doctrines of
22 laches, unclean hands, estoppel, and failure to do equity.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 **(Acceptance)**

25 Defendant asserts that any acceptance of any portion of the excess proceeds does not
26 "satisfy" the amount due and owing on the Loan and would not constitute a waiver of its rights
27 under the Loan and Deed of Trust, or statute.

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(Waiver and Estoppel)**

3 Defendant asserts that by reason of Plaintiff's acts and omissions, Plaintiff has waived its
4 rights and is estopped from asserting the claims against Defendants.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 **(Void for Vagueness and Ambiguity)**

7 To the extent that Plaintiffs' interpretation of NRS 116.3116 is accurate, the statute and
8 Chapter 116 as a whole are void for vagueness and ambiguity.

9 **NINTH AFFIRMATIVE DEFENSE**

10 **(Due Process Violations)**

11 A senior deed of trust beneficiary cannot be deprived of its property interest in violation
12 of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution
13 and Article 1, Sec. 8, of the Nevada Constitution.

14 **TENTH AFFIRMATIVE DEFENSE**

15 **(Violation of Procedural Due Process)**

16 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
17 pursuant to the Due Process Clause of the Nevada Constitution and United States Constitution.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(Supremacy Clause)**

20 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
21 pursuant to the Supremacy Clause of the United States Constitution.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **(Property Clause)**

24 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
25 pursuant to the Property Clause of the United States Constitution.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Failure to Mitigate Damages)**

3 Defendant alleges that the Plaintiff's claims are barred in whole or in part because of the
4 Plaintiff's failure to take reasonable steps to mitigate the damages, if any, in this case.

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 **(Tender of Super-priority Lien)**

7 Defendant alleges that it tendered payment of the super-priority portion of the HOA liens
8 to the HOA and/or its agents.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 **(Contracts Clause)**

11 The HOA Sale is void or otherwise does not operate to extinguish the first Deed of Trust
12 pursuant to the Contracts Clause of both the United States Constitution and the Nevada
13 Constitution.

14 **SIXTEENTH AFFIRMATIVE DEFENSE**

15 **(Additional Affirmative Defenses)**

16 Defendant reserves the right to assert additional affirmative defenses in the event
17 discovery and/or investigation indicates that additional affirmative defenses are applicable.

18 **PRAYER**

19 WHEREFORE, Defendant prays for judgment as follows:

- 20 1. That the Court make a judicial determination that Defendant's Deed of Trust is
21 superior to Plaintiff's claim of title to the Subject Property;
22 2. That the Court make a judicial determination that Defendant's Deed of Trust
23 survived the HOA Sale for Subject Property;
24 3. That the Court make a judicial determination that Plaintiff took title subject to
25 Defendant's Deed of Trust on the Subject Property;
26 4. That Plaintiff recover nothing on account of the claims made in the Complaint
27 and each of its purported claims;
28 5. For reasonable attorney's fees and costs; and

1 6. For any such other and further relief as the Court may deem just and proper in the
2 case.

3
4 **THORNBURG MORTGAGE SECURITIES TRUST 2007-3's COUNTERCLAIM**

5 COMES NOW Defendant/Counterclaimant THORNBURG MORTGAGE SECURITIES
6 TRUST 2007-3, (hereinafter "THORNBURG"), by and through its attorneys of record, the law
7 firm of Wright, Finlay & Zak, LLP, and hereby submits its Counterclaim against SATICOY
8 BAY LLC SERIES 34 INNISBROOK; SPANISH TRAIL MASTER ASSOCIATION; RED
9 ROCK FINANCIAL SERVICES; FRANK TIMPA; DOES I through X; and ROE
10 CORPORATIONS I through X, inclusive (collectively, "Counterdefendants").

11 **I.**

12 **PARTIES**

13 1. THORNBURG is a foreign corporation conducting business in the State of
14 Nevada.

15 2. THORNBURG is the assigned Beneficiary under the Deed of Trust signed by
16 FRANK TIMPA ("Borrower"), recorded on June 12, 2006 as Instrument 20060612-0001581,
17 (hereinafter "Deed of Trust"), which encumbers the Property and secures a promissory note.

18 3. Upon information and belief, Counterdefendant SATICOY BAY LLC SERIES 34
19 INNISBROOK (hereinafter "SATICOY" or "Buyer"), is a Nevada limited-liability company.

20 4. Upon information and belief, Counterdefendant, SPANISH TRAIL MASTER
21 ASSOCIATION (hereinafter "HOA"), is a Nevada non-profit corporation, licensed to do
22 business in the State of Nevada.

23 5. Upon information and belief, Counterdefendant RED ROCK FINANCIAL
24 SERVICES. (hereinafter "RRFS" or "HOA Trustee") is a company licensed to do business in the
25 State of Nevada.

26 6. Upon information and belief, Counterdefendant, FRANK TIMPA (hereinafter
27 "TIMPA"), is a Nevada resident and the former titleholder of the Property.
28

7. THORNBURG does not know the true names, capacities or bases of liability of fictitious defendants sued as DOES I through X, ROE CORPORATIONS I through X, inclusive (collectively "fictitious Defendants"). Each fictitiously named defendant is in some way liable to THORNBURG or claims some rights, title, or interest in the Subject Property that is subsequent to or subject to the interests of THORNBURG. THORNBURG will amend this Counterclaim to reflect the true names of said defendants when the same have been ascertained.

8. Upon information and belief, the HOA Trustee and one or more fictitious defendants are the agents of the HOA, and the HOA is responsible for their acts and omissions under the doctrine of respondeat superior.

II.

JURISDICTION AND VENUE

9. Venue is proper in this judicial district because the property that is the subject of this action is situated in this county.

10. The Court has personal jurisdiction over SATICOY because this lawsuit arises out of and is connected with SATICOY's purposeful purchase of an interest in real property situated in the County of Clark, State of Nevada.

11. The Court has personal jurisdiction over HOA Trustee because this lawsuit arises out of and is connected with HOA Trustee's role in a foreclosure upon real property located in the County of Clark, State of Nevada. Additionally, upon information and belief, HOA Trustee is a Nevada corporation conducting business in Clark County, Nevada.

12. The Court has personal jurisdiction over HOA because this lawsuit arises out of and is connected with HOA's foreclosure of real property located in the County of Clark, State of Nevada and, upon information and belief, HOA is a Nevada non-profit corporation conducting business in Clark County, Nevada.

III.

FACTUAL BACKGROUND

13. On or about December 21, 2006, Borrower Frank Timpa obtained a secured loan against the Property known as 34 Innisbrook Avenue, Las Vegas, NV 89113 ("Property").

1 14. The Deed of Trust executed by Borrower on June 2, 2006 identifies Countrywide
2 Home Loans, Inc., as the Lender, Mortgage Electronic Registration Systems, Inc. (MERS), as
3 nominee for Lender and Lender's assigns, as Beneficiary, and Recontrust Company, N.A. as the
4 Trustee, securing a loan in the amount of \$3,780,000.00 (hereinafter the "Borrower's Loan").¹

5 15. The Borrower became delinquent on his payment obligations under the Deed of
6 Trust on or about February 1, 2008.

7 16. On June 9, 2010, original lender assigned all beneficial interest in the Deed of
8 Trust to Thornburg Mortgage Securities Trust 2007-3.²

9 17. On January 21, 2015, THORNBURG's agents substituted Veriprise Processing
10 Solutions LLC as the Trustee under the Deed of Trust.³

11 18. On August 4, 2011, a Lien For Delinquent Assessments was recorded against the
12 Property by RRFS for HOA.⁴

13 19. On December 6, 2011 a Notice of Default and Election to Sell Pursuant to The
14 Lien For Delinquent Assessments was recorded against the Property by RRFS for HOA.⁵

15 20. On September 15, 2014 a Notice of Foreclosure Sale was recorded against the
16 Property by RRFS on behalf of HOA.⁶

17 21. Upon information and belief, pursuant to that Notice of Sale, a non-judicial
18 foreclosure sale occurred on November 7, 2014 (hereinafter the "HOA Sale"), whereby
19 SATICOY acquired her interest in the Property, if any, for \$1,201,000.00.

20
21 ¹ A true and correct copy of the Deed of Trust recorded as Book and Instrument Numbers
22 20060612-0001581 is attached hereto as **Exhibit 1**.

23 ² A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument
24 Numbers 20100609-0003189 is attached hereto as **Exhibit 2**.

25 ³ A true and correct copy of the Substitution of Trustee recorded as Book and Instrument
26 Numbers 20150121-0000855 is attached hereto as **Exhibit 3**.

27 ⁴ A true and correct copy of the Lien For Delinquent Assessments (HOA) recorded as Book and
28 Instrument Number 20110804-0002324 is attached hereto as **Exhibit 4**.

⁵ A true and correct copy of the Notice of Default (HOA) recorded as Book and Instrument
Number 20111206-0001106 is attached hereto as **Exhibit 5**.

⁶ A true and correct copy of the Notice of Foreclosure Sale (HOA) recorded as Book and
Instrument Number 20140915-0001527 is attached hereto as **Exhibit 6**.

1 22. On November 10, 2014, a Foreclosure Deed was recorded by which SATICOY
2 claimed its interest.⁷

3 23. A homeowner's association sale conducted pursuant to NRS Chapter 116 must
4 comply with all notice provisions as stated in NRS 116.31162 through NRS 116.31168 and NRS
5 107.090.

6 24. A lender or holder, such as THORNBURG and/or its predecessors, has a right to
7 cure a delinquent homeowner's association lien in order to protect their security interest.

8 25. Upon information and belief, the HOA and its agent, the HOA Trustee, did not
9 comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS
10 116.31168 and the CC&Rs.

11 26. A recorded notice of default must "describe the deficiency in payment."

12 27. The Notice of Lien, Notice of Default, and Notice of Sale (collectively "HOA
13 Foreclosure Notices") failed to identify what proportion of the claimed lien were for alleged
14 assessments, late fees, interest, fines/violations, or collection fees/costs.

15 28. Prior to the HOA Sale, THORNBURG and its predecessors demanded an
16 accounting of the HOA liens(s), including what portion of said lien(s) constituted the super-
17 priority amount.

18 29. HOA Trustee responded with an accounting of the claimed lien, but did not
19 specify what portion of the lien constituted the super-priority lien.⁸

20 30. HOA Trustee demanded payment of the full lien, including amounts not legally
21 included in the super-priority lien.

22 31. Prior to the HOA Sale, THORNBURG and its predecessors tendered payment of
23 9 months of assessments to HOA and its agents, thus satisfying the super-priority lien prior to
24 HOA's foreclosure of the remaining lien amount.⁹

25 _____
26 ⁷ A true and correct copy of the Foreclosure Deed recorded as Book and Instrument Number
20141110-0002475 attached hereto as **Exhibit 7**.

27 ⁸ HOA Trustee Letter and Ledger dated January 26, 2012 attached hereto as **Exhibit 8**.

28 ⁹ Tender letter and tender check dated February 9 and February 6, 2012, respectively, attached
hereto as **Exhibit 9**.

1 32. THORNBURG's satisfaction of the HOA super-priority lien prevented
2 extinguishment of its First Deed of Trust, thereby preserving its first lien position and security
3 interest in the Property.

4 33. The HOA Sale violated THORNBURG's rights and harmed it because the HOA
5 Trustee failed to inform potential buyers at the lien sale that actual tender of the HOA super-
6 priority lien had been made prior to the sale.

7 34. The HOA Sale was an invalid sale and could not have extinguished
8 THORNBURG's secured interest because THORNBURG had in fact tendered the 9-month
9 super-priority lien prior to the HOA Sale.

10 35. The HOA Sale occurred without notice to THORNBURG, or its predecessors,
11 agents, servicers or trustees what portion of the lien, if any, that the HOA and HOA Trustee
12 claimed constituted a "super-priority" lien.

13 36. The HOA Sale occurred without notice to THORNBURG, or its predecessors,
14 agents, servicers or trustees, whether HOA was foreclosing on the "super-priority" portion of its
15 lien, if any, or under the non-super-priority portion of the lien.

16 37. The HOA Sale occurred without notice to THORNBURG, or its predecessors,
17 agents, servicers or trustees, of a right to cure the delinquent assessment and the super-priority
18 lien, if any.

19 38. The HOA Sale violated THORNBURG's and/or its predecessors' rights to due
20 process because it was not given proper, adequate notice and the opportunity to cure the
21 deficiency or default in the payment of the HOA's assessments and the super-priority lien, if any.

22 39. The HOA Sale was an invalid sale and could not have extinguished
23 THORNBURG's secured interest because of defects in the notices given to THORNBURG, or
24 its predecessors, agents, servicers or trustees, if any.

25 40. Extinguishment of THORNBURG's Deed of Trust would deprive it of its right to
26 due process because, upon information and belief, the HOA included amounts in its super-
27 priority lien, such as fines, late fees, interest, dues, and costs of collection that are not allowed to
28 be included in its super-priority lien, if any, under Nevada law.

1 41. Extinguishment of THORNBURG's Deed of Trust would deprive it of its right to
2 due process because the HOA Trustee and/or the HOA failed to describe the deficiency in
3 payment as required by Nevada law and failed to give The Trust or its predecessors, agents,
4 servicers or trustees any reasonable opportunity to satisfy the super-priority lien, if any.

5 42. Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include costs
6 and fees that are specifically enumerated in the statute.

7 43. A homeowner's association may only collect as a part of the super priority lien (a)
8 nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b)
9 nine months of common assessments which became due prior to the institution of an action to
10 enforce the lien (unless Fannie Mae and Freddie Mac regulations require a shorter period of not
11 less than six months).

12 44. Upon information and belief, the HOA Foreclosure Notices included improper
13 fees and costs in the amount demanded.

14 45. The attorney's fees and the costs of collecting on a homeowner's association lien
15 cannot be included in the super-priority lien.

16 46. Upon information and belief, the HOA assessment lien and foreclosure notices
17 included fines, interest, late fees, dues, attorney's fees, and costs of collection that are not
18 properly included in a super-priority lien under Nevada law and that are not permissible under
19 NRS 116.3102 et seq.

20 47. The HOA Sale is unlawful and void under NRS 116.3102 et seq.

21 48. The HOA Sale deprived THORNBURG and/or its predecessors of their right to
22 due process because the foreclosure notices failed to identify the super-priority amount, to
23 adequately describe the deficiency in payment, to provide THORNBURG and/or its
24 predecessors, notice of the correct super-priority amount, and to provide a reasonable
25 opportunity to satisfy that amount.

26 49. A homeowner's association sale must be done in a commercially reasonable
27 manner and in good faith.

28 50. A homeowner's association may not foreclose a lien by sale if (a) the unit is

owner-occupied, (b) the beneficiary under the deed of trust has recorded a notice of default and election to sell, and (c) the trustee has not recorded the certificate of the administrator of the Foreclosure Mediation Program.

51. At the time of the HOA Sale, the amount owed on the Borrowers' Loan exceeded \$4,000,000.00.

52. Upon information and belief, at the time of the HOA Sale, the fair market value of the Property exceeded \$3,000,000.00.

53. Upon information and belief, the amount paid by SATICOY at the HOA Sale allegedly totaled \$1,021,000.00.

54. The sales price at the HOA Sale is not commercially reasonable, and not done in good faith, when compared to the debt owed to THORNBURG on the Borrowers' Loan and the fair market value of the Property, which demonstrates that the HOA Sale was not commercially reasonable or conducted in good faith as a matter of law.

55. The HOA Sale was commercially unreasonable if it extinguished THORNBURG's Deed of Trust.

56. In the alternative, the HOA Sale was an invalid sale and could not have extinguished THORNBURG's secured interest because it was not a commercially reasonable sale.

57. Without providing THORNBURG, or its predecessors, agents, servicers or trustees, notice of the correct super-priority amount and a reasonable opportunity to satisfy that amount, including its failure to identify the super-priority amount, its failure to adequately describe the deficiency in payment as required by Nevada law, and failure to properly apply actual tender of 9 months of assessments to the lien account balance, the HOA Sale is commercially unreasonable and deprived THORNBURG and/or its predecessors of their rights to due process.

58. The CC&Rs for the HOA provide in Sections 10.7 and 11.3, that no action taken by the HOA shall impair, defeat, or render invalid THORNBURG's Deed of Trust.

59. Because the CC&Rs contain a Mortgagee Protection Clause in Sections 10.7 and

1 11.3, and because THORNBURG, or its predecessors, agents, servicers or trustees were not
2 given proper notice that the HOA intended to foreclose on the super-priority portion of the dues
3 owing, THORNBURG or its predecessors, agents, servicers or trustees did not know that it had
4 to attend the HOA Sale to protect its security interest.

5 60. Because the CC&Rs contained a Mortgagee Protection Clause, and because
6 proper notice that the HOA intended to foreclose on the super-priority portion of the dues owing
7 was not given, prospective bidders did not appear for the HOA Sale, making the HOA Sale
8 commercially unreasonable.

9 61. The Buyer, HOA, and HOA Trustee knew that THORNBURG would rely on the
10 Mortgagee Protection Clause contained in the recorded CC&Rs, and knew that THORNBURG
11 or its predecessors, agents, servicers or trustees would not know that the HOA was foreclosing
12 on super-priority amounts because of the failure of the HOA and HOA Trustee to provide such
13 notice. THORNBURG or its predecessors, agents, servicers or trustees' absence from the HOA
14 Sale allowed the Buyer to appear at the HOA Sale and purchase the Property for a fraction of
15 market value, making the HOA Sale commercially unreasonable.

16 62. The Buyer, HOA, and HOA Trustee knew that prospective bidders would be less
17 likely to attend the HOA Sale because the public at large believed that THORNBURG was
18 protected under the Mortgagee Protection Clause in the CC&Rs of public record, and that the
19 public at large did not receive notice, constructive or actual, that the HOA was foreclosing on a
20 super-priority portion of its lien because HOA and HOA Trustee improperly failed to provide
21 such notice. The general public's belief therefore was that a buyer at the HOA Sale would take
22 title to the Property subject to THORNBURG's Deed of Trust. This general belief resulted in
23 the absence of prospective bidders at the HOA Sale, which allowed the Buyer to appear at the
24 HOA Sale and purchase the Property for a fraction of market value, making the HOA Sale
25 commercially unreasonable.

26 63. The circumstances of the HOA Sale of the Property breached the HOA's and the
27 HOA Trustee's obligations of good faith under NRS 116.1113 and their duty to act in a
28 commercially reasonable manner.

1 64. THORNBURG is informed and believes that SATICOY is a professional property
2 purchaser.

3 65. The circumstances of the HOA Sale of the Property and the status as a
4 professional property purchaser prevent SATICOY from being deemed a bona fide purchaser for
5 value.

6 66. Upon information and belief, SATICOY had actual, constructive or inquiry notice
7 of THORNBURG's first Deed of Trust, which prevents SATICOY from being deemed a bona
8 fide purchaser for value.

9 67. In the event THORNBURG's interest in the Property is not reaffirmed or
10 restored, THORNBURG suffered damages in the amount of the fair market value of the Property
11 or the unpaid balance of the Borrower's Loan and Deed of Trust, at the time of the HOA Sale,
12 whichever is greater, as a proximate result of HOA's and HOA Trustee's acts and omissions.

13 **FIRST CAUSE OF ACTION**

14 **(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010 et seq.
15 versus SATICOY, HOA, and all fictitious Defendants)**

16 68. THORNBURG incorporates and re-alleges all previous paragraphs, as if fully set
17 forth herein.

18 69. Pursuant to NRS 30.010 et seq. and NRS 40.010, this Court has the power and
19 authority to declare THORNBURG's rights and interests in the Property and to resolve Counter-
20 Defendants' adverse claims in the Property.

21 70. Further, pursuant to NRS 30.010 et seq., this Court has the power and authority to
22 declare the rights and interest of the parties following the acts and omissions of the HOA and
23 HOA Trustee in foreclosing the Property.

24 71. THORNBURG's Deed of Trust is a first secured interest on the Property as
25 intended by NRS 116.3116(2)(b).

26 72. As the current beneficiary under the Deed of Trust and Borrower's Loan,
27 THORNBURG's interest still encumbers the Property and retains its first position status in the
28 chain of title for the Property after the HOA Sale and is superior to the interest, if any, acquired
by SATICOY, or held or claimed by any other party.

1 73. The Buyer claims an interest in the Property through a Foreclosure Deed recorded
2 in the Clark County Recorder's Office that is adverse to THORNBURG's interest.

3 74. Upon information and belief, the HOA, the HOA Trustee and the fictitious
4 Defendants failed to provide proper, adequate notices required by Nevada statutes, the CC&R's
5 and due process to THORNBURG and/or its predecessors, and therefore the HOA Sale is void
6 and should be set aside or rescinded.

7 75. Based on the adverse claims being asserted and conduct by the parties,
8 THORNBURG is entitled to a judicial determination regarding the rights and interests of the
9 respective parties to the case.

10 76. For all the reasons set forth above and in the Factual Background, THORNBURG
11 is entitled to a determination from this Court, pursuant to NRS 30.010 and NRS 40.010, that
12 THORNBURG is the beneficiary of a first position Deed of Trust which still encumbers the
13 Property and is superior to the interest, if any, acquired by the Buyer.

14 77. In the alternative, for all the reasons set forth above and in the Factual
15 Background, THORNBURG is entitled to a determination from this Court, pursuant to NRS
16 30.010 and NRS 40.010, that the HOA Sale is unlawful and void.

17 78. THORNBURG has been required to retain counsel and is entitled to recover
18 reasonable attorney's fees and costs to prosecute this action.

19 **SECOND CAUSE OF ACTION**

20 **(Permanent and Preliminary Injunction versus SATICOY)**

21 79. THORNBURG incorporates by reference the allegations of all previous
22 paragraphs, as if fully set forth herein.

23 80. As set forth above, the Buyer may claim an ownership interest in the Property that
24 is adverse to THORNBURG.

25 81. Any sale or transfer of the Property, prior to a judicial determination concerning
26 the respective rights and interests of the parties to the case, may be rendered invalid if
27 THORNBURG's Deed of Trust still encumbered the Property in first position and was not
28 extinguished by the HOA Sale.

1 82. THORNBURG has a reasonable probability of success on the merits of the
2 complaint, for which compensatory damages will not compensate THORNBURG for the
3 irreparable harm of the loss of title to a bona fide purchaser or loss of the first position priority
4 status secured by the Property.

5 83. THORNBURG has no adequate remedy at law due to the uniqueness of the
6 Property involved in the case.

7 84. THORNBURG is entitled to a preliminary and permanent injunction prohibiting
8 the Buyer, their successors, assigns, and agents from conducting a sale, transfer or encumbrance
9 of the Property if it is claimed to be superior to THORNBURG's Deed of Trust or not subject to
10 that Deed of Trust.

11 85. THORNBURG is entitled to a preliminary injunction requiring the Buyer to pay
12 all taxes, insurance and homeowner's association dues during the pendency of this action.

13 86. THORNBURG is entitled to a preliminary injunction requiring the Buyer to
14 segregate and deposit all rents with the Court or a Court-approved trust account over which the
15 Buyer has no control during the pendency of this action.

16 87. THORNBURG has been required to retain counsel to prosecute this action and is
17 entitled to recover reasonable attorney's fees to prosecute this action.

18 **THIRD CAUSE OF ACTION**
19 **(Wrongful Foreclosure versus the HOA, the HOA Trustee, and fictitious Defendants)**

20 88. THORNBURG incorporates by reference the allegations of all previous
21 paragraphs, as if fully set forth herein.

22 89. Upon information and belief, the HOA, the HOA Trustee, and all fictitious
23 Defendants did not comply with all mailing and noticing requirements stated in NRS 116.31162
24 through NRS 116.31168.

25 90. The HOA, the HOA Trustee, and all fictitious Defendants failed to provide notice
26 pursuant to the CC&Rs.

27 91. Because the HOA Sale was wrongfully conducted and violated applicable law, the
28 Court should set it aside to the extent that it purports to have extinguished THORNBURG's first

1 Deed of Trust and delivered free and clear title to SATICOY.

2 92. Because the HOA Sale was not commercially reasonable, it was invalid, wrongful
3 and should be set aside.

4 93. Because the HOA, HOA Trustee, and fictitious Defendants' did not give
5 THORNBURG, or its predecessors, agents, servicers or trustees the proper, adequate notice and
6 the opportunity to cure the deficiency or default in the payment of the HOA's assessments and
7 super-priority lien (if any) required by Nevada statutes, the CC&Rs and due process, the HOA
8 Sale was wrongfully conducted and should be set aside.

9 94. Because the HOA Sale was not done in accordance with Nevada statutes and the
10 CC&Rs, the HOA Sale was wrongfully conducted and should be set aside.

11 95. Because, upon information and belief, the HOA Foreclosure Notices included
12 improper fees and costs in the amount demanded, the HOA Sale was wrongfully conducted and
13 should be set aside.

14 96. Because the HOA, HOA Trustee, and fictitious Defendants' refused and/or mis-
15 applied actual tender of 9 months of assessments, constituting the super-priority lien amount, the
16 HOA Sale was wrongfully conducted and should be set aside.

17 97. As a proximate result of the HOA's, HOA Trustee's, and the fictitious
18 Defendants' wrongful foreclosure of the Property by the HOA Sale, as more particularly set forth
19 above and in the Factual Background, THORNBURG has suffered general and special damages
20 in an amount in excess of \$10,000.00. THORNBURG will seek leave of court to assert said
21 amounts when they are determined.

22 98. If it is determined that THORNBURG's Deed of Trust has been extinguished by
23 the HOA Sale, as a proximate result of HOA, HOA Trustee, and fictitious Defendants' wrongful
24 foreclosure of the Property by the HOA Sale, THORNBURG has suffered special damages in the
25 amount equal to the fair market value of the Property or the unpaid balance of the Borrower's
26 Loan, plus interest, at the time of the HOA Sale, whichever is greater, in an amount not presently
27 known. THORNBURG will seek leave of court to assert said amounts when they are
28 determined.

1 99. THORNBURG has been required to retain counsel to prosecute this action and is
2 entitled to recover reasonable attorney's fees to prosecute this action.

3 **FOURTH CAUSE OF ACTION**

4 **(Negligence versus HOA, HOA Trustee, and the fictitious Defendants)**

5 100. THORNBURG incorporates by reference the allegations of all previous
6 paragraphs, as if fully set forth herein.

7 101. The HOA, the HOA Trustee, and fictitious Defendants owed a duty to
8 THORNBURG or its predecessors and subordinate lienholders to conduct the HOA foreclosure
9 sale at issue in this case properly and in a manner that would fairly allow them an opportunity to
10 protect their interest and cure the super-priority lien threatening their security interests.

11 102. The HOA, the HOA Trustee, and fictitious Defendants breached their duty for all
12 the reasons set forth above and in the Factual Background including without limitation, by
13 failing to disclose the amount of the super-priority lien, if any, by failing to specify that it was
14 foreclosing on the super-priority portion of its lien as opposed to the non-super-priority portion,
15 by failing to accept and apply tender of the super-priority amount, and by failing to provide
16 notice that THORNBURG or its predecessors and subordinate lienholders had an opportunity to
17 cure.

18 103. As a proximate result of the HOA's, HOA Trustee's, and fictitious Defendants'
19 breaches of their duties, THORNBURG or its predecessors' tender of a pay-off of the super-
20 priority lien was wrongfully refused and/or not applied to the super-priority lien balance.

21 104. As a proximate result of the HOA's, HOA Trustee's, and fictitious Defendants'
22 breaches of their duties, THORNBURG has incurred general and special damages in an amount
23 in excess of \$10,000.00.

24 105. If THORNBURG is found to have lost its first secured interest in the Property, it
25 was the proximate result of the HOA's, HOA Trustee's, and fictitious Defendants' breaches of
26 their duties, and THORNBURG has thereby suffered general and special damages in an amount
27 in excess of \$10,000.00.

28 106. THORNBURG has been required to retain counsel to prosecute this action and is

1 entitled to recover reasonable attorney's fees to prosecute this action.

2 **FIFTH CAUSE OF ACTION**

3 **(Negligence Per Se versus HOA, HOA Trustee, and the fictitious Defendants)**

4 **107.** THORNBURG incorporates by reference the allegations of all previous
5 paragraphs, as if fully set forth herein.

6 **108.** NRS Chapter 116 imposes a duty on homeowner's associations and their agents to
7 conduct their foreclosure sales in a manner that is consistent with its provisions and, by
8 reference, the provisions of NRS 107.090.

9 **109.** HOA, HOA Trustee, and fictitious Defendants breached the statutory duties
10 imposed by NRS Chapter 116 concerning notice.

11 **110.** HOA, HOA Trustee, and fictitious Defendants violated NRS Chapter 116 by
12 failing to provide the proper, adequate notice and the opportunity to cure the deficiency or
13 default in the payment of the HOA's assessments and super-priority lien (if any) required by
14 Nevada statutes, including without limitation, NRS 116.31162(1)(b)(1) by failing to properly and
15 adequately describe the deficiency in payment of a super-priority lien, and by failing to properly
16 apply actual payment of same.

17 **111.** THORNBURG is a member of the class of persons whom NRS Chapter 116 is
18 intended to protect.

19 **112.** The injury that THORNBURG faces—extinguishment of its first-position Deed
20 of Trust—is the type against which NRS Chapter 116 is intended to protect.

21 **113.** As a proximate result of HOA's, HOA Trustee's, and the fictitious Defendants'
22 breaches of their statutory duties, THORNBURG's had not actual notice of the claimed super-
23 priority lien amount, if any, and actual tender of a pay-off of the super-priority lien amount
24 threatening its security interest was wrongfully refused and/or mis-applied by HOA and/or HOA
25 Trustee.

26 **114.** As a proximate result of HOA's, HOA Trustee's, and the fictitious Defendants'
27 breaches of their duties, THORNBURG has incurred general and special damages in an amount
28 in excess of \$10,000.00.

1 115. If THORNBURG is found to have lost its first secured interest in the Property, it
2 was the proximate result of HOA's, HOA Trustee's and the fictitious Defendants' breaches of
3 their statutory duties, and THORNBURG has thereby suffered general and special damages in an
4 amount in excess of \$10,000.00.

5 116. THORNBURG has been required to retain counsel to prosecute this action and is
6 entitled to recover reasonable attorney's fees to prosecute this action.

7 **SIXTH CAUSE OF ACTION**

8 **(Breach of Contract versus the HOA and HOA Trustee, and the fictitious Defendants)**

9 117. THORNBURG incorporates by reference the allegations of all previous
10 paragraphs, as if fully set forth herein.

11 118. THORNBURG was an intended beneficiary of the HOA's CC&Rs.

12 119. The HOA, the HOA Trustee, and fictitious Defendants breached the obligations,
13 promises, covenants and conditions of the CC&Rs owed to THORNBURG by the circumstances
14 under which they conducted the HOA Sale of the Property.

15 120. The HOA, the HOA Trustee, and fictitious Defendants' breaches of the
16 obligations, promises, covenants and conditions of the CC&Rs proximately caused
17 THORNBURG general and special damages in an amount in excess of \$10,000.00.

18 121. THORNBURG has been required to retain counsel to prosecute this action and is
19 entitled to recover reasonable attorney's fees to prosecute this action.

20 **SEVENTH CAUSE OF ACTION**

21 **(Misrepresentation versus the HOA)**

22 122. THORNBURG incorporates by reference the allegations of all previous
23 paragraphs, as if fully set forth herein.

24 123. THORNBURG is within the class or persons or entities the HOA intended or had
25 reason to expect to act or to refrain from action in reliance upon the provisions of the CC&Rs,
26 including without limitation, the Mortgagee Protection Clause.

27 124. THORNBURG, and its predecessors in interest, justifiably relied upon the
28 provisions of the CC&Rs and NRS 116.3116(2)(b) in giving consideration for the Deed of Trust,
and the Loan it secures, and the HOA intended or had reason to expect their conduct would be

1 influenced.

2 125. The HOA's representations in the provisions of the CC&Rs, including without
3 limitation, the Mortgagee Protection Clause, were false.

4 126. The HOA had knowledge or a belief that the representations in the provisions of
5 the CC&Rs, including without limitation, the Mortgagee Protection Clause, were false or it had
6 an insufficient basis for making the representations.

7 127. The HOA had a pecuniary interest in having THORNBURG and its predecessors
8 in interest rely on the provisions of the CC&Rs, including without limitation, the Mortgagee
9 Protection Clause.

10 128. The HOA failed to exercise reasonable care or competence in communicating the
11 information within the provisions of the CC&Rs, including without limitation, the Mortgagee
12 Protection Clause, which was false or it had an insufficient basis for making.

13 129. The HOA, the HOA Trustee, and fictitious Defendants acted in contravention to
14 the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause,
15 when it conducted the HOA Sale in a manner that could extinguish THORNBURG's Deed of
16 Trust.

17 130. THORNBURG suffered general and special damages in an amount in excess of
18 \$10,000.00 as a proximate result of its reliance.

19 131. THORNBURG has been required to retain counsel to prosecute this action and is
20 entitled to recover reasonable attorney's fees to prosecute this action.

21 **EIGHTH CAUSE OF ACTION**

22 **(Unjust Enrichment versus SATICOY, HOA, HOA Trustee, and fictitious Defendants)**

23 132. THORNBURG incorporates and re-alleges all previous paragraphs, as if fully set
24 forth herein.

25 133. THORNBURG has been deprived of the benefit of the Deed of Trust by the
26 actions of SATICOY, HOA, the HOA Trustee, and fictitious Defendants.

27 134. SATICOY, HOA, the HOA Trustee, and fictitious Defendants have benefitted
28 from the unlawful HOA Sale and nature of the real property.

1 135. SATICOY, HOA, the HOA Trustee, and fictitious Defendants have benefitted
2 from THORNBURG's payment of taxes, insurance or homeowner's association assessments
3 since the time of the HOA Sale.

4 136. Should THORNBURG's Complaint be successful in quieting title against
5 SATICOY, HOA, the HOA Trustee, and fictitious Defendants and setting aside the HOA Sale,
6 SATICOY, HOA, the HOA Trustee, and fictitious Defendants will have been unjustly enriched
7 by the HOA Sale and usage of the Property.

8 137. THORNBURG will have suffered damages if SATICOY, HOA, the HOA
9 Trustee, and fictitious Defendants are allowed to retain their interests in the Property and the
10 funds received from the HOA Sale.

11 138. THORNBURG will have suffered damages if SATICOY, HOA, the HOA
12 Trustee, and fictitious Defendants are allowed to retain their interests in the Property and
13 THORNBURG's payment of taxes, insurance or homeowner's association assessments since the
14 time of the HOA Sale.

15 139. THORNBURG is entitled to general and special damages in excess of
16 \$10,000.00.

17 140. THORNBURG has furthermore been required to retain counsel and is entitled to
18 recover reasonable attorney's fees for having brought the underlying action.

19 **NINTH CAUSE OF ACTION**

20 **(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and HOA**
21 **Trustee, and the fictitious Defendants)**

22 141. THORNBURG incorporates by reference the allegations of all previous
23 paragraphs, as if fully set forth herein.

24 142. Implicit in every contract in the state of Nevada is an implied covenant of good
25 faith and fair dealing.

26 143. THORNBURG was an intended beneficiary of the HOA's CC&Rs.

27 144. The HOA, the HOA Trustee, and fictitious Defendants breached the duties,
28 obligations, promises, covenants and conditions, express and implied, in the CC&Rs owed to
THORNBURG by the circumstances under which they conducted the HOA Sale of the Property.

1 145. The HOA, the HOA Trustee, and fictitious Defendants took affirmative action to
2 re-convey the Property to a third party, in direct contravention of the HOA's duties to
3 THORNBURG as promised in the CC&Rs.

4 146. The HOA, the HOA Trustee, and fictitious Defendants' breaches of the
5 obligations, promises, covenants and conditions of the CC&Rs, and to act in good faith regarding
6 same, proximately caused THORNBURG general and special damages in an amount in excess of
7 \$10,000.00.

8 147. THORNBURG has been required to retain counsel to prosecute this action and is
9 entitled to recover reasonable attorney's fees to prosecute this action.

10 **TENTH CAUSE OF ACTION**

11 **(In the Alternative - Application for Deficiency Judgment/Breach of Contract versus**
12 **TIMPA)**

13 148. THORNBURG incorporates by reference the allegations of all previous
14 paragraphs, as if fully set forth herein.

15 149. Pursuant to the terms of the TIMPA Loan and Deed of Trust, TIMPA promised
16 and agreed to make minimum monthly payments to THORNBURG, or its predecessors.

17 150. TIMPA is in default per the terms of the TIMPA Loan in that payment was not
18 made as agreed. TIMPA failed, neglected, or refused to make payment of the amounts due and
19 owing under the terms of the TIMPA Loan and Deed of Trust.

20 151. Pursuant to the terms of the TIMPA Loan and Deed of Trust, TIMPA promised
21 and agreed, if any action or proceeding was commenced which materially affected
22 THORNBURG's interest in the Property, he would take such action as necessary to protect
23 THORNBURG's interest.

24 152. TIMPA failed, neglected, or refused to cure the alleged delinquent assessment and
25 prevent the HOA Sale. TIMPA is in default per the terms of the TIMPA Loan in that the HOA
26 and HOA Trustee foreclosed on the Property and Buyer now claims to have an interest superior
27 to THORNBURG's Deed of Trust.

28 153. THORNBURG has duly performed all conditions precedent on its part, which are

1 required to be performed under the terms of the TIMPA Loan and Deed of Trust.

2 154. Demand has been made of TIMPA, but TIMPA has failed or refused to make
3 payment and cure the defaults pursuant to the terms of the TIMPA Loan and Deed of Trust.

4 155. TIMPA has failed to abide by the terms of the TIMPA Loan and Deed of Trust.

5 156. The current amount owing on the TIMPA Loan is in excess of \$4,000,000.00.

6 157. THORNBURG has been required to retain counsel and incur attorneys' fees as a
7 proximate result of TIMPA's defaults and breaches of the TIMPA Loan and Deed of Trust.

8 158. Should THORNBURG be unsuccessful in quieting title against Defendants, and
9 setting aside the HOA Sale, THORNBURG will suffer general and special damages from the
10 loss of its secured interest in the Property.

11 159. THORNBURG has general and special damages in excess of \$10,000.00, as a
12 proximate result of TIMPA's defaults and breaches of the TIMPA Loan and Deed of Trust.

13 160. THORNBURG has been required to retain counsel to prosecute this action and is
14 entitled to recover reasonable attorney's fees to prosecute this action.

15
16 PRAYER

17 Wherefore, THORNBURG prays for judgment against the Counterdefendants, jointly
18 and severally, as follows:

- 19 1. For a declaration and determination that THORNBURG's interest is secured
20 against the Property, and that THORNBURG's first Deed of Trust was not
21 extinguished by the HOA Sale;
- 22 2. For a declaration and determination that THORNBURG's interest is superior to
23 the interest of SATICOY, HOA, the HOA Trustee, and fictitious Defendants;
- 24 3. For a declaration and determination that the HOA Sale was invalid to the extent it
25 purports to convey the Property free and clear to SATICOY;
- 26 4. In the alternative, for a declaration and determination that the HOA Sale was
27 invalid and conveyed no legitimate interest to SATICOY;
- 28 5. For a preliminary injunction that SATICOY, its successors, assigns, and agents

1 are prohibited from conducting a sale, transfer or encumbrance of the Property
2 during the pendency of this action;

3 6. For a preliminary injunction requiring SATICOY, its successors, assigns, and
4 agents pay all taxes, insurance and homeowner's association dues during the
5 pendency of this action.

6 7. For a preliminary injunction that SATICOY, his successors, assigns, and agents
7 be required to segregate and deposit all rents with the Court or a Court-approved
8 trust account over which SATICOY has no control during the pendency of this
9 action.

10 8. If it is determined that THORNBURG's Deed of Trust has been extinguished by
11 the HOA Sale, for special damages in the amount equal to the fair market value of
12 the Property or the unpaid balance of the Borrower's Loan and Deed of Trust, at
13 the time of the HOA Sale, whichever is greater;

14 9. For general and special damages in an amount in excess of \$10,000.00;

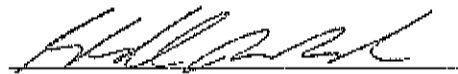
15 10. For attorney's fees;

16 11. For costs incurred herein, including post-judgment costs;

17 12. For any and all further relief deemed appropriate by this Court.

18 DATED this 10 day of April, 2015.

19
20 WRIGHT, FINLAY & ZAK, LLP

21 

22 Dana Jonathon Nitz, Esq.

23 Nevada Bar No. 0050

24 Shadd A. Wade, Esq.

25 Nevada Bar No. 11310

26 7785 W. Sahara Ave., Suite 200

27 Las Vegas, NV 89117

28 *Attorney for Attorneys for Defendant, Thornburg
Mortgage Securities Trust 2007-3*

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding **THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S ANSWER AND COUNTER-CLAIMS** filed in Case No. A-
14-710161-C **does not** contain the social security number of any person.

DATED this 10 day of April, 2015.

WRIGHT, FINLAY & ZAK, LLP



Dana Jonathon Nitz, Esq.

Nevada Bar No. 0050

Shadd A. Wade, Esq.

Nevada Bar No. 11310

7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

*Attorneys for Defendant, Thornburg Mortgage
Securities Trust 2007-3*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 10 day of April, 2015, I did cause a true copy of
DEFENDANT/COUNTERCLAIMANT THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER AND COUNTER-CLAIMS to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9:

Akerman LLP

Contact	Email
Akerman Las Vegas Office	akermanlas@akerman.com
Allison R. Schmidt, Esq.	allison.schmidt@akerman.com
Darren T. Brenner, Esq.	darren.brenner@akerman.com

Law Offices of Michael F. Bohn, Esq.

Contact	Email
Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq	mbohn@bohnlawfirm.com

Kathy Maasry
An Employee of WRIGHT, FINLAY & ZAK, LLP

Exhibit 1

Exhibit 1

Exhibit 1



20060612-0001581

Assessor's Parcel Number:
16328614007
After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
JOHNNA HOBDY
~~Recording Requested By:~~
J. FOX

Fee: \$40.00
N/C Fee: \$0.00

06/12/2006 09:05:04

T20060102568

Requestor:
NEVADA TITLE COMPANY

Frances Deane COO
Clark County Recorder Pgs: 27

COUNTRYWIDE HOME LOANS, INC.

1455 FRAZEE ROAD #102
SAN DIEGO
CA 92108

[Space Above This Line For Recording Data]

06-04-1186JLP 00013834433506006
[Escrow/Closing #] [Doc ID #]

DEED OF TRUST

MIN 1001337-0001462176-0

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.

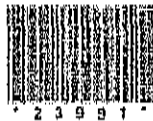
NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 16

VMP -6A(NV) (0507) CHL (11/05)(d)

VMP Mortgage Solutions, Inc.

Form 3029 1/01



DOC ID #: 00013834433506006

(A) "Security Instrument" means this document, which is dated JUNE 02, 2006, together with all Riders to this document.

(B) "Borrower" is

FRANK A TIMPA, A MARRIED MAN AS HIS SOLE & SEPARATE PROPERTY

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 MSN# SVB-314

Lender's address is

Calabasas, CA 91302-1613

(D) "Trustee" is

ReconTrust Company, N.A

225 West Hillcrest Dr., MSN TO-02

Thousand Oaks, CA 91360

(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 JUNE 02, 2006

The Note states that Borrower owes Lender

THREE MILLION SEVEN HUNDRED EIGHTY THOUSAND and 00/100

Dollars (U.S. \$ 3, 780, 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 JULY 01, 2046

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

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

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

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

DOC ID #: 00013834433506006

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

DOC ID #: 00013834433506006

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

[Type of Recording Jurisdiction]

CLARK

[Name of Recording Jurisdiction]

LOT THIRTEEN (13) IN BLOCK ONE (1) OF ESTATES AT SPANISH TRAIL UNIT NO. 5, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 40, OF PLATS, PAGE 6, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

The legal description was obtained from the previous deed:

Recorded on: Libor# Page#

which currently has the address of

34 Innisbrook Ave, Las Vegas

[Street/City]

Nevada 89113-1225 ("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 seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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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, such 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

DOC ID #: 00013834433506006

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

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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

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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

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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.

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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.

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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. These 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,

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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 not 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.

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


FRANK A. TIMRA

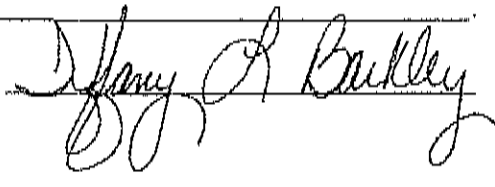
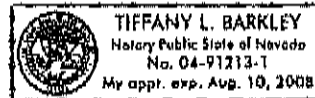
_____(Seal)
-Borrower

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-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

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STATE OF NEVADA
COUNTY OF ClarkThis instrument was acknowledged before me on June 2, 2008 byFrank A. TimpaMail Tax Statements To:
TAX DEPARTMENT SV3-24450 American Street
Simi Valley CA, 93065

Escrow No.: 06-04-1186-JLP

EXHIBIT "A"

LEGAL DESCRIPTION

LOT THIRTEEN (13) IN BLOCK ONE (1) OF ESTATES AT SPANISH TRAIL
UNIT NO. 5, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 40, OF PLATS,
PAGE 6, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY,
NEVADA.

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 #:
16328614007

Prepared By:
JOHNNA HOB DY

06-04-1186JLP 00013834433506006
{Escrow/Closing #} {Doc ID #}

THIS PLANNED UNIT DEVELOPMENT RIDER is made this SECOND day of
JUNE, 2006, and is incorporated into and shall be deemed to amend and supplement the
Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
-7R (0411) CHL (11/04)(d) Page 1 of 4 Initials: *JA*
VMP Mortgage Solutions, Inc. (800)521-7291 Form 3150 1/01



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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:

34 Innisbrook Ave
Las Vegas, NV 89113-1225
{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
ESTATES AT SPANISH TRAILS

{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:  -7R (0411)

CHL (11/04)

Page 2 of 4

Form 3150 1/01

DOC ID #: 00013834433506006

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: _____

VMP -7R (04/11)

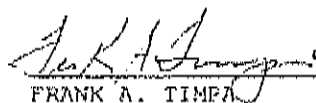
CHL (11/04)

Page 3 of 4

Form 3150 1/01

DOC ID #: 00013834433506006

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


FRANK A. TIMPA

_____(Seal)
- Borrower

_____(Seal)
- Borrower

_____(Seal)
- Borrower

_____(Seal)
- Borrower

ADJUSTABLE RATE RIDER

(PayOption MTA Twelve Month Average Index - Payment Caps)

06-04-1186JLP 00013834433506006
[Escrow/Closing #] [Doc ID #]

THIS ADJUSTABLE RATE RIDER is made this SECOND day of JUNE, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's 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:

34 Innisbrook Ave
Las Vegas, NV 89113-1225
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THE NOTE.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for changes in the interest rate and the monthly payments, as follows:

* PayOption MTA ARM Rider
1E310-XX (09/05)(d)

Page 1 of 6



DOC ID #: 0001383443350

2. INTEREST**(A) Interest Rate**

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. Up until the first day of the calendar month that immediately precedes the first monthly payment due date set forth in Section 3 of the Note, I will pay interest at a yearly rate of 7.750 %. Additional days interest collected prior to the first monthly payment due date is sometimes called "Per Diem" interest and is due at the time I close my loan. Thereafter until the first Interest Rate Change Date, defined below in Section 2(B), I will pay interest at a yearly rate of 2.250 %. This rate is sometimes referred to as the "Start Rate" and is used to calculate the initial monthly payment described in Section 3. The interest rate required by this Section 2 of the Note is the rate I will pay both before and after any default described in Section 7(B) of the Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of AUGUST, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

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

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE & 5/8 (3.625 %) percentage point(s) ("Margin") 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%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS**(A) Time and Place of Payments**

I will make a payment every month.

▪ PayOption MTA ARM Rider
1E310-XX (09/05)

Page 2 of 6

DOC ID #: 00013834433506006

I will make my monthly payments on the FIRST day of each month beginning on August, 2006. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under the Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JULY 01, 2046, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
P.O. Box 10219, Van Nuys, CA 91410-0219

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

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 11,950.17, unless adjusted under Section 3(F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the first day of AUGUST, 2007, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.500% of my prior monthly payment. This 7.500% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment.

• PayOption MTA ARM Rider
1E310-XX (09/05)

Page 3 of 6

DOC ID #: 00013834433506006

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent (115 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my Minimum Payment would cause me to exceed that limit, I will instead pay a new Minimum Payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the tenth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, the Note Holder may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." The Payment Options are calculated using the new interest rate in accordance with Section 2(D). I may be given the following Payment Options:

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

• PayOption MTA ARM Rider
1E310-XX (09/05)

Page 4 of 6

DOC ID #: 00013834433506006

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

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

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

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

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

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

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

* PayOption MTA ARM Rider
1E310-XX (09/05)

Page 5 of 6

DOC ID #: 00013834433506006
this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period,
Lender may invoke any remedies permitted by this Security Instrument without further notice or
demand on Borrower.

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

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


FRANK A. TIMPA

Borrower

Borrower

Borrower

Borrower

*PayOption MTA ARM Rider
1E310-XX (09/05)

Page 6 of 6

Exhibit 2

Exhibit 2

Exhibit 2

Inst #: 201006090003189

Fees: \$14.00

N/C Fee: \$0.00

06/09/2010 01:46:06 PM

Receipt #: 381952

Requestor:

CLARK RECORDING SERVICE

Recorded By: RNS Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING REQUESTED BY:
 RECONTRUST COMPANY, N.A.
 AND WHEN RECORDED MAIL DOCUMENT TO:
 BAC Home Loans Servicing, LP
 400 COUNTRYWIDE WAY SV-35
 SIMI VALLEY, CA 93065

TS No. 08-0061701

TITLE ORDER#: 3766435

ADN- 163-28-614-007

CORPORATION ASSIGNMENT OF DEED OF TRUST NEVADA

FOR VALUE RECEIVED, THE UNDERSIGNED HEREBY GRANTS, ASSIGNS AND TRANSFER TO:
 THORNBURG MORTGAGE SECURITIES TRUST 2007-3

ALL BENEFICIAL INTEREST UNDER THAT CERTAIN DEED OF TRUST DATED 06/03/2006,
 EXECUTED BY: FRANK A TIMPA, A MARRIED MAN AS HIS SOLE & SEPARATE
 PROPERTY, TRUSTOR: TO RECONTRUST COMPANY, N.A., TRUSTEE AND RECORDED AS
 INSTRUMENT NO. 0001581 ON 06/12/2006, IN BOOK 20060612, OF OFFICIAL RECORDS IN THE
 COUNTY RECORDER'S OFFICE OF CLARK COUNTY, IN THE STATE OF NEVADA.

DESCRIBING THE LAND THEREIN: AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST.

TOGETHER WITH THE NOTE OR NOTES THEREIN DESCRIBED OR REFERRED TO, THE
 MONEY DUE AND TO BECOME DUE THEREON WITH INTEREST, AND ALL RIGHTS
 ACCRUED OR TO ACCRUE UNDER SAID DEED OF TRUST/MORTGAGE.

DATED: June 04, 2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC.

State of: Texas
 County of: Tarrant

BY: Khadija Gulley, Assistant Secretary
Khadija Gulley

JUN 07 2010

On June 07, 2010 before me Elsie E. Kroussakis, personally appeared
Asst Secy, know to me (or proved to me on the oath of Asst Secy or through
Asst Secy) to be the person whose name is subscribed to the foregoing instrument and
 acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.
 Witness my hand and official seal.

Elsie E. Kroussakis
 Notary Public's Signature

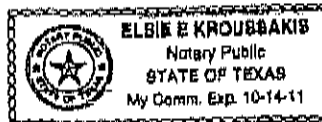


Exhibit 3

Exhibit 3

Exhibit 3

Recording Requested By:
Title 365

Inst #: 20150121-0000855
Fees: \$18.00
N/C Fee: \$0.00
01/21/2015 08:46:52 AM
Receipt #: 2287996
Requestor:
SPL INC - LA
Recorded By: CDE Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded Mail To:
VERIPRISE PROCESSING SOLUTIONS LLC
750 Hwy 121 BYP STE 100
Lewisville, TX 75067

APN: 163-28-614-007

TS No.: NV1400263224
TSG No.: 730-1406084-70
Drawn by: FRANK A. TIMPA

SUBSTITUTION OF TRUSTEE

WHEREAS,
FRANK A TIMPA, A MARRIED MAN AS HIS SOLE & SEPARATE PROPERTY

was the original Trustor, RECONTRUST COMPANY, N.A was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC. was the original Beneficiary under that certain Deed of Trust Dated 06/02/2006 and recorded on 06/12/2006 as Instrument No. 20060612-0001581, Book/Page NA/NA, of Official Records of CLARK County, Nevada; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, WHEREFORE, the undersigned hereby substitutes, VERIPRISE PROCESSING SOLUTIONS LLC whose address is: 750 Hwy 121 BYP STE 100, Lewisville, TX 75067, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

NEVADA

SUBSTITUTION OF TRUSTEE - PAGE 2

TS No.: NV1400263224
TSG No.: 730-1406084-70

Date: 1-16-15

THORNBURG MORTGAGE SECURITIES TRUST 2007-
3, MORTGAGE BACKED NOTES, SERIES 2007-3, U.S. BANK
NATIONAL ASSOCIATION, AS INDENTURE
TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF
AMERICA NATIONAL ASSOCIATION, AS INDENTURE
TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK
NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE
WIA/TIA THORNBURG MORTGAGE SECURITIES TRUST
2007-3, BY NATIONSTAR MORTGAGE LLC AS
ATTORNEY-IN-FACT

Jacqueline E. Riley 1-16-15
Jacqueline E. Riley

Assistant Secretary

State Of: Texas

County Of: Denton

Before me, Robin L. Porter, on this day personally appeared Jacqueline E. Riley known
to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that this
person executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 16 day of January, A.D. 2015.

Signature: Robin L. Porter (Seal)

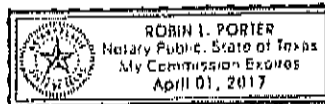


Exhibit 4

Exhibit 4

Exhibit 4

Assessor Parcel Number: 163-28-614-007
File Number: R74507

Accommodation

Insl #: 201108040002324

Fees: \$14.00

N/C Fee: \$0.00

08/04/2011 09:30:55 AM

Receipt #: 868888

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: CDE Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

LIEN FOR DELINQUENT ASSESSMENTS

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

NOTICE IS HEREBY GIVEN: Red Rock Financial Services, a division of RMI Management LLC, officially assigned as agent by the Spanish Trail Master Association, herein also called the Association, in accordance with Nevada Revised Statutes 116 and outlined in the Association Covenants, Conditions, and Restrictions, herein also called CC&R's, recorded on 03/07/1984, in Book Number 1885, as Instrument Number 1844877 and including any and all Amendments and Annexations et. seq., of Official Records of Clark County, Nevada, which have been supplied to and agreed upon by said owner.

Said Association imposes a Lien for Delinquent Assessments on the commonly known property:

34 Innisbrook Ave, Las Vegas, NV 89113

ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1, in the County of Clark

Current Owner(s) of Record:

TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

The amount owing as of the date of preparation of this lien is **\$5,543.92.

This amount includes assessments, late fees, interest, fines/violations and collection fees and costs.

** The said amount may increase or decrease as assessments, late fees, interest, fines/violations, collection fees, costs or partial payments are applied to the account.

Dated: July 28, 2011

Prepared By Anna Romero, Red Rock Financial Services, on behalf of Spanish Trail Master Association

STATE OF NEVADA)

COUNTY OF CLARK)

On July 28, 2011, before me, personally appeared Anna Romero, 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 to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

When Recorded Mail To: Red Rock Financial Services
7251 Antigo Street, Suite 100
Las Vegas, Nevada 89119
702-932-6887

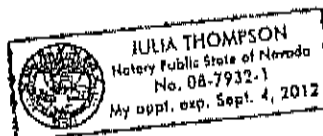


Exhibit 5

Exhibit 5

Exhibit 5

Exhibit 6

Exhibit 6

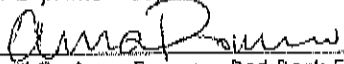
Exhibit 6

Assessor Parcel Number: 163-28-614-007
File Number: R74507
Property Address: 34 Innisbrook Ave
Las Vegas NV 89113

or federal savings and loan association or savings association authorized to do business in the State of Nevada, in the amount of **\$20,309.95** as of 9/15/2014, which includes the total amount of the unpaid balance and reasonably estimated costs, expenses and advances at the time of the initial publication of this notice. Any subsequent Association assessments, late fees interest, expenses or advancements, if any, of the Association or its Agent, under the terms of the Lien for Delinquent Assessments shall continue to accrue until the date of the sale. The property heretofore described is being sold "as is".

The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, encumbrances, obligations to satisfy any secured or unsecured liens or against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded on 03/07/1984, in Book Number 1885, as Instrument Number 1844877 of the Official Records in the Office of the Recorder and any subsequent amendments or updates that may have been recorded.

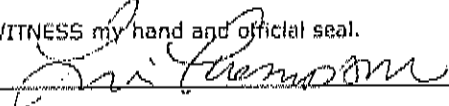
Dated: September 11, 2014


Prepared By Anna Romero, Red Rock Financial Services, on behalf of Spanish Trail Master Association

STATE OF NEVADA)
COUNTY OF CLARK)

On September 11, 2014, before me, personally appeared Anna Romero, 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 to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Reinstatement Information: (702) 483-2996 or Sale Information: (714) 573-7777

When Recorded Mail To:
Red Rock Financial Services
4775 W. Teco Avenue, Suite 140
Las Vegas, Nevada 89118
(702) 483-2996 or (702) 932-6887

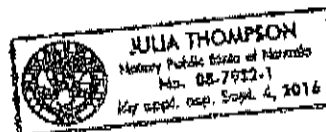


Exhibit 7

Exhibit 7

Exhibit 7

Mail Tax statement to:
Sutley Bay LLC, Series 34 Innisbrook
900 S. Las Vegas Blvd., #810
Las Vegas, NV 89101

APN # 163-28-614-007

Inst #: 20141110-0002475
Fees: \$18.00 N/C Fee: \$25.00
RPTT: \$8125.10 Ex: #
11/10/2014 11:49:45 AM
Receipt #: 2215869
Requestor:
RESOURCES GROUP
Recorded By: DXI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

FORECLOSURE DEED

The undersigned declares: *26/11/10*

Red Rock Financial Services, herein called agent for (Spanish Trail Master Association), was the duly appointed agent under that certain Lien for Delinquent Assessments, recorded 08/04/2011 as instrument number 0002324 Book 20110804, in Clark County. The previous owner as reflected on said lien is TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN). Red Rock Financial Services as agent for Spanish Trail Master Association does hereby grant and convey, but without warranty expressed or implied to: Sutley Bay LLC, Series 34 Innisbrook (herein called grantee), pursuant to NRS 116.3116 through NRS 116.31168, all its right, title and interest in and to that certain property legally described as: ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1 which is commonly known as 34 Innisbrook Ave Las Vegas, NV 89113.

AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Spanish Trail Master Association governing documents (CC&R's) and that certain Lien for Delinquent Assessments, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 12/06/2011 as instrument number 0001106 Book 20111206 which was recorded in the office of the recorder of said county. Red Rock Financial Services has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Lien for Delinquent Assessments and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Spanish Trail Master Association, at public auction on 11/07/2014, 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 \$1,201,000.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Lien for Delinquent Assessment.

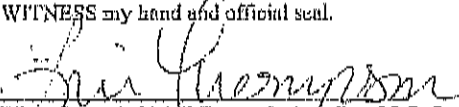
Dated: November 10, 2014

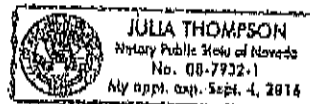

By: Christie Marling, employee of Red Rock Financial Services, agent for Spanish Trail
Master Association

STATE OF NEVADA)
COUNTY OF CLARK)

On November 10, 2014, before me, personally appeared Christie Marling, 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 to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


When Recorded Mail To: Suticoy Bay LLC, Series 34 Lomisbrook
900 S. Las Vegas Blvd., #810
Las Vegas, NV 89101



Sign 7-4-2016

STATE OF NEVADA DECLARATION OF VALUE

1. Assessor Parcel Number (s)

a) 103-20-614-007
b) _____
c) _____
d) _____

2. Type of Property:

a) ☐ Vacant Land h) ☒ Single Fam Res.
b) ☐ Condo/Townhome i) ☐ 2-4 Plux
c) ☐ Apt. Bldg. j) ☐ Condo/Ind'l
d) ☐ Agricultural k) ☐ Mobile Home
e) ☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Notes: _____

3. Total Value/Sales Price of Property:

Deed in Lieu of Foreclosure Only (value of property) \$ 1,201,000.00
Transfer Tax Value: \$ 1,201,000.00
Real Property Transfer Tax Due: \$ 6185.10

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 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 [Signature] Capacity AGENT
Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Red Rock Financial Services
Address: 4775 West Tropic Ave #140
City: Las Vegas
State: NV Zip: 89118

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Salsbury Bay LLC, Series 34 limited
Address: 600 E. Las Vegas Blvd., #010
City: Las Vegas
State: NV Zip: 89101

COMPANY/PERSON REQUESTING RECORDING

(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: Russell J. Myall Escrow # _____
Address: 900 S. 1st Street Reno NV 89401
City: Reno State: NV Zip: 89401

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

Exhibit 8

Exhibit 8

Exhibit 8

Exhibit 8



Red Rock Financial Services

Numbers of Pages 5

January 26, 2012

Miles, Bauer, Bergstrom & Winters LLP
Attn: Alexander Bhame
Via Email: abhame@mileslegal.com

Re: 34 Innisbrook Ave, Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

In response to your request for payoff figures for the above reference account, the following accounting ledger is a breakdown for the payoff request.

The current balance is \$9,255.44 (Please collect additional \$200.00 transfer fee for new owner payable to: Spanish Trail Master Association). This demand and its balance due will expire on 2/10/12. You MUST request an update as this balance will only be valid through the date above. Payment received after the expiration date will not be accepted if the balance has changed. Failure to remit the balance by the expiration date may result in the continuation of the collection process at an additional cost. Check(s) should be made payable to Red Rock Financial Services and mailed to the address below.

Spanish Trail Master Association and/or the Management Company's transfer fees as well as other fees and costs may not be included. You must contact Spanish Trail Master Association directly for those additional amounts at 702-367-8747.

If you have any questions, please contact our office at 702-932-6887.

Regards,

Red Rock Financial Services

Red Rock Financial Services

2251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rfrs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a (one-time) electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check. No subsequent amounts will be added to the debit. (If we cannot collect your electronic payment, we will issue a notice against your account.) Please contact the Attorney Receivable Department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

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Red Rock Financial Services
Account Detail
Spanish Trail Master Association
Information as of: January 26, 2012

Page 1

Red Rock Financial Services Account Number: R74507

Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113

COUNTRYWIDE HOME LOANS, INC., / ESTATES WEST AT SPANISH TRAIL
ASSOCIATION, / FRANK ANTHONY TIMPA, TRUSTEE, / MADELAINE TIMPA,
TRUSTEE, / MERS, / REPUBLIC SERVICES, / SPANISH TRAIL MASTER ASSOCIATION, /
THORNBURG MORTGAGE SECURITIES TRUST 2007-3, / Timpa Trust u/t/d/ March 3, 1999,

Detailed Summary

Date	Description	Amount	Balance	Check#
07/01/2010	Assessment	\$225.00	\$225.00	
08/01/2010	Assessment	\$225.00	\$450.00	
08/16/2010	Late Fee	\$25.00	\$475.00	
09/01/2010	Assessment	\$225.00	\$700.00	
09/15/2010	Assessment	\$825.00	\$1,525.00	
09/16/2010	Late Fee	\$25.00	\$1,550.00	
10/01/2010	Assessment	\$225.00	\$1,775.00	
10/16/2010	Late Fee	\$25.00	\$1,800.00	
11/01/2010	Assessment	\$225.00	\$2,025.00	
11/16/2010	Late Fee	\$25.00	\$2,050.00	
12/01/2010	Assessment	\$225.00	\$2,275.00	
12/02/2010	Association Misc. Charge	\$200.00	\$2,475.00	
12/16/2010	Late Fee	\$25.00	\$2,500.00	
12/21/2010	Intent Mailing Costs	\$9.00	\$2,509.00	
12/21/2010	Intent to Lien Letter	\$125.00	\$2,634.00	
12/21/2010	Intent Mailing Costs	\$9.00	\$2,643.00	
01/01/2011	Assessment	\$225.00	\$2,868.00	
01/16/2011	Late Fee	\$25.00	\$2,893.00	
02/01/2011	Assessment	\$225.00	\$3,118.00	
02/16/2011	Late Fee	\$25.00	\$3,143.00	
03/01/2011	Assessment	\$225.00	\$3,368.00	
03/01/2011	Assessment	\$825.00	\$4,193.00	
03/16/2011	Late Fee	\$25.00	\$4,218.00	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 1/26/12

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Red Rock Financial Services
Account Detail
Spanish Trail Master Association
Information as of: January 26, 2012

Page 2

Red Rock Financial Services Account Number: R74507

Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113

COUNTRYWIDE HOME LOANS, INC., / ESTATES WEST AT SPANISH TRAIL
ASSOCIATION, / FRANK ANTHONY TIMPA, TRUSTEE, / MADELAINE TIMPA,
TRUSTEE, / MERS, / REPUBLIC SERVICES, / SPANISH TRAIL MASTER ASSOCIATION, /
THORNBURG MORTGAGE SECURITIES TRUST 2007-3, / Timpa Trust u/t/d/ March 3, 1999,

Detailed Summary

Date	Description	Amount	Balance	Check#
03/17/2011	Red Rock Fee Adjustment	-\$348.96	\$3,869.04	
03/17/2011	Lien Mailing Costs	\$7.98	\$3,877.02	
03/17/2011	Lien for Delinquent Assessment	\$275.00	\$4,152.02	
03/17/2011	Lien Release	\$30.00	\$4,182.02	
03/17/2011	Lien Recording Costs	\$28.00	\$4,210.02	
03/17/2011	Lien Mailing Costs	\$7.98	\$4,218.00	
04/01/2011	Assessment	\$225.00	\$4,443.00	
04/16/2011	Late Fee	\$25.00	\$4,468.00	
05/01/2011	Assessment	\$225.00	\$4,693.00	
05/16/2011	Late Fee	\$25.00	\$4,718.00	
06/01/2011	Assessment	\$225.00	\$4,943.00	
06/16/2011	Late Fee	\$25.00	\$4,968.00	
07/01/2011	Assessment	\$225.00	\$5,193.00	
07/16/2011	Late Fee	\$25.00	\$5,218.00	
07/28/2011	Lien Mailing Costs	\$8.96	\$5,226.96	
07/28/2011	Lien for Delinquent Assessment	\$275.00	\$5,501.96	
07/28/2011	Lien Release	\$30.00	\$5,531.96	
07/28/2011	Lien Recording Costs	\$28.00	\$5,559.96	
07/28/2011	Lien Mailing Costs	\$8.96	\$5,568.92	
08/01/2011	Assessment	\$225.00	\$5,793.92	
08/16/2011	Late Fee	\$25.00	\$5,818.92	
09/01/2011	Assessment	\$225.00	\$6,043.92	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 1/26/12

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Red Rock Financial Services
Account Detail
Spanish Trail Master Association
Information as of: January 26, 2012

Page 3

Red Rock Financial Services Account Number: R74507

Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113

COUNTRYWIDE HOME LOANS, INC., / ESTATES WEST AT SPANISH TRAIL
ASSOCIATION, / FRANK ANTHONY TIMPA, TRUSTEE, / MADELAINE TIMPA,
TRUSTEE, / MERS, / REPUBLIC SERVICES, / SPANISH TRAIL MASTER ASSOCIATION, /
THORNBURG MORTGAGE SECURITIES TRUST 2007-3, / Timpa Trust u/t/d/ March 3, 1999,

Detailed Summary

Date	Description	Amount	Balance	Check#
09/15/2011	Assessment	\$825.00	\$6,868.92	
09/16/2011	Late Fee	\$25.00	\$6,893.92	
10/01/2011	Assessment	\$225.00	\$7,118.92	
10/16/2011	Late Fee	\$25.00	\$7,143.92	
10/27/2011	Intent to NOD	\$90.00	\$7,233.92	
10/27/2011	Intent to NOD	\$90.00	\$7,323.92	
11/01/2011	Assessment	\$225.00	\$7,548.92	
11/16/2011	Late Fee	\$25.00	\$7,573.92	
11/28/2011	Adjustment	-\$90.00	\$7,483.92	
11/29/2011	NOD Mailing Costs	\$17.92	\$7,501.84	
11/29/2011	Notice of Default	\$375.00	\$7,876.84	
11/29/2011	NOD Mailing Costs	\$89.60	\$7,966.44	
11/29/2011	NOD Release	\$30.00	\$7,996.44	
11/29/2011	Trustee Sale Guarantee	\$350.00	\$8,346.44	
11/29/2011	NOD Recording Costs	\$17.00	\$8,363.44	
11/29/2011	NOD Release Recording Costs	\$17.00	\$8,380.44	
12/01/2011	Assessment	\$225.00	\$8,605.44	
12/15/2011	Late Fee	\$25.00	\$8,630.44	
01/01/2012	Assessment	\$225.00	\$8,855.44	
01/15/2012	Late Fee	\$25.00	\$8,880.44	
01/26/2012	Payoff Demand	\$150.00	\$9,030.44	
02/01/2012	Assessment	\$225.00	\$9,255.44	

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 1/26/12

JA0088

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type

Name (as shown on your income tax return)	
RMI Management, LLC	
Business name/disregarded entity name, if different from above	
Red Rock Financial Services	
Check appropriate box for federal tax classification:	
<input type="checkbox"/> Individual/sole proprietor	<input type="checkbox"/> C Corporation
<input type="checkbox"/> S Corporation	<input checked="" type="checkbox"/> Partnership
<input type="checkbox"/> Trust/estate	<input type="checkbox"/> Exempt payee
<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶	
<input type="checkbox"/> Other (see instructions) ▶	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
7251 Amigo Street, Suite 100	
City, state, and ZIP code	
Las Vegas, NV 89119	
List account number(s) here (optional)	

Part 1 Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number					

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number					
-					

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. paragon
--------------	------------------------------

Signature of
U.S. person

Date:

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

Exhibit 9

Exhibit 9

Exhibit 9

DOUGLAS E. MILES
Also Admitted in California &
Illinois

JEREMY T. BERGSTROM
Also Admitted in Arizona

GINA M. CORENA
ROCK K. JUNG
KRISTA J. NIELSON
JORY C. GARABEDIAN
THOMAS M. MORLAN

Admitted in California
STEVEN E. STERN
Admitted in Arizona & Illinois
ANDREW H. PASTWICK
Also Admitted in Arizona &
California



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

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

CALIFORNIA OFFICE
1731 E. Dyer Road, Suite 100
Santa Ana, CA 92705
Phone: (714) 481-9100
Fax: (714) 481-9141

RICHARD J. BAUER, JR.
FRED TIMOTHY WINTERS
KEENAN E. McCLENNAN
MARK T. BOMEYER
Also Admitted in the District
of

Columbia & Virginia
TAMIS S. CROSBY
L. BRYANT JAEQUEZ
WAYNE A. RASH
VY T. PHAM
HADI R. SEYED-ALI
BRIAN H. TRAN
ANNA A. GHAJAR
CORI E. JONES
CATHERINE K. MASON
CHRISTINE A. CHUNG
HANH T. NGUYEN
S. SHELLY RAISZADEH
SHANNON C. WILLIAMS
ABTIN SHAKOURI
LAWRENCE IL JOIVIN

February 9, 2012

RED ROCK FINANCIAL SERVICES
7251 Amigo Street, Suite 100
Las Vegas, NV 89119

Re: *Property Address:* 34 Innisbrook Avenue
ACCT NO.:
LOAN #:
MBBW File No.

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. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$9,255.44. 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:

...

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:

JA0091

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. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$2,025.00 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 Red Rock Financial Services in the sum of \$2,025.00, 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 34 Innisbrook Avenue 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.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct
 Payee: RED ROCK FINANCIAL SERVICES
 12-H0207
 Check #: 13298
 Date: 2/5/2012
 Amount: 2,025.00
 Initials: SRN

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
2/3/2012	R74507	To Cure HOA Deficiency	2,025.00			

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

Bank of America
 4100 N. Green Valley Parkway
 Henderson, NV 89074
 16-661220
 1020
 12-H0207
 Loan #

13298

Date: 2/5/2012

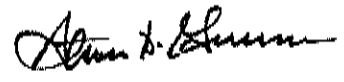
Amount \$**** 2,025.00

Pay \$*****Two Thousand, Twenty-Five & No/100 Dollars
 to the order of
 Check Void After 90 Days

RED ROCK FINANCIAL SERVICES



Security Features Included. Details on back.


CLERK OF THE COURT

CCAN
DAVID R. KOCH
Nevada Bar No. 8830
STEVEN B. SCOW
Nevada Bar No. 9906
ROBERT L. ENGLISH
Nevada Bar No. 3504
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
dkoch@kochscow.com
sscows@kochscow.com
renglish@kochscow.com
Telephone: (702) 318-5040
Facsimile: (702) 318-5039

Attorneys for Counter-Defendant/Counterclaimant
Red Rock Financial Services

EIGHTH DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34 INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; RECONSTRUCT COMPANY,
N.A. a division of BANK OF AMERICA;
FRANK TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUST,

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 34 INNISBROOK,
a Nevada Limited-liability company; SPANISH
TRAIL MASTER ASSOCIATION, a Nevada
Non-Profit Corporation; RED ROCK
FINANCIAL SERVICES, LLC, an unknown

Case No.: A-14-710161-C
Dept.: XXXI

RED ROCK FINANCIAL
SERVICES' ANSWER TO
THORNBURG MORTGAGE
SECURITIES TRUST 2007-3
COUNTERCLAIM; AND RED
ROCK FINANCIAL SERVICES'
COUNTERCLAIM FOR
INTERPLEADER (NRCP 22)

1 through X; and ROE CORPORATIONS 1
2 through X, inclusive,

3 Counter-Defendants.

4 RED ROCK FINANCIAL SERVICES,

5 Counterclaimant,

6 vs.

7 THORNBURG MORTGAGE SECURITIES
8 TRUST 2007-3; COUNTRYWIDE HOME
9 LOANS, INC.; ESTATES WEST AT SPANISH
10 TRAILS; MORTGAGE ELECTRONIC
11 REGISTRATION SYSTEM, INC.; REPUBLIC
12 SERVICES; LAS VEGAS VALLEY WATER
DISTRICT; FRANK TIMPA and MADELAINE
TIMPA, individually and as trustees of the
TIMPA TRUST U/T/D March 3, 1999; and
DOES 1-100, inclusive,

13 Counter-Defendants.

14
15 RED ROCK FINANCIAL SERVICES ("Red Rock") answers the Counterclaim filed
16 by Thornburg Mortgage Securities Trust 2007-3 ("Thornburg"), and admits, denies, and
17 alleges as follows:

18 I.

19 PARTIES

20 1. In response to paragraphs 1, 3 and 7, Red Rock is without sufficient
21 information to form a belief as to the truth of the allegations of these paragraphs and on
22 that basis denies the allegations.

23 2. In response to paragraph 2, Red Rock states the document referenced
24 speaks for itself, and Red Rock is without sufficient information or knowledge to for a
25 belief as to the remaining allegations in this paragraph and on that basis denies the
26 allegations.

27 3. Red Rock admits the allegations of paragraphs 4 through 6.
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4. In response to paragraph 8, Red Rock states this paragraph sets forth a legal conclusion to which no response is necessary. To the extent a response is required, Red Rock denies the allegations of this paragraph.

II.

JURISDICTION AND VENUE

5. In response to paragraphs 9 through 12, Red Rock states these paragraphs constitute a legal conclusion to which no response is required.

III.

FACTUAL BACKGROUND

6. In response to paragraphs 13 and 15, Red Rock is without sufficient information to form a belief as to the truth of the allegations of these paragraphs and on that basis Red Rock denies the allegations.

7. In response to paragraphs 14, 16, 17, 18, 19, 20, and 22, Red Rock states the documents referenced therein speak for themselves, and Red Rock is without sufficient information or knowledge to for a belief as to the remaining allegations in these paragraphs and on that basis Red Rock denies the allegations.

8. In response to paragraph 21, Red Rock admits that there was a foreclosure sale on November 7, 2014. Red Rock is without sufficient information or knowledge to form a belief as to the remaining allegations in this paragraph and on that basis Red Rock denies the allegations.

9. In response to paragraphs 23 and 24, Red Rock states these paragraphs set forth legal conclusions to which no responses are necessary. To the extent responses are required, Red Rock denies the allegations of these paragraphs.

10. Red Rock denies the allegations of paragraph 25.

11. In response to paragraph 26, Red Rock states this paragraph sets forth legal conclusions to which no responses are necessary. To the extent a response is required, Red Rock denies the allegations.

12. Red Rock denies the allegations of paragraph 27.

1 13. In response to paragraph 28, Red Rock is without sufficient information to
2 form a belief as to the truth of the allegations of this paragraph and on that basis Red
3 Rock denies the allegations.

4 14. In response to paragraphs 29 and 30, Red Rock states the documents
5 referenced therein speak for themselves, and Red Rock denies any further allegations in
6 these paragraphs.

7 15. In response to paragraph 31, Red Rock admits that it received the letter
8 attached as Exhibit 9 and denies the remaining allegations in the paragraph.

9 16. In response to paragraph 32, Red Rock states this paragraph sets forth
10 legal conclusions to which no responses are necessary. To the extent a response is
11 required, Red Rock denies the allegations.

12 17. Red Rock denies the allegations of paragraphs 33 through 41.

13 18. In response to paragraphs 42 and 43, Red Rock states these paragraphs set
14 forth legal conclusions to which no responses are necessary. To the extent a response is
15 required, Red Rock denies the allegations.

16 19. Red Rock denies the allegations of paragraphs 44 and 45.

17 20. In response to paragraph 46, Red Rock states this paragraph sets forth
18 legal conclusions to which no responses are necessary. To the extent a response is
19 required, Red Rock denies the allegations.

20 21. Red Rock denies the allegations of paragraphs 47 and 48.

21 22. In response to paragraphs 49 and 50, Red Rock states these paragraphs set
22 forth legal conclusions to which no responses are necessary. To the extent a response is
23 required, Red Rock denies the allegations.

24 23. In response to paragraphs 51 and 52, Red Rock is without sufficient
25 information to form a belief as to the truth of the allegations of these paragraphs and on
26 that basis Red Rock denies the allegations.

27 24. Red Rock denies the allegations of paragraphs 53, 54, 55, 56, and 57.
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1 25. In response to paragraph 58, Red Rock states the content of the CC&Rs
2 speak for themselves, and no response is required.

3 26. In response to paragraphs 59 and 61, Red Rock states that Mortgage
4 Protection Clauses do not circumvent the Nevada Statutes, and Red Rock denies the
5 allegations contain in theses paragraphs.

6 27. In response to paragraph 60, Red Rock is without sufficient information to
7 form a belief as to the truth of the allegations of this paragraph and on that basis Red
8 Rock denies the allegations.

9 28. Red Rock denies the allegations of paragraphs 61, 62, and 63.

10 29. In response to paragraphs 64, 65, and 66, Red Rock is without sufficient
11 information to form a belief as to the truth of the allegations of these paragraphs and on
12 that basis Red Rock denies the allegations.

13 30. Red Rock denies the allegations of paragraph 67.

14 **FIRST CAUSE OF ACTION**

15 **(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010 et seq.**
16 **versus SATICOY, HOA, and all fictitious Defendants)**

17 31. In response to paragraph 68, Red Rock repeats and reasserts its responses
18 to paragraphs 1 through 67 of the Counterclaim as though fully set forth herein.

19 32. In response to paragraphs 69, 70, 71, and 72, Red Rock states these
20 paragraphs set forth legal conclusions to which no response is necessary. To the extent
21 responses are required, Red Rock is without sufficient knowledge or information to form
22 a belief and on that basis denies the allegations in these paragraphs.

23 33. In response to paragraphs 73, Red Rock is without sufficient information to
24 form a belief as to the truth of the allegations of this paragraph and on that basis denies
25 the allegations.

26 34. Red Rock denies the allegations of paragraphs 74, 75, 76, 77, and 78.
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28

1 **SECOND CAUSE OF ACTION**

2 **(Permanent and Preliminary Injunction versus SATICOY)**

3 35. Red Rock states that this Second Cause of Action, paragraphs 79 through
4 87, is not applicable to it, therefore, no response is required to these allegations.

5 **THIRD CAUSE OF ACTION**

6 **(Wrongful Foreclosure versus the HOA, the HOA Trustee, and fictitious Defendants)**

7 36. In response to paragraph 88, Red Rock repeats and reasserts its responses
8 to paragraph 1 through 87 of the Counterclaim as though fully set forth herein.

9 37. Red Rock denies the allegations of paragraphs 89 through 99.

10 **FOURTH CAUSE OF ACTION**

11 **(Negligence versus HOA, the HOA Trustee, and fictitious Defendants)**

12 38. In response to paragraph 100, Red Rock repeats and reasserts its responses
13 to paragraph 1 through 99 of the Counterclaim as though fully set forth herein.

14 39. In response to paragraph 101, Red Rock states this paragraph states legal
15 conclusions to which no response is necessary. To the extent a response is required, Red
16 Rock is without sufficient knowledge or information to form a belief and on that basis
17 denies the allegations in this paragraph.

18 40. Red Rock denies the allegations of paragraphs 102 through 106.

19 **FIFTH CAUSE OF ACTION**

20 **(Negligence Pro Se versus HOA, the HOA Trustee, and fictitious Defendants)**

21 41. In response to paragraph 107, Red Rock repeats and reasserts its responses
22 to paragraph 1 through 106 of the Counterclaim as though fully set forth herein.

23 42. In response to paragraph 108, Red Rock states the Chapter and statutes
24 reference speak for themselves and no response is necessary. To the extent a response is
25 required, Red Rock denies the allegations of this paragraph.

26 43. Red Rock denies the allegations of paragraphs 109 and 110.

27 44. In response to paragraphs 111 and 112, Red Rock states this paragraph
28 states legal conclusions to which no response is necessary. To the extent a response is

1 required, Red Rock is without sufficient knowledge or information to form a belief and
2 on that basis denies the allegations in this paragraph.

3 45. Red Rock denies the allegations of paragraphs 113 through 116.

4 **SIXTH CAUSE OF ACTION**

5 **(Breach of Contract versus HOA, the HOA Trustee, and fictitious Defendants)**

6 46. In response to paragraph 117, Red Rock repeats and reasserts its responses
7 to paragraph 1 through 116 of the Counterclaim as though fully set forth herein.

8 47. In response to paragraph 118, Red Rock is without sufficient knowledge or
9 information to form a belief and on that basis denies the allegations in this paragraph.

10 48. Red Rock denies the allegations of paragraphs 119 through 121.

11 **SEVENTH CAUSE OF ACTION**

12 **(Misrepresentation versus HOA)**

13 49. In response to paragraph 122, Red Rock repeats and reasserts its responses
14 to paragraphs 1 through 121 of the Counterclaim as though fully set forth in full herein.

15 50. In response to paragraph 123, Red Rock states this paragraph states legal
16 conclusions to which no response is necessary. To the extent a response is required, Red
17 Rock is without sufficient knowledge or information to form a belief and on that basis
18 denies the allegations in this paragraph.

19 51. In response to paragraph 124, Red Rock is without sufficient knowledge or
20 information to form a belief and on that basis denies the allegations in this paragraph.

21 52. Red Rock denies the allegations of paragraphs 125 through 131.

22 **EIGHTH CAUSE OF ACTION**

23 **(Unjust Enrichment versus SATICOY, HOA, HOA Trustee, and fictitious Defendants)**

24 53. In response to paragraph 132, Red Rock repeats and reasserts its responses
25 to paragraphs 1 through 131 of the Counterclaim as though fully set forth in full herein.

26 54. Red Rock denies the allegations of paragraphs 133 through 140.

1 **NINTH CAUSE OF ACTION**

2 **(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and HOA**
3 **Trustee, and the fictitious Defendants)**

4 55. In response to paragraph 141, Red Rock repeats and reasserts its responses
5 to paragraphs 1 through 140 of the Counterclaim as though fully set forth in full herein.

6 56. In response to paragraphs 142 and 143, Red Rock states these paragraphs
7 state legal conclusions to which no responses are necessary. To the extent responses are
8 required, Red Rock is without sufficient knowledge or information to form a belief and
9 on that basis denies the allegations in these paragraphs.

10 57. Red Rock denies the allegations of paragraphs 144 through 147.

11 **TENTH CAUSE OF ACTION**

12 **(In the Alternative-Application for Deficiency Judgment/Breach of**
13 **Contract versus Timpa)**

14 58. Red Rock states that this cause of action, paragraphs 148 through 160, is not
15 applicable to it, therefore, no response is required.

16 **AFFIRMATIVE DEFENSES**

17 **FIRST AFFIRMATIVE DEFENSE**

18 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's counterclaim fails
19 to state a claim for which relief can be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's unclean hands
22 preclude any of the relief requested.

23 **THIRD AFFIRMATIVE DEFENSE**

24 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred
25 by the doctrines of estoppel, laches, and waiver.
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FOURTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred by the applicable statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has acquiesced to any of the conduct and usage alleged in its Counterclaim.

SIXTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has failed to mitigate its damages, if any.

SEVENTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3's damages, if any, are caused by its own actions or from the acts of others not parties to this action.

EIGHTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has failed to join an indispensable party, in that other parties are wholly or at least partly caused Counterclaimant's harm and complete relief may not be granted in their absence.

NINTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred by the voluntary payment doctrine.

TENTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 knowingly and voluntarily waived its rights to obtain any or all of the relief sought in its Counterclaim.

ELEVENTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no contract with this answering counter-defendant.

TWELFTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no fiduciary relationship with this answering counter-defendant.

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THIRTEENTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred by the economic loss doctrine.

FOURTEENTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no special relationship with this answering counter-defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

This answering counter-defendant has limited facts available at this time and thus some of the foregoing Affirmative Defenses may have been plead in accordance to NRCF 8, for purposes of non-waiver. Furthermore, pursuant to NRCF 11, this answering counter-defendant has or may have more affirmative defenses or counterclaims that are not known at this time but may be uncovered through further discovery wherefore, this answering counter-defendant reserves the right to assert any such affirmative defenses or Counterclaims so ascertained at a later date.

WHEREFORE, as to the Thornburg Mortgage Securities Trust 2007-3's Counterclaim, Red Rock prays as follows:

1. That Counterclaimant Thornburg Mortgage Securities Trust 2007-3 take nothing by way of its Counterclaim.
2. That judgment be rendered in favor of Red Rock;
3. That Counterclaimant Thornburg Mortgage Securities Trust 2007-3 compensate Red Rock for reasonable fees and costs incurred in defending this action; and
4. For any other such relief that the Court deems just and proper.

Dated: May 21, 2015.

KOCH & SCOW, LLC

By: /s/Steven B. Scow
Steven B. Scow
Attorneys for Red Rock Financial Services

1 COUNTERCLAIM FOR INTERPLEADER

2 COMES NOW Counterclaimant RED ROCK FINANCIAL SERVICES (hereinafter
3 sometimes "Red Rock"), and pleads as follows:

4 PARTIES

5 1. Counterclaimant Red Rock Financial Services is a licensed collection
6 company, and at all times material herein was and is doing business in Clark County,
7 Nevada. Red Rock was hired by Spanish Trail Master Association (the "Master
8 Association") as its agent to manage and collect assessments charged to homeowners
9 within the Association.

10 2. Counter-defendant Thornburg Mortgage Securities Trust 2007-3
11 ("Thornburg"), is an unknown business entity, which at all times material herein, was
12 doing business in Clark County, Nevada.

13 3. Counter-defendant Frank Timpa ("Frank") is individual who, on
14 information and belief resides in Clark County, Nevada and is a co-trustee of the Timpa
15 Trust U/T/D March 3, 1999 ("Timpa Trust").

16 4. Counter-defendant Madeline Timpa ("Madeline") is individual who, on
17 information and belief resides in Clark County, Nevada and is a co-trustee of the Timpa
18 Trust.

19 5. Counter-defendant Countrywide Home Loans, Inc. ("Countrywide"), is an
20 unknown business entity, which at all times, material herein, was doing business in Clark
21 County, Nevada.

22 6. Counter-defendant Estates West at Spanish Trail ("Sub HOA") is a Nevada
23 corporation, which at all times material herein, was doing business in Clark County,
24 Nevada.

25 7. Counter-defendant Mortgage Electronic Registration Systems, Inc.
26 ("MERS") is an unknown business entity, which at all times material herein, was doing
27 business in Clark County, Nevada.
28

1 8. Counter-Defendant Republic Services, ("Republic") is an unknown entity,
2 which at all times material herein, was doing business in Clark County, Nevada.

3 9. Counter-defendant Las Vegas Valley Water District ("LVVWD") is a
4 political subdivision of the State of Nevada, which at all times material herein, was doing
5 business in Clark County, Nevada.

6 10. Countrywide, MERS, Sub HOA, Republic, and LVVWD are joined to this
7 proceeding as Counterclaim defendants pursuant to *Lund v. Eighth Jud. Dist. Ct.*, 255 P.3d
8 280 (2011) and NRCP 13(h).

9 11. Red Rock is unaware currently of the true names and capacities of those
10 defendants sued herein as DOES 1-100 and therefore sues said counter-defendants by
11 such fictitious names. Plaintiff will seek leave of the court to amend this Counterclaim to
12 allege the true names and capacities of said defendants when the same have been
13 ascertained.

14 12. Red Rock is informed and believes, and thereon alleges, that each of the
15 cross-defendants sued herein, including those named as DOES, are the agents, servants,
16 employees, predecessor entities, successor entities, parent entities, totally owned or
17 controlled entities, or had some legal relationship of responsibility for, the other cross-
18 defendants, and in doing the things herein alleged, acted within the course and scope
19 and authority of such agency, employment, ownership or other relationship and with the
20 full knowledge and consent of the other defendants, or are in some other manner legally
21 responsible for the acts as alleged herein. Additionally, with respect to all corporate
22 entity cross-defendants, the officers and directors of such entities ratified and affirmed all
23 contracts of its employees, agents, directors and/or officers.

24 GENERAL ALLEGATIONS

25 13. Red Rock is a debt collection company, which works on behalf of
26 homeowner associations to collect debts secured by real property, including delinquent
27 homeowner assessments. When a property owner becomes delinquent to the
28 homeowners association, Red Rock is contracted to collect the debt. These efforts include

1 attempts to collect the debt directly from the property owner, but when the property
2 owner does not pay after an extended period, the process leads to a non-judicial
3 foreclosure action pursuant to Nevada law.

4 14. Here, Red Rock was contracted by the Master Association to collect debts
5 for unpaid homeowners assessments owed to the Master Association by counter-
6 defendants Frank Timpa and Madeline Timpa individually and as trustees of the Timpa
7 Trust for the property located at 34 Innisbrook Avenue, Las Vegas, NV 89113 ("the
8 Subject property"). Red Rock's efforts resulted in a foreclosure sale of the Subject
9 Property on November 7, 2014.

10 15. In connection with the foreclosure sale, the Master Association was paid the
11 money it was owed, and Red Rock was paid its fees and costs incurred in collecting the
12 debt as allowed by contract and Nevada law. After paying these costs, Red Rock was left
13 with funds of \$1,168,865.05. Red Rock has no further direct interest in such funds. These
14 funds have been deposited into counsel's attorney-client trust account and \$5,000 has
15 been withheld for costs, expenses, and fees to commence this interpleader action. The
16 remainder will be deposited into Court or disbursed as ordered by this Court.

17 CAUSE OF ACTION

18 (Interpleader Against All Cross-Defendants [NRCP 22])

19 16. Red Rock repeats and realleges all previous allegations as if fully set forth
20 herein.

21 17. Public records in Clark County, Nevada indicate that there are several liens
22 and other debts secured by the subject property in this action. These debts exceed the
23 amount to be deposited with the Court. Red Rock does not know the current status of
24 such debts, nor does it have knowledge how the funds should be distributed to the
25 various cross-defendants. Red Rock is therefore faced with potential for multiple
26 liability.

27 18. Red Rock requests that the Court determine how such funds should be
28 distributed.

1 19. Red Rock has incurred attorneys' fees and costs in preparing, filing and
2 prosecuting this action and will apply and account for those attorneys' fees and costs
3 through the amount withheld, and will seek any further reimbursement from the amount
4 to be deposited with the Court per Nevada law, including NRS 116.31164(3)(c).

5 20. Red Rock requests that, after the parties have been served or at such other
6 appropriate time, that it be dismissed from this interpleader action, as it has no direct
7 interest in the interpleaded funds other than payment of its costs and fees for bringing
8 the instant action.

9 PRAYER

10 WHEREFORE, Red Rock prays for relief as follows:

11 1. That the court determine how the deposited funds should be distributed
12 and order distribution of said funds;

13 2. That Red Rock be reimbursed out of said deposited funds its attorneys fees
14 and costs in bringing this interpleader action;

15 3. That Red Rock be dismissed from this action with prejudice following
16 payment of the excess proceeds as directed by the Court; and

17 4. For such other and further relief as the court determines proper.

18
19 Dated: May 21, 2015.

KOCH & SCOW, LLC

20 By: /s/Steven B. Scow
21 David R. Koch (Nevada Bar No. 8830)
22 Steven B. Scow (Nevada Bar No. 9906)
23 Robert L. English (Nevada Bar No. 3504)
24 11500 S. Eastern Ave., Suite 210
25 Henderson, Nevada 89052
26 Attorneys for Red Rock Financial Services
27
28

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on May 21, 2015, I caused the foregoing document entitled: **RED ROCK FINANCIAL SERVICES' ANSWER to BANK OF AMERICA'S COUNTERCLAIM and RED ROCK FINANCIAL SERVICES' FIRST AMENDED COUNTERCLAIM FOR INTERPLEADER** to be served by as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in in the mail; and/or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and/or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and/or
- ☐ hand-delivered to the attorney(s) listed below at the address indicated below;
- ☐ to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or:
- ☐ by electronic mailing to:

Akerman LLP

Contact	Email
Akerman Las Vegas Office	akermanlas@akerman.com
Allison R. Schmidt, Esq.	allison.schmidt@akerman.com

Law Offices of Michael F. Bohn, Esq.

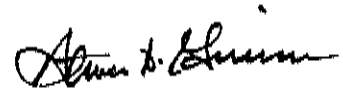
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Shadd Wade, Esq.	swade@wrightlegal.net

Executed on May 21, 2015 at Henderson, Nevada.

/s/ Andrea W. Eshenbaugh
An Employee of Koch & Scow LLC



CLERK OF THE COURT

1 **SACOM**
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11 Las Vegas, Nevada 89119
12 (702) 642-3113 / (702) 642-9766 FAX

13 Attorney for plaintiff

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 SATICOY BAY LLC SERIES 34
17 INNISBROOK,

18 Plaintiff,

19 vs.

20 THORNBURG MORTGAGE SECURITIES
21 TRUST 2007-3; FRANK TIMPA and
22 MADELAINE TIMPA, individually and as
23 trustees of the TIMPA TRUST,

24 Defendants.

CASE NO.: A-14-710161-C
DEPT NO.: II

EXEMPTION FROM ARBITRATION:
Title to real property

25 **SECOND AMENDED COMPLAINT**

26 Plaintiff, Saticoy Bay LLC Series 34 Innisbrook, by and through its attorney, Michael F. Bohn,
27 Esq. alleges as follows:

28 1. Plaintiff is the owner of the real property commonly known as 34 Innisbrook, Las Vegas,
Nevada.

2. Plaintiff obtained title by a foreclosure sale conducted on November 7, 2014 as evidenced by
foreclosure deed recorded on November 10, 2014.

3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments
due from the former owners, Frank and Madelaine Timpa to the Spanish Trails Master Association

1 pursuant to NRS Chapter 116.

2 4. Thornburg Mortgage Securities Trust 2007-3 is the current beneficiary of a deed of trust which
3 was recorded as an encumbrance to the subject property on June 12, 2006..

4 5. Frank and Madelaine Timpa individually and as trustees of the Timpa Trust are the former
5 owners of the property.

6 6. The interest of each of the defendants has been extinguished by reason of the foreclosure sale,
7 which was properly conducted with adequate notice given to all persons and entities claiming an interest
8 in the subject property, and resulting from a delinquency in assessments due from the former owner, to
9 the Spanish Trails Master Association, pursuant to NRS Chapter 116.

10 7. The HOA foreclosure sale complied with all requirements of law, including, but not limited
11 to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the
12 recording, posting, and publishing of the Notice of Sale.

13 8. Prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion of the
14 HOA lien representing 9 months of assessments for common expenses.

15 9. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the
16 plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim
17 to the subject property.

18 10. The plaintiff is entitled to an award of attorneys fees and costs.

19 **SECOND CLAIM FOR RELIEF**

20 11. Plaintiff repeats the allegations contained in paragraphs 1 through 10.

21 12. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property
22 is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no
23 estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any
24 estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

25 13. The plaintiff is entitled to an award of attorneys fees and costs.

26 **THIRD CLAIM FOR RELIEF**

27 14. Plaintiff repeats the allegations contained in paragraphs 1 through 13.

1 15. Defendants Frank and Madelaine Timpa individually and as trustee of the Timpa Trust were
2 served with a 3 day notice to quit.

3 16. The defendants have failed to vacate the premises despite the notice that have been served
4 upon him.

5 17. The defendants have remained in possession of said property up to and including the present
6 time.

7 18. The plaintiff is entitled to a Writ of Restitution of the restoring possession to the plaintiff.

8 19. Plaintiff is entitled to an award of attorneys fees and costs of suit.

9 WHEREFORE, plaintiff prays as follows:

10 **ON ACCOUNT OF THE FIRST CLAIM FOR RELIEF**

11 1. For a determination and declaration that plaintiff is the rightful holder of title to the property,
12 free and clear of all liens, encumbrances, and claims of the defendants.

13 2. For an award of attorneys fees and costs; and

14 3. For such other and further relief as the Court may deem just and proper.

15 **ON ACCOUNT OF THE SECOND CLAIM FOR RELIEF**

16 1. For a determination and declaration that the defendants have no estate, right, title, interest or
17 claim in the property.

18 2. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest
19 or claim in the property; and

20 3. For such other and further relief as the Court may deem just and proper.

21 **ON ACCOUNT OF THE THIRD CLAIM FOR RELIEF**

22 1. For restitution and possession of the premises;

23 2. For reasonable attorneys fees and costs of Court; and

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3. For such other and further relief as the Court may deem proper.

DATED this 11th day of June 2015.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: /s/ Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
Gerald L. Tan, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

RPLY
DONALD H. WILLIAMS, ESQ.
Nevada Bar No. 5548
WILLIAMS & ASSOCIATES
612 South Tenth Street
Las Vegas, Nevada 89101
Attorney for Republic Services

DISTRICT COURT

CLARK COUNTY, NEVADA

8	SATICOY BAY LLC SERIES 34 INNISBROOK,)	CASE NO.: A-14-710161-C
9)	DEPT. NO.: XXXI
10	Plaintiff,)	
11	vs.)	REPLY TO COUNTERCLAIM
12)	FOR INTERPLEADER
13	THORNBROOK MORTGAGE SECURITIES)	
14	TRUST 2007-3; RECONSTRUCT COMPANY,)	
15	N.A. a division of BANK OF AMERICA; FRANK)	
16	TIMPA AND MADELAINE TIMPA,)	
17	Individually and as trustees of the TIMPA TRUST,)	
18	Defendants.)	
19	<hr/>		
20	ALL RELATED CLAIMS.)	
21	<hr/>		

REPUBLIC SERVICES REPLY TO COUNTERCLAIM

COMES NOW Defendants REPUBLIC SERVICES (hereinafter referred to collectively as "Republic"), by and through its attorney, Donald H. Williams, Esq. of The Law Offices of WILLIAMS & ASSOCIATES, and hereby admits, denies and alleges as follows:

- I. Answering paragraph 8 of the allegations in RED ROCK FINANCIAL SERVICES Counterclaim, Republic admits the same.
- II. Answering ALL REMAINING PARAGRAPHS, Republic states that it is without knowledge or information necessary to ascertain the truth or falsity of the allegations contained therein and therefore denies the same.

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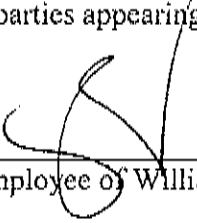
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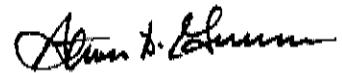
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I certify that I am an employee of Williams & Associates,
and that on the 23 day of June, 2015, I caused to be served via the Court's Wiznet online
filing system and pursuant to Administrative Order 14-2 a true and correct copy of the
foregoing **REPUBLIC SERVICES REPLY TO COUNTERCLAIM** in the above matter
to all parties appearing in this action and who have registered for E-service.



An Employee of Williams & Associates



CLERK OF THE COURT

CCAN
WRIGHT, FINLAY & ZAK, LLP
Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Shadd A. Wade, Esq.
Nevada Bar No. 11310
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 475-7964; Fax: (702) 946-1345
dnitz@wrightlegal.net
swade@wrightlegal.net

Attorneys for Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities Trust 2007-3

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; RECONTRUST COMPANY,
N.A. a division of BANK OF AMERICA;
FRANK TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUST,

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant

vs.

SATICOY BAY LLC SERIES 34
INNISBROOK, a Nevada limited-liability
company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL

Case No.: A-14-710161-C
DEPT No.: XXXI

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S ANSWER
TO RED ROCK FINANCIAL
SERVICES' COUNTERCLAIM FOR
INTERPLEADER (NRCP 22)**

SERVICES, an unknown entity; FRANK TIMPA, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Counter-defendants.

RED ROCK FINANCIAL SERVICES,

Counterclaimant,

vs.

THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAILS; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; REPUBLIC SERVICES; LAS VEGAS VALLEY WATER DISTRICT; FRANK TIMPA and MADELAINE TIMPA, individually and as trustees of the TIMPA TRUS U/T/D March 3, 1999; and DOES 1-100, inclusive,

Counter-Defendants.

COMES NOW Defendant/Counterclaimant/Counter-Defendant, THORNBURG MORTGAGE SECURITIES TRUST 2007-3, (hereinafter "THORNBURG" or "Counter-Defendant"), by and through its attorney of record, the law firm of Wright, Finlay & Zak, LLP, and hereby submits its Answer to the Counter-Defendant/Counterclaimant RED ROCK FINANCIAL SERVICES' (hereinafter "RED ROCK") Counterclaim.

PARTIES

1. Counter-Defendant admits the allegations contained in paragraphs 1 and 2 of the Complaint.

2. Counter-Defendant does not possess enough information to admit or deny the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Complaint; therefore, Defendant denies said allegations.

///

1 **GENERAL ALLEGATIONS**

2 3. Counter-Defendant does not possess enough information to admit or deny the
3 allegations contained in paragraphs 13, 14 and 15 of the Complaint; therefore, Defendant denies
4 said allegations.

5 **CAUSE OF ACTION**

6 **(Interpleader Against All Cross-Defendants [NRCP 22])**

7 4. Answering paragraph 16, Counter-Defendant hereby repeats, re-alleges and
8 incorporates each of its admissions, denials, or other responses to all the paragraphs referenced
9 hereinabove as if set forth at length and in full.

10 5. Counter-Defendant does not possess enough information to admit or deny the
11 allegations contained in paragraphs 17, 18, 19 and 20 of the Complaint; therefore, Defendant
12 denies said allegations.

13 **COUNTER-DEFENDANT ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:**

14 **FIRST AFFIRMATIVE DEFENSE**

15 **(Failure to State a Claim)**

16 Red Rock's Counterclaim fails to state a claim against Defendant upon which relief can
17 be granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 **(Priority)**

20 The Property remains subject to Counter-Defendant's first priority Deed of Trust, thereby
21 forestalling any enjoinder/extinguishment of Counter-Defendant's interest in the Property.

22 **THIRD AFFIRMATIVE DEFENSE**

23 **(Assumption of Risk)**

24 Red Rock, at all material times, calculated, knew and understood the risks inherent in the
25 situations, actions, omissions, and transactions upon which they now base their various claims
26 for relief, and with such knowledge, Red Rock undertook and thereby assumed such risks and is
27 consequently barred from all recovery by such assumption of risk.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Commercial Reasonableness and Violation of Good Faith - NRS 116.1113)**

3 The HOA lien foreclosure sale by which Plaintiff took its interest was commercially
4 unreasonable if it eliminated Counter-Defendant's Deed of Trust, as Plaintiff contends. The
5 sales price, when compared to the outstanding balance of First Note and Deed of Trust and the
6 fair market value of the Property, demonstrates that the sale was not conducted in good faith as a
7 matter of law. The circumstances of sale of the property violated the HOA's obligation of good
8 faith under NRS 116.1113 and duty to act in a commercially reasonable manner.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(Equitable Doctrines)**

11 Counter-Defendant alleges that the Red Rock's claims are barred by the equitable
12 doctrines of laches, unclean hands, estoppel, and failure to do equity.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 **(Acceptance)**

15 Counter-Defendant asserts that any acceptance of any portion of the excess proceeds does
16 not "satisfy" the amount due and owing on the Loan and would not constitute a waiver of its
17 rights under the Loan and Deed of Trust, or statute.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 **(Waiver and Estoppel)**

20 Counter-Defendant asserts that by reason of Red Rock's acts and omissions, Red Rock
21 has waived its rights and is estopped from asserting the claims against Counter-Defendants.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 **(Void for Vagueness and Ambiguity)**

24 To the extent that Red Rock's interpretation of NRS 116.3116 is accurate, the statute and
25 Chapter 116 as a whole are void for vagueness and ambiguity.

26 **NINTH AFFIRMATIVE DEFENSE**

27 **(Due Process Violations)**

28 A senior deed of trust beneficiary cannot be deprived of its property interest in violation

1 of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution
2 and Article 1, Sec. 8, of the Nevada Constitution.

3 **TENTH AFFIRMATIVE DEFENSE**

4 **(Violation of Procedural Due Process)**

5 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
6 pursuant to the Due Process Clause of the Nevada Constitution and United States Constitution.

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 **(Supremacy Clause)**

9 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
10 pursuant to the Supremacy Clause of the United States Constitution.

11 **TWELFTH AFFIRMATIVE DEFENSE**

12 **(Property Clause)**

13 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
14 pursuant to the Property Clause of the United States Constitution.

15 **THIRTEENTH AFFIRMATIVE DEFENSE**

16 **(Failure to Mitigate Damages)**

17 Counter-Defendant alleges that the Red Rock's claims are barred in whole or in part
18 because of the Red Rock's failure to take reasonable steps to mitigate the damages, if any, in this
19 case.

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

21 **(Tender of Super-priority Lien)**

22 Counter-Defendant alleges that it tendered payment of the super-priority portion of the
23 HOA liens to the HOA and/or its agents.

24 **FIFTEENTH AFFIRMATIVE DEFENSE**

25 **(Contracts Clause)**

26 The HOA Sale is void or otherwise does not operate to extinguish the first Deed of Trust
27 pursuant to the Contracts Clause of both the United States Constitution and the Nevada
28 Constitution.

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 **(Additional Affirmative Defenses)**

3 Counter-Defendant reserves the right to assert additional affirmative defenses in the event
4 discovery and/or investigation indicates that additional affirmative defenses are applicable.

5 **PRAYER**

6 WHEREFORE, Counter-Defendant prays for judgment as follows:

7 1. That the Court make a judicial determination that Counter-Defendant's Deed of
8 Trust is superior to Plaintiff's claim of title to the Subject Property;

9 2. That the Court make a judicial determination that Counter-Defendant's Deed of
10 Trust survived the HOA Sale for Subject Property;

11 3. That the Court make a judicial determination that Plaintiff took title subject to
12 Counter-Defendant's Deed of Trust on the Subject Property;

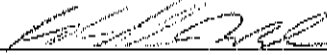
13 4. That the Court stay any distribution of the interplead funds until there is a final
14 resolution to the competing claims to title.

15 5. For reasonable attorney's fees and costs; and

16 6. For any such other and further relief as the Court may deem just and proper in the
17 case.

18 DATED this 24 day of June, 2015.

19
20 WRIGHT, FINLAY & ZAK, LLP

21 
22 Dana Jonathon Nitz, Esq.

23 Nevada Bar No. 0050

24 Shadd A. Wade, Esq.

25 Nevada Bar No. 11310

26 7785 W. Sahara Ave., Suite 200

27 Las Vegas, NV 89117

28 *Attorneys for Defendant/Counterclaimant/Counter-*
Defendant, Thornburg Mortgage Securities Trust
2007-3

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The undersigned does hereby affirm that the preceding **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER TO RED ROCK FINANCIAL SERVICES' COUNTERCLAIM FOR INTERPLEADER (NRCP 22)** filed in Case No. A-14-710161-C does not contain the social security number of any person.

WRIGHT, FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Shadd A. Wade, Esq.
Nevada Bar No. 11310
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
*Attorneys for Defendant/Counterclaimant/Counter-
Defendant, Thornburg Mortgage Securities Trust
2007-3*

CERTIFICATE OF SERVICE

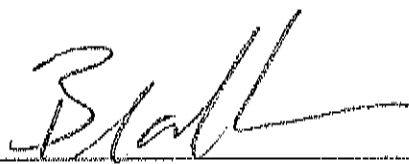
Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 24 day of June, 2015, I did cause a true copy of
DEFENDANT/COUNTERCLAIMANT THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER AND COUNTER-CLAIMS to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9:

Koch & Scow LLC

Name	Email
David R. Koch	dkoch@kochscow.com
Robert L. English	renglish@kochscow.com
Staff	aeshenbaugh@kochscow.com
Steven B. Scow	sscow@kochscow.com

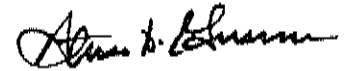
Law Offices of Michael F. Bohn, Esq.

Name	Email
Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq	mbohn@bohnlawfirm.com


An Employee of WRIGHT, FINLAY & ZAK, LLP

AOS

**DISTRICT COURT, CLARK COUNTY
CLARK COUNTY, NEVADA**


CLERK OF THE COURT

**SATICOY BAY LLC SERIES 34
INNISBROOK**

Plaintiff

vs

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3; ET
AL.**

Defendant

CASE NO: A-14-710161-C

HEARING DATE/TIME:

DEPT NO: XXXI

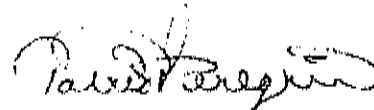
AFFIDAVIT OF SERVICE

PATRICK J. PEREGRIN being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the SUMMONS, RED ROCK FINANCIAL SERVICES ANSWER TO THORNBURG MORTGAGE SECURITIES TRUST 2007-3 COUNTERCLAIM; AND RED ROCK FINANCIAL SERVICES COUNTERCLAIM FOR INTERPLEADER (NRCP 22), on the 12th day of June, 2015 and served the same on the 17th day of June, 2015, at 12:15 by:

serving the servee COUNTRYWIDE HOME LOANS, INC. C/O REGISTERED AGENT THE CORPORATION TRUST COMPANY OF NEVADA by personally delivering and leaving a copy at (address) 311 S DIVISION ST., CARSON CITY NV 89703 with LINDA ROBERTSON, pursuant to NRS 14,020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 53.045

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



EXECUTED this 17 day of Jun, 2015.

PATRICK J. PEREGRIN

AOS

**DISTRICT COURT, CLARK COUNTY
CLARK COUNTY, NEVADA**


CLERK OF THE COURT

**SATICOY BAY LLC SERIES 34
INNISBROOK**

Plaintiff

vs

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3; ET
AL.**

Defendant

CASE NO: A-14-710161-C

HEARING DATE/TIME:

DEPT NO: XXXI

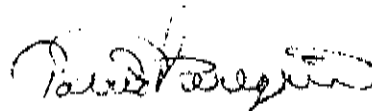
AFFIDAVIT OF SERVICE

PATRICK J. PEREGRIN being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received copy(ies) of the SUMMONS, RED ROCK FINANCIAL SERVICES ANSWER TO THORNBURG MORTGAGE SECURITIES TRUST 2007-3 COUNTERCLAIM; AND RED ROCK FINANCIAL SERVICES COUNTERCLAIM FOR INTERPLEADER (NRCF 22), on the 12th day of June, 2015 and served the same on the 17th day of June, 2015, at 12:15 by:

serving the servee REPUBLIC SERVICES, INC. C/OTHE CORPORATION TRUST COMPANY by personally delivering and leaving a copy at (address) 311 S. Division St., CARSON CITY NV 89703 with LINDA ROBERTSON, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 53.045

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



EXECUTED this 17 day of Jun, 2015

PATRICK J. PEREGRIN

AOS

**DISTRICT COURT, CLARK COUNTY
CLARK COUNTY, NEVADA**


CLERK OF THE COURT

**SATICOY BAY LLC SERIES 34
INNISBROOK**

Plaintiff

vs

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3; ET
AL.**

Defendant

CASE NO: A-14-710161-C

HEARING DATE/TIME:

DEPT NO: XXXII

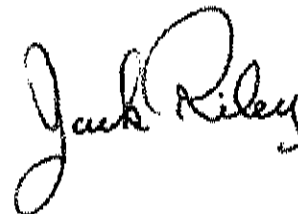
AFFIDAVIT OF SERVICE

JACK RILEY R-045599 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the SUMMONS, RED ROCK FINANCIAL SERVICES ANSWER TO THORNBURG MORTGAGE SECURITIES TRUST 2007-3 COUNTERCLAIM; AND RED ROCK FINANCIAL SERVICES COUNTERCLAIM FOR INTERPLEADER (NRCP 22), on the 12th day of June, 2015 and served the same on the 15th day of June, 2015, at 13:00 by:

serving the servee ESTATES WEST AT SPANISH TRAIL C/O REGISTERED AGENT ASA ASHCRAFT by personally delivering and leaving a copy at (address) 7495 W MISSION HILLS DR, LAS VEGAS NV 89113 with LISA PARRY, MANAGER DIRECTOR pursuant to NRS 14,020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 53.045

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



EXECUTED this 15 day of Jun, 2015

JACK RILEY R-045599

**DISTRICT COURT, CLARK COUNTY
CLARK COUNTY, NEVADA**Electronically Filed
07/01/2015 03:03:26 PM

CLERK OF THE COURT

SATICOY BAY LLC SERIES 34 INNISBROOK

Plaintiff

vs

THORNBURG MORTGAGE SECURITIES TRUST
2007-3; ET AL.

Defendant

CASE NO: A-14-710161-C

HEARING DATE/TIME:

DEPT NO: XXXI

AFFIDAVIT OF SERVICE

JEFFREY PALMER being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age; not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the SUMMONS; RED ROCK FINANCIAL SERVICES ANSWER TO THURNBURG MORTGAGE SECURITIES TRUST 2007-3 COUNTERCLAIM; AND RED ROCK FINANCIAL SERVICES COUNTERCLAIM FOR INTERPLEADER (NRCP 22), on the 12th day of June, 2015 and served the same on the 17th day of June, 2015, at 09:00 by:

serving the servee MORTGAGE ELECTRONIC REGISTRATION SYSTEM C/O REGISTERED AGENT GENPACT REGISTERED AGENT INC by personally delivering and leaving a copy at (address) 1901 E VOORHEES ST., SUITE, DANVILLE IL 61834 with TRACIE ELLIS, pursuant to NRS 14,020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 53.045

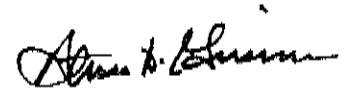
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 19 day of June, 2015.

JEFFREY PALMER

AOS

**DISTRICT COURT, CLARK COUNTY
CLARK COUNTY, NEVADA**


CLERK OF THE COURT

**SATICOY BAY LLC SERIES 34
INNISBROOK**

Plaintiff

vs

**THORNBURG MORTGAGE
SECURITIES TRUST, ET AL.**

Defendant

CASE NO: A-14-710161-C

HEARING DATE/TIME:

DEPT NO:

AFFIDAVIT OF SERVICE

GREGORY BROWN R-013683 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the SUMMONS, RED ROCK FINANCIAL SERVICES' ANSWER TO THORNBURG MORTGAGE SECURITIES TRUST 2007-3 COUNTERCLAIM; AND RED ROCK FINANCIAL SERVICES' COUNTERCLAIM FOR INTERPLEADER, on the 9th day of July, 2015 and served the same on the 14th day of July, 2015, at 13:43 by:

serving the servee LAS VEGAS VALLEY WATER DISTRICT C/O MARY BETH SCOW (COUNTY COMMISSIONERS OFFICE) by personally delivering and leaving a copy at (address) 500 S. GRAND CENTRAL PKWY. 6TH FL, LAS VEGAS NV 89155 with CAROLE VILLNEUVE as , an agent lawfully designated by statute to accept service of process;

DESCRIPTION: CAUCASIAN FEMALE IN 60s, 5'6, 150LBS, BLOND HAIR AND GLASSES

Pursuant to NRS 53.045

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

EXECUTED this 14 day of Jul, 2015.

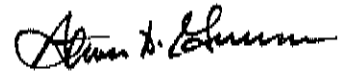


GREGORY BROWN R-013683

Junos Legal Services - 630 South 10th Street - Suite B - Las Vegas NV 89101 - (702) 579-6300 - Fax (702) 259-6249 - Toll Free (888) 56Junes

EP113390

JA0128



CLERK OF THE COURT

1 ANS

2 WRIGHT, FINLAY & ZAK, LLP

3 Dana Jonathon Nitz, Esq.

4 Nevada Bar No. 0050

5 Eric S. Powers, Esq.

6 Nevada Bar No. 12850

7 7785 W. Sahara Ave., Suite 200

8 Las Vegas, NV 89117

9 (702) 475-7964; Fax: (702) 946-1345

10 epowers@wrightlegal.net

11 *Attorneys for Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities*
12 *Trust 2007-3*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 SATICOY BAY LLC SERIES 34
16 INNISBROOK,

17 Plaintiff,

18 vs.

19 THORNBURG MORTGAGE SECURITIES
20 TRUST 2007-3; RECONTRUST COMPANY,
21 N.A. a division of BANK OF AMERICA;
22 FRANK TIMPA and MADELAINE TIMPA,
23 individually and as trustees of the TIMPA
24 TRUST,

25 Defendants.

26 THORNBURG MORTGAGE SECURITIES
27 TRUST 2007-3,

28 Counterclaimant

vs.

SATICOY BAY LLC SERIES 34
INNISBROOK, a Nevada limited-liability
company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK
TIMPA, an individual; DOES I through X; and

Case No.: A-14-710161-C
DEPT No.: XXXI

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S ANSWER
TO SECOND AMENDED COMPLAINT**

1 ROE CORPORATIONS I through X, inclusive,
2 Counter-defendants.

3 RED ROCK FINANCIAL SERVICES,
4 Counterclaimant,

5 vs.

6
7 THORNBURG MORTGAGE SECURITIES
8 TRUST 2007-3; COUNTRYWIDE HOME
9 LOANS, INC.; ESTATES WEST AT
10 SPANISH TRAILS; MORTGAGE
11 ELECTRONIC REGISTRATION SYSTEMS,
12 INC.; REPUBLIC SERVICES; LAS VEGAS
13 VALLEY WATER DISTRICT; FRANK
TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUS U/T/D March 3, 1999; and DOES 1-100,
inclusive,

14 Counter-Defendants.

15 Defendant, Thornburg Mortgage Securities Trust 2007-3 ("Thornburg"), by and through
16 its attorneys of record Dana Jonathon Nitz, Esq., and Eric S. Powers, Esq., of the law firm of
17 Wright, Finlay & Zak, LLP, hereby submits its Answer to Saticoy Bay LLC Series 34
18 Innisbrook's ("Saticoy" or "Plaintiff") Second Amended Complaint. Nothing in this Answer to
19 Second Amended Complaint is intended to disturb Thornburg's previously filed Counterclaims
20 filed on April 10, 2015.

21 **ANSWER TO SECOND AMENDED COMPLAINT**

22 1. Thornburg admits that Plaintiff was the highest bidder at an HOA foreclosure sale for
23 the real property located at 34 Innisbrook, Las Vegas, Nevada (the "Property"). Thornburg
24 denies that Plaintiff is the owner of the Property. Thornburg maintains that its interest in the
25 Property is secure and valid.

26 2. Thornburg denies the allegations contained in Paragraph 2 of the Complaint.

27 3. Thornburg avers that the allegations contained in Paragraph 3 state a legal conclusion for
28 which no response is required; provided however, to the extent Paragraph 3 does require a

1 response, Thornburg denies that Plaintiff obtained title to the Property. Thornburg does not have
2 enough information to admit or deny the remaining allegations contained in Paragraph 3 and
3 denies the same.

4 4. Thornburg admits the allegations contained in Paragraph 4 of the Complaint.

5 5. The allegations contained in Paragraph 5 contain statements directed to entities in which
6 Thornburg is not a party therefore, no response is required. To the extent a response is required;
7 Thornburg admits that Madelaine and Frank Timpa were the former owners of the Property.

8 6. Thornburg denies the allegations contained in Paragraph 6 of the Complaint.

9 7. Thornburg avers that the allegations contained in Paragraph 7 of the Complaint contain
10 legal conclusions to which no response is required; provided however, to the extent Paragraph 7
11 does require a response, Thornburg does not have adequate information or knowledge to admit
12 or deny the allegations contained in Paragraph 7 of the Complaint; therefore, Thornburg denies
13 the same.

14 8. Thornburg does not have adequate information or knowledge to admit or deny the
15 allegations contained in Paragraph 8 of the Complaint; therefore, Thornburg denies the same.

16 9. Thornburg denies the allegations contained in Paragraph 9 of the Complaint.

17 10. Thornburg denies the allegations contained in Paragraph 10 of the Complaint.

18 **SECOND CLAIM FOR RELIEF**

19 11. Answering Paragraph 11, Thornburg hereby repeats, re-alleges and incorporates each of
20 its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set
21 forth at length and in full.

22 12. Thornburg avers that the allegations contained in paragraph 12 state legal conclusions for
23 which no response is required; provided however, to the extent paragraph 40 does require a
24 response, Thornburg denies the allegations contained in Paragraph 12 of the Complaint.

25 13. Thornburg denies the allegations contained in Paragraph 13 of the Complaint.

26 **THIRD CLAIM FOR RELIEF**

27 14. Answering Paragraph 14, Thornburg hereby repeats, re-alleges and incorporates each of
28 its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set

1 forth length and in full.

2 15. Thornburg does not have adequate information or knowledge to admit or deny the
3 allegations contained in Paragraph 15; therefore, Thornburg denies said allegations.

4 16. Thornburg does not have adequate information or knowledge to admit or deny the
5 allegations contained in Paragraph 16; therefore, Thornburg denies said allegations.

6 17. Thornburg does not have adequate information or knowledge to admit or deny the
7 allegations contained in Paragraph 17; therefore, Thornburg denies said allegations.

8 18. Thornburg denies the allegations contained in Paragraph 18 of the Complaint.

9 19. Thornburg denies the allegations contained in Paragraph 19 of the Complaint.

10
11 **AFFIRMATIVE DEFENSES**

12 **FIRST AFFIRMATIVE DEFENSE**

13 **(Failure to State a Claim)**

14 Plaintiff's Complaint fails to state a claim against Thornburg upon which relief can be
15 granted.

16 **SECOND AFFIRMATIVE DEFENSE**

17 **(Priority)**

18 Plaintiff took title of the Property subject to Thornburg's first priority Deed of Trust,
19 thereby forestalling any enjoinder/extinguishment of Thornburg's interest in the Property.

20 **THIRD AFFIRMATIVE DEFENSE**

21 **(Assumption of Risk)**

22 Plaintiff, at all material times, calculated, knew and understood the risks inherent in the
23 situations, actions, omissions, and transactions upon which they now base their various claims
24 for relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and is
25 consequently barred from all recovery by such assumption of risk.
26
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1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Commercial Reasonableness and Violation of Good Faith - NRS 116.1113)**

3 The HOA lien foreclosure sale by which Plaintiff took its interest was commercially
4 unreasonable if it eliminated Defendant's Deed of Trust, as PJ contends. The sales price, when
5 compared to the outstanding balance of First Note and Deed of Trust and the fair market value of
6 the Property, demonstrates that the sale was not conducted in good faith as a matter of law. The
7 circumstances of sale of the property violated the HOA's obligation of good faith under NRS
8 116.1113 and duty to act in a commercially reasonable manner.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(Equitable Doctrines)**

11 Thornburg alleges that the Plaintiff's claims are barred by the equitable doctrines of
12 laches, unclean hands, equitable estoppel, and failure to do equity.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 **(Acceptance)**

15 Plaintiff asserts that any acceptance of any portion of possible excess proceeds does not
16 "satisfy" the amount due and owing on the Loan and would not constitute a waiver of its rights
17 under the Loan and Deed of Trust, or statute.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 **(Waiver and Estoppel)**

20 Thornburg asserts that by reason of Plaintiff's acts and omissions, Plaintiff has waived its
21 rights and is estopped from asserting the claims against Thornburg.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 **(Void for Vagueness, Ambiguity, Violation of Due Process)**

24 To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute and
25 Chapter 116 as a whole are void for vagueness, ambiguity, and violation of due process.
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NINTH AFFIRMATIVE DEFENSE

(Due Process Violations)

A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

TENTH AFFIRMATIVE DEFENSE

(Violation of Procedural Due Process)

The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Due Process Clause of the Nevada Constitution and United States Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

(Supremacy Clause)

The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Supremacy Clause of the United States Constitution.

TWELFTH AFFIRMATIVE DEFENSE

(Property Clause)

The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Property Clause of the United States Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Plaintiff alleges that the PJ's claims are barred in whole or in part because of the Plaintiff's failure to take reasonable steps to mitigate the damages, if any, in this case.

FOURTEENTH AFFIRMATIVE DEFENSE

(Contracts Clause)

The HOA Sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Contracts Clause of both the United States Constitution and the Nevada Constitution.

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 **(Additional Affirmative Defenses)**

3 Plaintiff reserves the right to assert additional affirmative defenses in the event discovery
4 and/or investigation indicates that additional affirmative defenses are applicable.

5 **ON ACCOUNT OF THE FIRST CLAIM FOR RELIEF**

6 WHEREFORE, Thornburg prays as follows:

- 7 1. That the Court make a judicial determination that Thornburg's Deed of Trust is superior
8 to Plaintiff's claim of title;
- 9 2. That the Court make a judicial determination that Thornburg's Deed of Trust survived the
10 HOA Sale;
- 11 3. That the Court make a judicial determination that Plaintiff took title subject to
12 Thornburg's Deed of Trust;
- 13 4. That Plaintiff recovers nothing on account of the claims made in the Second Amended
14 Complaint and each of their purported claims;
- 15 5. For reasonable attorney's fees and costs; and
- 16 6. For any such other and further relief as the Court may deem just and proper in the case.

17 **ON ACCOUNT OF THE SECOND CLAIM FOR RELIEF**

18 WHEREFORE, Thornburg prays as follows:

- 19 1. That the Court make a judicial determination that Thornburg's Deed of Trust is superior
20 to Plaintiff's claim of title;
- 21 2. That the Court make a judicial determination that Thornburg's Deed of Trust survived the
22 HOA Sale;
- 23 3. That the Court make a judicial determination that Plaintiff took title subject to
24 Thornburg's Deed of Trust;
- 25 4. That Plaintiff recovers nothing on account of the claims made in the Second Amended
26 Complaint and each of their purported claims;
- 27 5. For reasonable attorney's fees and costs; and
- 28

1 6. For any such other and further relief as the Court may deem just and proper in the case.

2 **ON ACCOUNT OF THE THIRD CLAIM FOR RELIEF**

3 WHEREFORE, Thornburg prays as follows:

4 1. That the Court not award restitution or possession of the premises;

5 2. That Plaintiff recovers nothing on account of the claims made in the Second Amended
6 Complaint and each of their purported claims;

7 3. For reasonable attorney's fees and costs; and

8 4. For any such other and further relief as the Court may deem just and proper in the case.

9 DATED this 23rd day of May, 2016.

10 WRIGHT, FINLAY & ZAK, LLP

11
12 /s/ Eric S. Powers

13 Dana Jonathon Nitz, Esq.

14 Nevada Bar No. 0050

Eric S. Powers, Esq.

15 Nevada Bar No. 12850

7785 W. Sahara Ave., Suite 200

16 Las Vegas, NV 89117

17 *Attorneys for Defendant/Counterclaimant/Counter-*
Defendant, Thornburg Mortgage Securities Trust
2007-3

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER TO SECOND AMENDED COMPLAINT** filed in Case No. A-14-710161-C **does not** contain the social security number of any person.
DATED this 23rd day of May, 2016.

WRIGHT, FINLAY & ZAK, LLP

/s/ Eric S. Powers

Dana Jonathon Nitz, Esq.

Nevada Bar No. 0050

Eric S. Powers, Esq.

Nevada Bar No. 12850

7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

Attorneys for Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities Trust 2007-3

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 23rd day of May, 2016, I did cause a true copy of **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER TO SECOND AMENDED COMPLAINT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9:

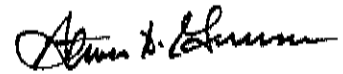
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Gregory J. Walch, Esq.
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LAS VEGAS VALLEY WATER DISTRICT
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725 East Charleston Blvd.
Las Vegas, NV 89101

Sean Anderson, Esq.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Rd., Suite 330
Las Vegas, NV 89148

/s/ Faith Harris
An Employee of WRIGHT, FINLAY & ZAK, LLP



CLERK OF THE COURT

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3 ADAM R. TRIPPIEDI, ESQ.
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4 atrippiedi@bohnlawfirm.com
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5 MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
6 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

7 Attorney for plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 34 INNISBROOK,

11 Plaintiff,

12 vs.

13 THORNBURG MORTGAGE SECURITIES TRUST
14 2007-3; and RECONTRUST COMPANY, N.A. a
15 division of BANK OF AMERICA; FRANK TIMPA
and MADELAINE TIMPA, individually and as
16 trustees of the TIMPA TRUST; SPANISH TRAIL
MASTER ASSOCIATION; and RED ROCK
17 FINANCIAL SERVICES;

18 Defendants.

19 THORNBURG MORTGAGE SECURITIES
20 TRUST 2007-3,

21 Counter-claimant

22 vs.

23 SATICOY BAY LLC SERIES 34 INNISBROOK, a
Nevada limited-liability company; SPANISH
24 TRAIL MASTER ASSOCIATION, a Nevada Non-
Profit Corporation; RED ROCK FINANCIAL
25 SERVICES, an unknown entity; FRANK TIMPA,
an individual; DOES I through X and ROE
26 CORPORATIONS I through X, inclusive,

27 Counter-defendants

CASE NO.: A-14-710161-C
DEPT NO.: XV

EXEMPTION FROM ARBITRATION:
Title to real property

1 RED ROCK FINANCIAL SERVICES

2 Counter-claimant,

3 vs

4 THORNBURG MORTGAGE SECURITIES
5 TRUST 2007-3; COUNTRYWIDE HOME
6 LOANS, INC.; ESTATES WEST AT SPANISH
7 TRAIL; MORTGAGE ELECTRONIC
8 REGISTRATION SYSTEMS, INC.; REPUBLIC
9 SERVICES; LAS VEGAS VALLEY WATER
DISTRICT; FRANK TIMPA and MADELINE
TIMPA, individually and as trustees of the TIMPA
TRUST U/T/D March 3, 1999; and DOES 1-100,
inclusive,

10 Counter-Defendants.

11 **THIRD AMENDED COMPLAINT**

12 Plaintiff Saticoy Bay LLC Series 34 Innisbrook, by and through its attorney, the Law Offices of
13 Michael F. Bohn, Esq. alleges as follows:

14 1. Plaintiff is the owner of the real property commonly known as 34 Innisbrook, Las Vegas,
15 Nevada.

16 2. Plaintiff obtained title by a foreclosure sale conducted on November 7, 2014, as evidenced by
17 foreclosure deed recorded on November 10, 2014.

18 3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments
19 due from the former owners, Frank and Madelaine Timpa to defendant Spanish Trails Master Association
20 pursuant to NRS Chapter 116.

21 4. Defendant Thornburg Mortgage Securities Trust 2007-3 is the current beneficiary of a deed
22 of trust which was recorded as an encumbrance to the subject property on June 12, 2006, as instrument
23 number 20060612-0001581.

24 5. Defendants Frank and Madelaine Timpa individually and as trustees of the Timpa Trust are
25 the former owners of the property.

26 6. Defendant Red Rock Financial Services, LLC was the collection agent and foreclosure agent
27

1 acting on behalf of defendant Spanish Trail Master Association.

2 7. The interest of each of the defendants has been extinguished by reason of the foreclosure sale,
3 which was properly conducted with adequate notice given to all persons and entities claiming an interest
4 in the subject property, and resulting from a delinquency in assessments due from the former owner, to
5 the Spanish Trail Master Association, pursuant to NRS Chapter 116.

6 8. The HOA foreclosure sale complied with all requirements of law, including, but not limited
7 to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the
8 recording, posting, and publishing of the Notice of Sale.

9 9. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the plaintiff
10 is the rightful owner of the property and that the defendants have no right, title, interest or claim to the
11 subject property.

12 10. The plaintiff is entitled to an award of attorneys fees and costs.

13 **SECOND CLAIM FOR RELIEF**

14 11. Plaintiff repeats the allegations contained in paragraphs 1 through 10.

15 12. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property
16 is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no
17 estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any
18 estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

19 13. The plaintiff is entitled to an award of attorneys fees and costs.

20 **THIRD CLAIM FOR RELIEF**

21 14. Plaintiff repeats the allegations contained in paragraphs 1 through 13.

22 15. Defendants Frank and Madelaine Timpa individually and as trustee of the Timpa Trust were
23 served with a 3 day notice to quit.

24 16. The defendants have failed to vacate the premises despite the notice that have been served
25 upon him.

26 17. The defendants have remained in possession of said property up to and including the present
27 time.

1 18. The plaintiff is entitled to a Writ of Restitution of the restoring possession to the plaintiff.

2 19. Plaintiff is entitled to an award of attorneys fees and costs of suit.

3 **FOURTH CLAIM FOR RELIEF**

4 20. Plaintiff repeats the allegations contained in paragraphs 1 through 19.

5 21. Defendant Thornburg Mortgage Securities Trust 2007-3 claims its predecessor-in-interest,
6 Bank of America, N.A., tendered its calculation of the super-priority amount of the HOA lien to
7 defendant Red Rock Financial Services, LLC (hereinafter "RRFS").

8 22. RRFS and Spanish Trail Master Association (the "HOA") had an obligation to inform the
9 bidders at the foreclosure sale if the super priority portion of the HOA lien had been tendered prior to the
10 foreclosure sale.

11 23. RRFS and the HOA did not make any statement advising bidders that Bank of America, N.A.
12 tendered the super-priority portion of the lien.

13 24. Plaintiff is informed and believes and thereupon alleges that the HOA and RRFS intended
14 that the buyers at the HOA foreclosure sale held on November 7, 2014, believe that the assessment lien
15 being foreclosed included a super-priority component that would extinguish the first deed of trust
16 recorded against the Property.

17 25. Plaintiff reasonably relied upon the notices and representations of the HOA and RRFS and
18 entered the high bid of \$1,201,000.00 for the Property with the reasonable belief that the HOA's
19 assessment lien being foreclosed by the HOA and RRFS included a superpriority portion that would
20 extinguish the first deed of trust recorded against the Property.

21 26. Plaintiff still believes that the HOA assessment lien contained a super-priority portion, but
22 if the Court finds otherwise, then Plaintiff will have been damaged in an amount in excess of \$10,000.00
23 by HOA and RRFS failing to disclose that the tender was made by Bank of America at some point prior
24 to the foreclosure sale.

25 27. If the Court finds that the HOA assessment lien did not contain a super-priority portion, then
26 Plaintiff's high bid for the Property should be rescinded due to the misrepresentations made by the HOA
27 and RRFS in the foreclosure documents, and all monies paid by Plaintiff should be refunded to Plaintiff.

1 28. Plaintiff is entitled to an award of attorneys fees and costs.

2 **FIFTH CLAIM FOR RELIEF**

3 29. Plaintiff repeats the allegations contained in paragraphs 1 through 28.

4 30. If the HOA or RRFS had disclosed in the documents recorded with the County Recorder, or
5 at the public auction held on November 7, 2014, that the assessment lien being foreclosed did not have
6 a super priority component, Plaintiff would not have bid and paid \$1,201,000.00 for the Property.

7 31. If the Court finds that the HOA assessment lien did not contain a super-priority portion, then
8 the HOA and RRFS will have been unjustly enriched by the amount of Plaintiff's bid that would not have
9 been made by Plaintiff if the HOA and RRFS had disclosed that Bank of America claimed to have
10 tendered the superpriority amount of the assessment lien, which is an amount in excess of \$10,000.00.

11 32. Plaintiff is entitled to an award of attorneys fees and costs.

12 WHEREFORE, plaintiff prays for Judgment as follows:

13 1. For injunctive relief;

14 2. For a determination and declaration that plaintiff is the rightful holder of title to the property,
15 free and clear of all liens, encumbrances, and claims of the defendants.

16 3. For a determination and declaration that the defendants have no estate, right, title, interest or
17 claim in the property.

18 4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest
19 or claim in the property;

20 5. If the Court finds that the assessment lien did not include a superpriority portion, for a
21 judgment against the HOA and RRFS rescinding Plaintiff's purchase of the Property and requiring all
22 monies paid by Plaintiff to be refunded, or in the alternative, for damages in an amount in excess of
23 \$10,000.00; and

24 ///

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26 ///

1 6. For such other and further relief as the Court may deem just and proper.

2 DATED this 10th day of February 2017.

3 LAW OFFICES OF
4 MICHAEL F. BOHN, ESQ., LTD.

5 By: /s/ Adam R. Trippiedi, Esq.
6 Michael F. Bohn, Esq.
7 Adam R. Trippiedi, Esq.
8 376 East Warm Springs Road, Ste. 140
9 Las Vegas, Nevada 89119
10 Attorney for plaintiff

11 **CERTIFICATE OF SERVICE**

12 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW
13 OFFICES OF MICHAEL F. BOHN, ESQ., and on the 10th day of February 2017., an electronic copy
14 of the **THIRD AMENDED COMPLAINT** was served on opposing counsel via the Court's electronic
15 service system to the following:

16 Dana J. Nitz, Esq.
17 Eric Powers, Esq.
18 WRIGHT, FINLAY & ZAK, LLP
19 7785 W. Sahara Ave., Ste. 200
20 Las Vegas, NV 89117
21 Attorneys for Thornburg Mortgage
22 Securities Trust 2007-3

Donald H. Williams
Robin Gullo
Williams & Associates
612 S. 10th Street
Las Vegas, NV 89101
Attorney for Republic Services

20 Bryan Naddafi, Esq.
21 Olympia Law P.C.
22 292 Francisco St.
23 Henderson, NV 89014
24 Attorney for Frank and Madeline Timpa

David R. Koch, Esq.
Steven B. Scow, Esq.
Robert L. English, Esq.
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Attorneys for Red Rock Financial Services

25 /s/ Marc Sameroff /
26 An Employee of the LAW OFFICES OF
27 MICHAEL F. BOHN, ESQ., LTD.

JA0145

1 I. Answering paragraph 8 and paragraphs 1 through 6, Republic states that it is without
2 knowledge or information necessary to ascertain the truth or falsity of the
3 allegations contained therein and therefore denies the same.

4 II. Answering paragraphs 7, 9 and 10 of the allegations in Plaintiff's Complaint,
5 Republic denies the same.

6 **SECOND CLAIM FOR RELIEF**

7 III. Answering paragraph 11 of the allegations in Plaintiff's Complaint, Republic repeats
8 and realleges its responses to the preceding paragraphs as if fully set forth herein.

9 IV. Answering paragraphs 12, Republic states that it is without knowledge or information
10 necessary to ascertain the truth or falsity of the allegations contained therein and
11 therefore denies the same.

12 V. Answering paragraph 13 of the allegations in Plaintiff's Complaint, Republic denies
13 the same.

14 **THIRD CLAIM FOR RELIEF**

15 VI. Answering paragraph 14 of the allegations in Plaintiff's Complaint, Republic repeats
16 and realleges its responses to the preceding paragraphs as if fully set forth herein.

17 VII. Answering paragraphs 15 through 19, Republic states that it is without knowledge or
18 information necessary to ascertain the truth or falsity of the allegations contained
19 therein and therefore denies the same.

20 **FOURTH CLAIM FOR RELIEF**

21 VIII. Answering paragraph 20 of the allegations in Plaintiff's Complaint, Republic repeats
22 and realleges its responses to the preceding paragraphs as if fully set forth herein.

23 IX. Answering paragraphs 21 through 28, Republic states that it is without knowledge or
24 information necessary to ascertain the truth or falsity of the allegations contained
25 therein and therefore denies the same.

26 **FIFTH CLAIM FOR RELIEF**

27 X. Answering paragraph 29 of the allegations in Plaintiff's Complaint, Republic repeats
28 and realleges its responses to the preceding paragraphs as if fully set forth herein.

1 XI. Answering paragraphs 30 through 32, Republic states that it is without knowledge or
2 information necessary to ascertain the truth or falsity of the allegations contained
3 therein and therefore denies the same.

4 **AFFIRMATIVE DEFENSES**

- 5 1. Regardless of any dispute in this matter, Republic's liens enjoy priority over the liens
6 of Plaintiff and of the other Defendants and/parties and are not extinguished by
7 foreclosure pursuant to NRS 444.520(3) and any other relevant statutes and/or
8 city or county ordinances.
- 9 2. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have
10 been alleged herein insofar as sufficient facts were not available after reasonable
11 inquiry upon the filing of the Reply, and therefore, Republic reserves the right to
12 amend this Reply to allege additional affirmative defenses, if subsequent
13 investigation warrants.

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WHEREFORE, Republic prays as follows:

1. That Republic's liens have priority over all other liens and encumbrances on the subject property;
2. That Republic is entitled to an Order permitting the entire amount of Republic's liens be paid directly to Republic from the funds interpled by Plaintiff; and
3. For such other and further relief as the Court may deem just and equitable.

DATED this 12 day of February, 2017.

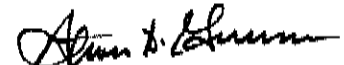
WILLIAMS & ASSOCIATES

DONALD H. WILLIAMS, ESQ.
Nevada Bar No.5548
642 South Tenth Street
Las Vegas, Nevada 89101
*Attorney for Defendants Republic
Services*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I certify that I am an employee of Williams & Associates, and that on the 17th day of February, 2017, I caused to be served via the Court's Wiznet online filing system and pursuant to **Administrative Order 14-2** a true and correct copy of the foregoing **ANSWER TO THIRD AMENDED COMPLAINT** in the above matter to all parties listed on the e-service list for the instant case.

Employee of WILLIAMS & ASSOCIATES



CLERK OF THE COURT

CCAN
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STEVEN B. SCOW
Nevada Bar No. 9906
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Attorneys for Defendant/Counter-Defendant/Counterclaimant
Red Rock Financial Services

EIGHTH DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34 INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; RECONSTRUCT COMPANY,
N.A. a division of BANK OF AMERICA;
FRANK TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUST; SPANISH TRAIL MASTER
ASSOCIATION; and RED ROCK FINANCIAL
SERVICES

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 34 INNISBROOK,
a Nevada Limited-liability company; SPANISH
TRAIL MASTER ASSOCIATION, a Nevada
Non-Profit Corporation; RED ROCK

Case No.: A-14-710161-C
Dept.: XXXI

**RED ROCK FINANCIAL
SERVICES' ANSWER TO
PLAINTIFF'S THIRD AMENDED
COMPLAINT**

1 FINANCIAL SERVICES, LLC, an unknown
2 entity; FRANK TIMPA, an individual; DOES 1
3 through X; and ROE CORPORATIONS I
through X, inclusive,

4 Counter-Defendants.

5
6 RED ROCK FINANCIAL SERVICES,

7 Counterclaimant,

8 vs.

9 THORNBURG MORTGAGE SECURITIES
10 TRUST 2007-3; COUNTRYWIDE HOME
11 LOANS, INC.; ESTATES WEST AT SPANISH
12 TRAILS; MORTGAGE ELECTRONIC
13 REGISTRATION SYSTEM, INC.; REPUBLIC
14 SERVICES; LAS VEGAS VALLEY WATER
DISTRICT; FRANK TIMPA and MADELAINE
TIMPA, individually and as trustees of the
TIMPA TRUST U/T/D March 3, 1999; and
DOES 1-100, inclusive,

15 Counter-Defendants.

16
17 RED ROCK FINANCIAL SERVICES ("Red Rock") answers the third amended
18 complaint filed by Plaintiff SATICOY BAY LLC SERIES 34 INNISBROOK ("Plaintiff"),
19 and admits, denies, and alleges as follows:

20 **THIRD AMENDED COMPLAINT**

21 1. In response to paragraphs 1 through 5, Red Rock is without sufficient
22 information to form a belief as to the truth of the allegations of these paragraphs and on
23 that basis denies the allegations.

24 2. In response to paragraph 6, Red Rock admits that it acted as the collection
25 and foreclosure agent of Spanish Trail Master Association.

26 3. Paragraphs 7 through 10 of the Complaint state legal conclusions, and no
27 response is necessary.

28 ///

1 **SECOND CLAIM FOR RELIEF**

2 4. In response to paragraph 11, Red Rock repeats and reasserts its responses
3 to all previous paragraphs.

4 5. Paragraphs 12 and 13 of the Complaint state legal conclusions, and no
5 response is necessary.

6 **THIRD CLAIM FOR RELIEF**

7 6. In response to paragraph 14, Red Rock repeats and reasserts its responses
8 to all previous paragraphs.

9 7. Red Rock is without knowledge or information sufficient to respond to
10 paragraphs 15 through 17 of the Complaint.

11 8. Paragraphs 18 and 19 of the Complaint state legal conclusions, and no
12 response is necessary.

13 **FOURTH CLAIM FOR RELIEF**

14 9. In response to paragraph 20, Red Rock repeats and reasserts its responses
15 to all previous paragraphs.

16 10. Red Rock is without knowledge or information sufficient to respond to
17 paragraph 21 of the Complaint.

18 11. Paragraphs 22 and 26 through 28 of the Complaint state legal conclusions,
19 and no response is necessary.

20 12. In response to paragraph 23 of the complaint, the paragraph calls for legal
21 conclusions as to the terms "tender" and "super-priority," and no response is necessary.
22 To the extent a response is necessary, Red Rock denies the allegations in this paragraph.

23 13. Red Rock denies the allegations in paragraph 24 of the Complaint.

24 14. In response to paragraph 25 of the Complaint, Red Rock denies the
25 underlying allegations that it provided notices or representations to Plaintiff in regards to
26 the super-priority portion of the lien and, therefore, denies the allegations in that
27 paragraph.
28

1 **FIFTH CLAIM FOR RELIEF**

2 15. In response to paragraph 29 of the Complaint, Red Rock repeats and
3 reasserts its responses to all previous paragraphs.

4 16. Red Rock is without knowledge or information sufficient to respond to
5 paragraph 30 of the Complaint.

6 17. Paragraphs 31 and 32 of the Complaint state legal conclusions, and no
7 response is necessary.

8 **AFFIRMATIVE DEFENSES**

9 **FIRST AFFIRMATIVE DEFENSE**

10 Plaintiff's counterclaim fails to state a claim for which relief can be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 Plaintiff's unclean hands preclude any of the relief requested.

13 **THIRD AFFIRMATIVE DEFENSE**

14 Plaintiff's claims are barred by the doctrines of estoppel, laches, and waiver.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred by the applicable statute of limitations.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 Plaintiff has acquiesced to any of the conduct and usage alleged in its Complaint.

19 **SIXTH AFFIRMATIVE DEFENSE**

20 Plaintiff has failed to mitigate its damages, if any.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 Plaintiff's damages, if any, are caused by its own actions or from the acts of others
23 not parties to this action.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 Plaintiff has failed to join an indispensable party, in that other parties are wholly
26 or at least partly caused Plaintiff's harm and complete relief may not be granted in their
27 absence.

28 **NINTH AFFIRMATIVE DEFENSE**

1 Plaintiff's claims are barred by the voluntary payment doctrine.

2 **TENTH AFFIRMATIVE DEFENSE**

3 Plaintiff knowingly and voluntarily waived its rights to obtain any or all of the
4 relief sought in its Complaint.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 Plaintiff has no contract with this answering counter-defendant.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 Plaintiff has no fiduciary relationship with this answering counter-defendant.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred by the economic loss doctrine.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 Plaintiff has no special relationship with this answering counter-defendant.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 This answering counter-defendant has limited facts available at this time and thus
15 some of the foregoing Affirmative Defenses may have been plead in accordance to NRCP
16 8, for purposes of non-waiver. Furthermore, pursuant to NRCP 11, this answering
17 counter-defendant has or may have more affirmative defenses or counterclaims that are
18 not known at this time but may be uncovered through further discovery wherefore, this
19 answering defendant reserves the right to assert any such affirmative defenses or
20 Counterclaims so ascertained at a later date.

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WHEREFORE, as to Plaintiff's Complaint, Red Rock prays as follows:

1. That Plaintiff take nothing by way of its Complaint.
2. That judgment be rendered in favor of Red Rock;
3. That Plaintiff compensate Red Rock for reasonable fees and costs incurred in defending this action; and
4. For any other such relief that the Court deems just and proper.

Dated: March 2, 2017.

KOCH & SCOW, LLC

By: /s/Steven B. Scow
Steven B. Scow
Attorneys for Red Rock Financial Services

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on March 2, 2017, I caused the foregoing document entitled: **RED ROCK FINANCIAL SERVICES' ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT** to be served by as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and/or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and/or
- ☐ hand-delivered to the attorney(s) listed below at the address indicated below;
- ☐ to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or;
- ☐ by electronic mailing to:

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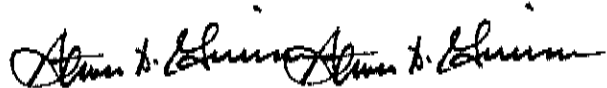
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Executed on March 2, 2017 at Henderson, Nevada.

/s/ Andrea W. Eshenbaugh
An Employee of Koch & Scow LLC



CLERK OF THE COURT CLERK OF THE COURT

1 ANS

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11 *Attorneys for Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities Trust 2007-3*

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; RECONTRUST COMPANY,
N.A. a division of BANK OF AMERICA;
FRANK TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUST,

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant

vs.

SATICOY BAY LLC SERIES 34
INNISBROOK, a Nevada limited-liability
company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK
TIMPA, an individual; DOES I through X; and

Case No.: A-14-710161-C
DEPT No.: XXXI

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S ANSWER
TO SATICOY BAY LLC SERIES 34
INNISBROOK'S THIRD AMENDED
COMPLAINT**

1 ROE CORPORATIONS I through X, inclusive,

2 Counter-defendants.

3 RED ROCK FINANCIAL SERVICES,

4 Counterclaimant,

5 vs.

6
7 THORNBURG MORTGAGE SECURITIES
8 TRUST 2007-3; COUNTRYWIDE HOME
9 LOANS, INC.; ESTATES WEST AT
10 SPANISH TRAILS; MORTGAGE
11 ELECTRONIC REGISTRATION SYSTEMS,
12 INC.; REPUBLIC SERVICES; LAS VEGAS
13 VALLEY WATER DISTRICT; FRANK
TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUS U/T/D March 3, 1999; and DOES 1-100,
inclusive,

14 Counter-Defendants.

15 Defendant, Thornburg Mortgage Securities Trust 2007-3 ("Thornburg"), by and through
16 its attorneys of record Edgar C. Smith, Esq., and Eric S. Powers, Esq., of the law firm of
17 Wright, Finlay & Zak, LLP, hereby submits its Answer to Saticoy Bay LLC Series 34
18 Innisbrook's ("Saticoy" or "Plaintiff") Third Amended Complaint. Nothing in this Answer to
19 Third Amended Complaint is intended to disturb Thornburg's previously filed Counterclaims
20 filed on April 10, 2015.

21 **ANSWER TO SECOND AMENDED COMPLAINT**

22 1. Thornburg denies that Plaintiff is the owner of the Property. Thornburg maintains that its
23 interest in the Property is secure and valid.

24 2. Thornburg avers that the allegations contained in Paragraph 3 make reference to
25 recorded documents, quote recorded documents, statutes, or case law, and/or offer opinions or
26 conclusions of law, and therefore cannot be either admitted or denied; however, to the extent a
27 response is necessary to any facts alleged therein, Thornburg admits only that a foreclosure deed
28 recorded November 10, 2014 purports to state that Plaintiff was the highest bidder at a

1 foreclosure sale conducted on November 7, 2014. Thornburg denies that Plaintiff has obtained
2 title to the Property. Thornburg maintains that its interest in the Property is secure and valid.

3 3. Thornburg avers that the allegations contained in Paragraph 3 make reference to recorded
4 documents, quote recorded documents, statutes, or case law, and/or offer opinions or conclusions
5 of law, and therefore cannot be either admitted or denied; however, to the extent a response is
6 necessary to any facts alleged therein, then Thornburg objects to any document referenced in
7 these paragraphs on the ground that the document speaks for itself; and, without waiving the
8 objection, Thornburg otherwise does not possess enough information to admit or deny the
9 allegations in these paragraphs and therefore denies the allegations contained therein on that
10 basis.

11 4. Thornburg admits the allegations contained in Paragraph 4 of the Complaint.

12 5. The allegations contained in Paragraph 5 contain statements directed to entities in which
13 Thornburg is not a party therefore, no response is required. To the extent a response is required;
14 Thornburg admits that Madelaine and Frank Timpa were the former owners of the Property.

15 6. The allegations contained in Paragraph 6 contain statements directed to entities in which
16 Thornburg is not a party therefore, no response is required. To the extent a response is required;
17 Thornburg is without information or knowledge to admit or deny the allegations contained
18 therein, and therefore denies the same.

19 7. Thornburg avers that the allegations contained in Paragraph 7 of the Complaint contain
20 legal conclusions to which no response is required; provided however, to the extent Paragraph 7
21 does require a response, Thornburg denies the allegations contained therein.

22 8. Thornburg avers that the allegations contained in Paragraph 8 of the Complaint contain
23 legal conclusions to which no response is required; provided however, to the extent Paragraph 8
24 does require a response, Thornburg denies the allegations contained therein.

25 9. Thornburg avers that the allegations contained in Paragraph 9 of the Complaint contain
26 legal conclusions to which no response is required; provided however, to the extent Paragraph 9
27 does require a response,

28 10. Thornburg denies the allegations contained in Paragraph 10 of the Complaint.

1 **SECOND CLAIM FOR RELIEF**

2 11. Answering Paragraph 11, Thornburg hereby repeats, re-alleges and incorporates each of
3 its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set
4 forth at length and in full.

5 12. Thornburg avers that the allegations contained in paragraph 12 state legal conclusions for
6 which no response is required; provided however, to the extent paragraph 40 does require a
7 response, Thornburg denies the allegations contained in Paragraph 12 of the Complaint.

8 13. Thornburg denies the allegations contained in Paragraph 13 of the Complaint.

9 **THIRD CLAIM FOR RELIEF**

10 14. Answering Paragraph 14, Thornburg hereby repeats, re-alleges and incorporates each of
11 its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set
12 forth length and in full.

13 15. Thornburg does not have adequate information or knowledge to admit or deny the
14 allegations contained in Paragraph 15; therefore, Thornburg denies said allegations.

15 16. Thornburg does not have adequate information or knowledge to admit or deny the
16 allegations contained in Paragraph 16; therefore, Thornburg denies said allegations.

17 17. Thornburg does not have adequate information or knowledge to admit or deny the
18 allegations contained in Paragraph 17; therefore, Thornburg denies said allegations.

19 18. Thornburg denies the allegations contained in Paragraph 18 of the Complaint.

20 19. Thornburg denies the allegations contained in Paragraph 19 of the Complaint.

21 **FOURTH CLAIM FOR RELIEF**

22 20. Answering Paragraph 20, Thornburg hereby repeats, re-alleges and incorporates each of
23 its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set
24 forth length and in full.

25 21. Thornburg admits the allegations contained in Paragraph 21 of the Complaint.

26 22. The allegations contained in Paragraph 22 are directed towards entities in which BONY
27 is not a party, therefore no response is required. To the extent a response is required, BONY is
28 without information or knowledge to admit or deny the allegations contained therein and

1 therefore denies the same.

2 23. The allegations contained in Paragraph 23 are directed towards entities in which BONY
3 is not a party, therefore no response is required. To the extent a response is required, BONY is
4 without information or knowledge to admit or deny the allegations contained therein and
5 therefore denies the same.

6 24. The allegations contained in Paragraph 24 are directed towards entities in which BONY
7 is not a party, therefore no response is required. To the extent a response is required, BONY is
8 without information or knowledge to admit or deny the allegations contained therein and
9 therefore denies the same.

10 25. The allegations contained in Paragraph 25 are directed towards entities in which BONY
11 is not a party, therefore no response is required. To the extent a response is required, BONY is
12 without information or knowledge to admit or deny the allegations contained therein and
13 therefore denies the same.

14 26. The allegations contained in Paragraph 26 are directed towards entities in which BONY
15 is not a party and contain legal conclusions, therefore no response is required. To the extent a
16 response is required, BONY is without information or knowledge to admit or deny the
17 allegations contained therein and therefore denies the same.

18 27. The allegations contained in Paragraph 27 are directed towards entities in which BONY
19 is not a party, therefore no response is required. To the extent a response is required, BONY is
20 without information or knowledge to admit or deny the allegations contained therein and
21 therefore denies the same.

22 28. Thornburg denies the allegations contained in Paragraph 28 of the Complaint.

23 **FIFTH CLAIM FOR RELIEF**

24 29. Answering Paragraph 29, Thornburg hereby repeats, re-alleges and incorporates each of
25 its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set
26 forth length and in full.

27 30. The allegations contained in Paragraph 30 are directed towards entities in which BONY
28 is not a party, therefore no response is required. To the extent a response is required, BONY is

1 without information or knowledge to admit or deny the allegations contained therein and
2 therefore denies the same.

3 31. The allegations contained in Paragraph 31 are directed towards entities in which BONY
4 is not a party, therefore no response is required. To the extent a response is required, BONY is
5 without information or knowledge to admit or deny the allegations contained therein and
6 therefore denies the same.

7 32. Thornburg denies the allegations contained in Paragraph 32 of the Complaint.
8

9 **AFFIRMATIVE DEFENSES**

10 **FIRST AFFIRMATIVE DEFENSE**

11 **(Failure to State a Claim)**

12 Plaintiff's Complaint fails to state a claim against Thornburg upon which relief can be
13 granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Priority)**

16 Plaintiff took title of the Property subject to Thornburg's first priority Deed of Trust,
17 thereby forestalling any enjoinder/extinguishment of Thornburg's interest in the Property.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Assumption of Risk)**

20 Plaintiff, at all material times, calculated, knew and understood the risks inherent in the
21 situations, actions, omissions, and transactions upon which they now base their various claims
22 for relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and is
23 consequently barred from all recovery by such assumption of risk.
24

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Commercial Reasonableness and Violation of Good Faith - NRS 116.1113)**
27
28

1 The HOA lien foreclosure sale by which Plaintiff took its interest was commercially
2 unreasonable if it eliminated Defendant's Deed of Trust, as PJ contends. The sales price, when
3 compared to the outstanding balance of First Note and Deed of Trust and the fair market value of
4 the Property, demonstrates that the sale was not conducted in good faith as a matter of law. The
5 circumstances of sale of the property violated the HOA's obligation of good faith under NRS
6 116.1113 and duty to act in a commercially reasonable manner.

7 **FIFTH AFFIRMATIVE DEFENSE**

8 **(Equitable Doctrines)**

9 Thornburg alleges that the Plaintiff's claims are barred by the equitable doctrines of
10 laches, unclean hands, equitable estoppel, and failure to do equity.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(Acceptance)**

13 Plaintiff asserts that any acceptance of any portion of possible excess proceeds does not
14 "satisfy" the amount due and owing on the Loan and would not constitute a waiver of its rights
15 under the Loan and Deed of Trust, or statute.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 **(Waiver and Estoppel)**

18 Thornburg asserts that by reason of Plaintiff's acts and omissions, Plaintiff has waived its
19 rights and is estopped from asserting the claims against Thornburg..

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 **(Void for Vagueness, Ambiguity, Violation of Due Process)**

22 To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute and
23 Chapter 116 as a whole are void for vagueness, ambiguity, and violation of due process.
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1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Due Process Violations)**

3 A senior deed of trust beneficiary cannot be deprived of its property interest in violation
4 of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution
5 and Article 1, Sec. 8, of the Nevada Constitution.

6 **TENTH AFFIRMATIVE DEFENSE**

7 **(Violation of Procedural Due Process)**

8 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
9 pursuant to the Due Process Clause of the Nevada Constitution and United States Constitution.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 **(Supremacy Clause)**

12 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
13 pursuant to the Supremacy Clause of the United States Constitution.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 **(Property Clause)**

16 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
17 pursuant to the Property Clause of the United States Constitution.

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

19 **(Failure to Mitigate Damages)**

20 Plaintiff alleges that the PJ's claims are barred in whole or in part because of the
21 Plaintiff's failure to take reasonable steps to mitigate the damages, if any, in this case.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 **(Contracts Clause)**

24 The HOA Sale is void or otherwise does not operate to extinguish the first Deed of Trust
25 pursuant to the Contracts Clause of both the United States Constitution and the Nevada
26 Constitution.
27
28

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 **(Additional Affirmative Defenses)**

3 Plaintiff reserves the right to assert additional affirmative defenses in the event discovery
4 and/or investigation indicates that additional affirmative defenses are applicable.

5 WHEREFORE, Thornburg prays as follows:

- 6 1. That the Court make a judicial determination that Thornburg's Deed of Trust is superior
7 to Plaintiff's claim of title;
- 8 2. That the Court make a judicial determination that Thornburg's Deed of Trust survived the
9 HOA Sale;
- 10 3. That the Court make a judicial determination that Plaintiff took title subject to
11 Thornburg's Deed of Trust;
- 12 4. That Plaintiff recovers nothing on account of the claims made in the Second Amended
13 Complaint and each of their purported claims;
- 14 5. For reasonable attorney's fees and costs; and
- 15 6. For any such other and further relief as the Court may deem just and proper in the case.

16 DATED this 19th day of March, 2017.

17
18 WRIGHT, FINLAY & ZAK, LLP

19 /s/ Eric S. Powers

20 Edgar C. Smith, Esq.

21 Nevada Bar No. 5506

22 Eric S. Powers, Esq.

23 Nevada Bar No. 12850

24 7785 W. Sahara Ave., Suite 200

25 Las Vegas, NV 89117

26 *Attorneys for Defendant/Counterclaimant/Counter-*
27 *Defendant, Thornburg Mortgage Securities Trust*
28 *2007-3*

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER TO SATICOY BAY LLC SERIES 34 INNISBROOK'S THIRD AMENDED COMPLAINT** filed in Case No. A-14-710161-C does **not** contain the social security number of any person.

DATED this 19th day of March, 2017.

WRIGHT, FINLAY & ZAK, LLP

/s/ Eric S. Powers

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Las Vegas, NV 89117

Attorneys for Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities Trust 2007-3

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 23rd day of May, 2016, I did cause a true copy of **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER TO SATICOY BAY LLC SERIES 34 INNISBROOK'S THIRD AMENDED COMPLAINT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9:

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