

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

LN MANAGEMENT LLC SERIES 3111 BEL  
AIR 24G,

Appellant

v.  
BANK OFAMERICA,N.A.;DITECH  
FINANCIAL LLC,

Respondent.

No. 82534

DOCKETING  
CIVIL APPEALS

Electronically Filed  
Apr 13 2021 03:49 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District 8th Department 13

County Clark Judge Mark Denton

District Ct. Case No. A-12-669570-C

**2. Attorney filing this docketing statement:**

Attorney Kerry P. Faughnan, Esq. Telephone 702-301-3096

Firm Law Office of Kerry P. Faughnan

Address PO Box 335361  
North Las Vegas, NV 89033

Client(s) LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Natalie L. Winslow, Esq. Telephone (702) 634-5000

Firm AKERMAN LLP

Address 1635 Village Center Cir. Ste. 200  
Las Vegas, NV 89134

Client(s) Bank of America and Ditech Financial LLC

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input checked="" type="checkbox"/> Summary judgment        | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

The state court proceeding was an action to quiet title after a HOA foreclosure.

The order appealed from is the Findings of Fact, Conclusions of Law and Judgment entered on January 20, 2021, Notice of Entry filed January 21, 2021.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Did the evidence support the findings of fact Tender was excused as futile?

Did the evidence support the findings of fact that the five year rule had not run and that the under NRCP 41(e) the case had been "brought to trial" by virtue of the 2014 MSJ that was subsequently set aside by stipulation?

Did the evidence support the findings of fact that the foreclosure sale was a sub-priority sale?

Did the evidence support the findings of fact that Fannie Mae had an actual interest, whether the evidence presented showed that Fannie Mae ever had an interest in the Deed of Trust, and whether an unrecorded interest by Fannie Mae effects Appellant's interest?

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court as the action does not concern matters presumptively assigned to the Court of Appeals under NRAP 17(b).

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** Jan 20, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** Jan 21, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** Feb 22, 2021

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP4(a)(1)

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**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

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(b) Explain how each authority provides a basis for appeal from the judgment or order:

Appeal after final judgment entered.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Plaintiff: LN Management LLC Series 3111 Bel Air 24G

Defendants: Michael T. Elliot; Las Vegas International Country Club Estates

Homeowners Association, Inc.; Regency Towers Association, Inc.; Bank of

America, N.A.;Ditech Financial LLC

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Stipulation and Order Regarding Status of Defendant, Regency Towers Association, Inc. entered on December 26, 2012.

Stipulation and Order Regarding Status of Defendant, Las Vegas International Country Club Estates Homeowners Association, Inc. entered on May 7, 2013

Default Judgment entered against Defendant Michael T. Elliot entered on December 23, 2014 in consolidated case A-13-682055-C

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Quiet Title/Declaratory Relief action by Plaintiff

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

While there is no express NRCP 54(b) certification the Court does state in its order the "This is a final judgment".

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

LN Management LLC 3111 Bel Air 24G  
Name of appellant

Kerry P. Faughnan, Esq.  
Name of counsel of record

Apr 13, 2021  
Date

/s/ Kerry P. Faughnan  
Signature of counsel of record

Clark County Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 13th day of April, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

[X] By allowing electronic service through the courts ECF system to:  
Natalie L. Winslow, Esq.  
AKERMAN LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, NV 89134

Dated this 13th day of April, 2021

/s/ Kerry P. Faughnan  
Signature

## CIVIL COVER SHEET

A-12-669570-C

Clark County, Nevada

XIII

Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)**I. Party Information**

Plaintiff(s) (name/address/phone): Bank of America, N.A.

Attorney (name/address/phone):

Jory C. Garabedian, Esq. Nevada Bar No. 10352

Miles, Bauer, Bergstrom &amp; Winters, LLP.

2200 Paseo Verde Parkway, Suite 250

Henderson, NV 89052

Defendant(s) (name/address/phone):

Michael T. Elliot, an individual; Las Vegas International Country Club Estates Home Owners Association, Inc., a Nevada Corporation; Regency Towers Association, Inc., a Nevada Corporation; and Does I-X Inclusive

Attorney (name/address/phone):

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

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

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)
☐ NRS Chapters 78-88  
☐ Commodities (NRS 90)  
☐ Securities (NRS 90)

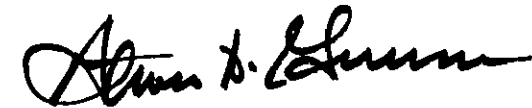
☐ Investments (NRS 104 Art. 8)  
☐ Deceptive Trade Practices (NRS 598)  
☐ Trademarks (NRS 600A)

☐ Enhanced Case Mgmt/Business  
☐ Other Business Court Matters

10/03/2012

Date

Signature of initiating party or representative



CLERK OF THE COURT

**COMP**

Jeremy Bergstrom, Esq.  
Nevada Bar No. 6904  
jbergstrom@mileslegal.com  
Jory C. Garabedian, Esq.  
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Henderson, NV 89052  
(702) 369-5960 / FAX: (702) 382-9452  
MBBW File No. 12-L0358

Attorneys for Plaintiff  
BANK OF AMERICA, N.A.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BANK OF AMERICA, N.A, a national banking  
association,

Plaintiff,

vs.

MICHAEL T. ELLIOTT, an individual; LAS  
VEGAS INTERNATIONAL COUNTRY CLUB  
ESTATES HOME OWNERS ASSOCIATION,  
INC., a Nevada Corporation; REGENCY  
TOWERS ASSOCIATION, INC., a Nevada  
Corporation; and DOES I-X INCLUSIVE,

Defendants.

) Case No.: A - 1 2 - 6 6 9 5 7 0 - C  
) Dept. No.: X I I I  
)  
)  
)  
)  
)

**COMPLAINT**

) EXEMPT FROM ARBITRATION:

- Seeks Equitable Relief
- Affects Title to Real Property

COMES NOW Plaintiff BANK OF AMERICA, N.A., (hereinafter "Plaintiff"), by and  
through its attorney of record, the law firm MILES, BAUER, BERGSTROM & WINTERS,  
LLP, and does hereby allege and complain as follows:

//

//

**JURISDICTION, VENUE AND PARTIES**

1. BANK OF AMERICA, N.A., now and was at all times herein, a national association doing business under the laws of the United States.

2. Based on information and belief, Defendant MICHAEL T. ELLIOTT (hereinafter "ELLIOTT"), is, and at all times referenced herein was, a resident of San Diego, California.

3. Based on information and belief, Defendant LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNERS ASSOCIATION, INC. (hereinafter "LVIC"), is, and at all times referenced herein was, a Nevada non-profit corporation.

4. Based on information and belief, Defendant REGENCY TOWERS ASSOCIATION, INC. (hereinafter "REGENCY") is, and at all times referenced herein was, a Nevada non-profit corporation.

5. Plaintiff is unaware of the true names and capacities of Defendants sued herein as DOES I through X, inclusive, and therefore sues these Defendants under such fictitious names. Defendants DOES I through X are believed to be responsible for matters alleged herein and liable to Plaintiff for damages and/or equitable relief as a result thereof. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.

6. The real property subject to this action is located in Clark County, Nevada and legally described as:

PARCEL 1:

UNIT ONE HUNDRED EIGHTY-FIVE (185) AS AMENDED PLAT OF REGENCY TOWERS, AS THE SAME IS ESTABLISHED AND IDENTIFIED IN THE PLAN OF CONDOMINIUM FILES PURSUANT TO THE PROVISIONS OF NRS 117.020 ON APRIL 12, 1972 IN BOOK 14 OF PLATS, PAGE 37, AS CLARIFIED BY AFFIDAVITS RECORDED SEPTEMBER 5, 1972, DOCUMENT NO. 285994, AND AS AMENDED ON AUGUST 10, 1973 IN BOOK 16 OF PLATS, PAGE 27, IN THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA ("PLAN"), AND AMENDED HERETO.

PARCEL 2:

AN UNDIVIDED .549% INTEREST IN THE COMMON AREAS INCLUDED IN THE PLAN.

1 PARCEL 3:

2 AN UNDIVIDED .549% INTEREST IN THE ESTATE FOR YEARS  
3 CREATED BY THAT CERTAIN LEASE DATED JANUARY 1, 1971  
4 BETWEEN CHAININ NEVADA PROPERTIES, INC., AS LANDLORD AND  
5 REGENCY HOLDING CORP. AS TENANT, RECORDED ON JANUARY 7,  
6 1971 AS INSTRUMENT NO. 72485, BOOK NO. 91, IN OFFICIAL RECORDS  
7 OF CLARK COUNTY NEVADA

8 and further commonly known as 3111 Bel Air Drive, Unit 24G, Las Vegas, Nevada 89109 [APN  
9 162-10-812-185] (hereinafter the "Subject Property"). Plaintiff, and all Defendants named  
10 herein, have and/or claim an interest to the Subject Property and therefore jurisdiction and venue  
11 are proper in the above-captioned Court.

### 12 GENERAL ALLEGATIONS

13 7. On or about October 8, 2002, ELLIOTT and his wife Regan Dawn Elliott,  
14 purchased and acquired title to the Subject Property as community property with rights of  
15 survivorship by way of a "Grant, Bargain, Sale Deed." Attached hereto as Exhibit 1, and  
16 incorporated herein, is a copy of the "Grant, Bargain, Sale Deed" recorded in the Office of the  
17 Clark County Recorder as document number 20021017-01112 on October 17, 2002.

18 8. On or about October 9, 2003, Regan Dawn Elliott conveyed her interest in the  
19 Subject Property to ELLIOTT by way of a Grant Deed. Attached hereto as Exhibit 2, and  
20 incorporated herein, is a copy of the "Grant Deed" recorded in the Office of the Clark County  
21 Recorder as document number 20031016-01640 on October 16, 2003.

22 9. Shortly before, on or around October 2, 2003, ELLIOTT took out a loan with  
23 Washington Mutual Bank, F.A. for \$315,000.00. The loan was secured by a deed of trust  
24 (hereinafter the "WMB Deed of Trust") and recorded against the Subject Property. Attached  
25 hereto as Exhibit 3, and incorporated herein, is a copy of the WMB Deed of Trust recorded in  
26 the Office of the Clark County Recorder as document number 20031016-0001641 on October  
27 16, 2003.

28 10. The WMB Deed of Trust was intended to be, and actually was, a first security  
interest in senior position against the Subject Property.

1           11.     On or about October 6, 2004, ELLIOTT took out a loan with Plaintiff for  
2 \$322,100.00. The loan was used to re-finance the loan associated with the WMB Deed of Trust.

3           12.     As part of the loan transaction with Plaintiff, the sums secured by the WMB Deed  
4 of Trust were required to be paid off at the time the loan was funded. Of the \$322,100.00  
5 Plaintiff loaned to ELLIOTT, \$313,615.59 was used to payoff the loan secured by the WMB  
6 Deed of Trust.

7           13.     Plaintiff's loan to ELLIOTT was secured by a deed of trust (hereinafter  
8 "Plaintiff's Deed of Trust") and recorded against the Subject Property. Attached hereto as  
9 **Exhibit 4**, and incorporated herein, is a copy of Plaintiffs' Deed of Trust recorded in the Office  
10 of the Clark County Recorder as document number 20041020-0001569 on October 20, 2004.

11           14.     Plaintiff's Deed of Trust was correctly indexed in the Clark County Recorder's  
12 Office with ELLIOTT as grantor and Plaintiff as grantee. Plaintiff's Deed of Trust was further  
13 indexed under parcel number 162-10-812-185 and the Deed of Trust referenced the assessor's  
14 parcel number and common address of the Subject Property.

15           15.     On or around November 12, 2010, REGENCY caused to be recorded a Lien for  
16 Delinquent Assessments, which purports to encumber the Subject Property. Attached hereto as  
17 **Exhibit 5**, and incorporated herein, is a copy of the Lien for Delinquent Assessments recorded in  
18 the Office of the Clark County Recorder as document number 20101112-0004451 on November  
19 12, 2010.

20           16.     Thereafter, REGENCY caused to be recorded two different Notices of Default  
21 and Election to Sell Pursuant to the Lien for Delinquent Assessments. The first was recorded on  
22 February 1, 2011 as document number 20110201-0002543 in the Office of the Clark County  
23 Recorder; and the second was recorded on July 13, 2011 as document number 20110713-  
24 0000603 in the Office of the Clark County Recorder. Attached hereto as **Exhibit 6**, and  
25 incorporated herein, is a copy of each of the recorded Notices of Default and Election to Sell  
26 Pursuant to the Lien for Delinquent Assessments.

27           17.     On or around March 28, 2011, LVIC caused to be recorded a Notice of Claim of  
28 Lien-Delinquent Homeowners Assessment, which purports to encumber the Subject Property.



1 Attached hereto as **Exhibit 7**, and incorporated herein, is a copy of the Notice of Claim of Lien-  
2 Delinquent Homeowners Assessment recorded in the Office of the Clark County Recorder as  
3 document number 20110328-0002335 on March 28, 2011.

4 18. On or around December 1, 2011, LVIC caused to be recorded a Notice of Default  
5 and Election to Sell as to the March 28, 2011 Notice of Claim of Lien-Delinquent Homeowners  
6 Assessment. Attached hereto as **Exhibit 8**, and incorporated herein, is a copy of the Notice of  
7 Default and Election to Sell recorded in the Office of the Clark County Recorder as document  
8 number 20111201-0002276 on December 1, 2011.

9 19. On or around June 21, 2012, LVIC caused to be recorded another Notice of Claim  
10 of Lien-Delinquent Homeowners Assessment, which purports to encumber the Subject Property.  
11 Attached hereto as **Exhibit 9**, and incorporated herein, is a copy of the Notice of Claim of Lien-  
12 Delinquent Homeowners Assessment recorded in the Office of the Clark County Recorder as  
13 document number 20120621-0001804 on June 21, 2012.

14 20. On or around July 25, 2012, LVIC caused to be recorded a Notice of Default and  
15 Election to Sell as to the June 21, 2012 Notice of Claim of Lien-Delinquent Homeowners  
16 Assessment. Attached hereto as **Exhibit 10**, and incorporated herein, is a copy of the Notice of  
17 Default and Election to Sell recorded in the Office of the Clark County Recorder as document  
18 number 20120725-0002134 on July 25, 2012.

19 21. Upon information and belief, both REGENCY and LVIC still claim to have active  
20 liens on Subject Property.

21 22. ELLIOTT has defaulted under the terms of Plaintiff's Deed of Trust. While  
22 commencing non-judicial foreclosure proceedings, Plaintiff discovered that its Deed of Trust  
23 contains a legal description error, which may create a cloud on title to the Subject Property.  
24 Plaintiff through this action seeks to clear up any title issues as a result of the legal description  
25 error.

26 23. It has been necessary for Plaintiff to retain counsel to bring this action to clear up  
27 title issues and protect Plaintiff's security interest in the Subject Property, and therefore Plaintiff  
28

1 reserves its right to seek attorney's fees and costs of suit pursuant to statute and/or the terms of  
2 Plaintiff's Deed of Trust.

3  
4 **FIRST CLAIM FOR RELIEF**  
5 **(Reformation of the Deed of Trust through Unilateral/Mutual Mistake—as to all**  
6 **Defendants)**

7 24. Plaintiff re-alleges and repeats the preceding paragraphs as though fully set forth  
8 herein.

9 25. Plaintiff and ELLIOTT intended and agreed to encumber ELLIOTT's interest in  
10 the Subject Property with a lien by way of Plaintiff's Deed of Trust.

11 26. Plaintiff and ELLIOTT, by mutual or unilateral mistake, attached the incorrect  
12 legal description of the Subject Property to Plaintiff's Deed of Trust.

13 27. ELLIOTT either knew, or should have known, of the mistaken legal description.

14 28. Including the correct legal description of the Subject Property in Plaintiff's Deed  
15 of Trust was a basic assumption of the underlying loan transaction between Plaintiff and  
16 ELLIOTT.

17 29. Omitting the correct legal description of the Subject Property in Plaintiff's Deed  
18 of Trust materially affects the bargained for exchange of the underlying loan transaction between  
19 Plaintiff and ELLIOTT.

20 30. Plaintiff would not have consented to the loan transaction with ELLIOTT without  
21 a correct legal description of the Subject Property attached to Plaintiff's Deed of Trust.

22 31. Reforming Plaintiff's Deed of Trust to conform to the parties' intent and  
23 understanding would serve substantial justice and equity, and would not unduly burden or  
24 prejudice any third-party and/or any party to this action.

25 32. Nevada courts routinely allow legal description errors to be remedied by extrinsic  
26 evidence, including reference to county assessor tax rolls. See *Triplett v. David H. Fulstone Co.*,  
27 109 Nev. 216, 218-19 (1993).

28 33. As a direct and proximate result of the foregoing, Plaintiff is entitled to reform its  
Deed of Trust to attach or include the correct legal description of the Subject Property.

1           34.     In the event it is later revealed through discovery, or otherwise, that ELLIOTT  
2 mislead Plaintiff regarding the legal description of the Subject Property, Plaintiff reserves the  
3 right to amend this Complaint to add additional causes of action for fraud and/or breach of  
4 contract or warranty.

5  
6                           **SECOND CLAIM FOR RELIEF**  
7                           **(Equitable Lien – as to all Defendants)**

8           35.     Plaintiff re-alleges and repeats the preceding paragraphs as though fully set forth  
9 herein.

10          36.     In the alternative to reforming the Deed of Trust, Plaintiff seeks an equitable lien  
11 on the Subject Property.

12          37.     ELLIOTT received a loan from Plaintiff, which was intended to be secured by a  
13 valid deed of trust or lien against the Subject Property.

14          38.     ELLIOTT has realized and retained the benefit of the loan proceeds and it would  
15 be unfair and against all fundamental principals of justice for ELLIOTT to retain said benefit  
16 without conveying a lien or security interest in the Subject Property to Plaintiff.

17          39.     As a direct and proximate result of the foregoing, Plaintiff is entitled to an  
18 equitable lien on the Subject Property.

19  
20                           **THIRD CLAIM FOR RELIEF**  
21                           **(Equitable Subrogation to WMB Deed of Trust – as to all Defendants)**

22          40.     Plaintiff re-alleges and repeats the preceding paragraphs as though fully set forth  
23 herein.

24          41.     In the alternative to reforming Plaintiff's Deed of Trust and/or obtaining an  
25 equitable lien on the Subject Property, Plaintiff seeks equitable subrogation to the WMB Deed of  
26 Trust.

27          42.     When Plaintiff funded the loan associated with its Deed of Trust to ELLIOTT, the  
28 proceeds of that loan were used to payoff the sums secured by the WMB Deed of Trust, which  
was a first security interest in senior position.

1           43.     After paying off the sums secured by the WMB Deed of Trust, Plaintiff  
2 reasonably expected to receive a first security interest in the Subject Property with priority  
3 interest over any subsequent or junior liens or interests.

4           44.     Plaintiff is entitled to be equitably subrogated to the lien position of the WMB  
5 Deed of Trust, which clearly encumbered the Subject Property and had clear priority over the  
6 liens, interests and rights claimed by REGENCY, LVIC and any other junior lien interests.

7           45.     REGENCY and LVIC will not be prejudiced by the equitable subrogation as their  
8 liens are and were at all times junior, and/or intended to be junior, to first security interests  
9 recorded against the Subject Property.

10  
11                   **FOURTH CLAIM FOR RELIEF**  
12                   **(Declaratory Relief – as to all Defendants)**

13           46.     Plaintiff re-alleges and repeats the preceding paragraphs as though fully set forth  
14 herein.

15           47.     An actual case and controversy exists between Plaintiff and Defendants named  
16 herein as to the title status of the Subject Property and lien priority.

17           48.     The respective interests in the Subject Property are adverse.

18           49.     Pursuant to NRS 30.010, et seq and NRS 40.010, Plaintiff is entitled to a  
19 declaration that it has a valid lien on the Subject Property through its existing Deed of Trust,  
20 through reformation of its Deed of Trust, through an equitable lien and/or through equitable  
21 subrogation to the WMB Deed of Trust.

22           50.     Plaintiff is further entitled to a declaration that it has a lien superior in priority  
23 over the liens, interests and rights claimed by REGENCY and LVIC as both had actual,  
24 constructive and/or inquiry notice of Plaintiff's Deed of Trust and first security lien interest in  
25 the Subject Property.

26     //

27     //

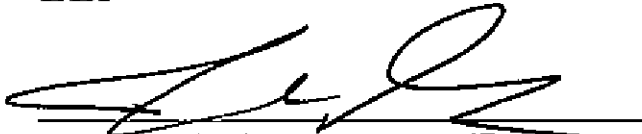
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1. For a judgment reforming Plaintiff's Deed of Trust to include the correct legal description of the Subject Property;
2. In the alternative, for an equitable lien on the Subject Property;
3. In the alternative, for a declaration that Plaintiff's Deed of Trust is equitably subrogated to the WMB Deed of Trust in first or senior position to any interests claimed by REGENCY and LVIC;
4. For a declaration that Plaintiff has a valid lien on the Subject Property in first or senior position to any interests claimed by REGENCY and LVIC;
5. For an award of attorney's fees and costs as permitted by statute and/or the terms of Plaintiff's Deed of Trust;
6. For any other relief this Court may deem just and proper.

Respectfully Submitted by:

MILES, BAUER, BERGSTROM & WINTERS,  
LLP

  
Jeremy T. Bergstrom, Esq.  
Nevada Bar No. 6904  
Jory C. Garabedian, Esq.  
Nevada Bar No. 10352  
2200 Paseo Verde Pkwy., Ste. 250  
Henderson, NV 89052  
*Attorneys for Plaintiff*

## **Exhibit 1**

20021017  
01112

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s) 162-10-812-135

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY	
Document Instrument No.:	
Book:	Page: 108
Date of Recording:	
Notes:	

3. Total Value/Sales Price of Property: \$450,000.00  
Deed in Lieu of Foreclosure Only (value of property) \$  
Transfer Tax Value per NRS 375.010, Section 2: \$450,000.00  
Real Property Transfer Tax Due: \$ 1,125.00

4. If Exemption Claimed  
a. Transfer Tax Exemption, per NRS 375.090, Section  
b. Explain Reason for Exemption:

5. Partial Interest: Percentage being transferred: %  
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: Elizabeth Seibold Capacity: SELLER  
Signature: \_\_\_\_\_ Capacity: \_\_\_\_\_

SELLER (GRANTOR) INFORMATION (Required)	BUYER (GRANTEE) INFORMATION (Required)
Print Name: <u>ELIZABETH SEIBOLD</u>	Print Name: _____
Address: <u>8770 DEL CASTRO</u>	Address: _____
City/State/Zip: <u>LAS VEGAS, NV 89113</u>	City/State/Zip: _____

COMPANY REQUESTING RECORDING

Co. Name: Pioneer National Title of Nevada, Inc.  
7670 W. Lake Mead Blvd., #165,  
Las Vegas, NV 89128  
Esc #.: 2020245-JP

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

COPIES  
11/2

20021017  
01112

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s) 162-10-812-185

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY	
Document Instrument No.:	
Book:	Page: 4081
Date of Recording:	
Notes:	

3. Total Value/Sales Price of Property: \$450,000.00  
Deed in Lieu of Foreclosure Only (value of property) \$  
Transfer Tax Value per NRS 375.010, Section 2: \$450,000.00  
Real Property Transfer Tax Due: \$ 1,125.00

4. If Exemption Claimed

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

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

5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

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 375.037, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: \_\_\_\_\_ Capacity: \_\_\_\_\_  
Signature: \_\_\_\_\_ Capacity: \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
(Required)

Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

**BUYER (GRANTEE) INFORMATION**  
(Required)

Print Name: Michael T. Elliott  
Address: 29W. Foothill Ave., Suite 210  
City/State/Zip: San Diego, CA 92103

**COMPANY REQUESTING RECORDING**

Co. Name: Pioneer National Title of Nevada, Inc.  
7670 W. Lake Mead Blvd., #165,  
Las Vegas, NV 89128

Esc #: 2020245-17

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

11/2  
10/10  
11/1



3

20021017  
01112

Escrow No. 2020245-JF  
APN No. 162-10-812-183  
R.P.T.T. \$ 1,125.00

**Grant, Bargain, Sale Deed**

(2)

THIS INDENTURE WITNESSETH: That John Seibold and Elizabeth Seibold, husband and wife as Joint Tenants  
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and  
Convey to Michael T. Elliott and Regan Dawn Elliott, husband and wife as community Property  
with rights of survivorship  
all that real property situated in the County of Clark, State of Nevada, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise  
appertaining.

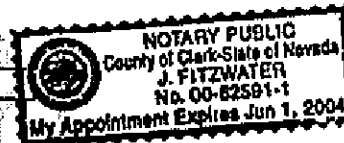
*John Seibold*  
John Seibold

*Elizabeth Seibold*  
Elizabeth Seibold

STATE OF NEVADA  
COUNTY OF CLARK

} ss:

This instrument was acknowledged before me on 10-8-02  
by John Seibold & Elizabeth Seibold



*J. Fitzwater*  
NOTARY PUBLIC J. FITZWATER

WHEN RECORDED MAIL TO:  
Michael T. Elliott  
2918 Fifth Avenue, Ste 210  
San Diego, CA 92103

SPACE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:  
Michael T. Elliott  
See above

Escrow No. 2020245-JF

20021017  
01112

**EXHIBIT A  
LEGAL DESCRIPTION**

**Parcel 1:**

Unit One Hundred Eighty-Five (185) as AMENDED PLAT OF REGENCY TOWERS, as the same is established and identified in the plan of condominium files pursuant to the provisions of NRS 117.020 on April 12, 1972 in Book 14 of Plats, Page 37, as clarified by affidavits recorded September 5, 1972, Document No. 285994, and as amended on August 10, 1973 in Book 16 of Plats, Page 27, in the Official Records of Clark County, Nevada ("Plan"), and amended hereto.

**Parcel 2:**

An undivided .549% interest in the Common Areas included in the Plan.

**Parcel 3:**

An undivided .549% interest in the Estate for Years created by that certain lease dated January 1, 1971 between Chainin Nevada Properties, Inc., as landlord and Regency Holding Corp. as tenant, recorded on January 7, 1971 as Instrument No. 72485, Book No. 91, in Official Records of Clark County Nevada.

CLARK COUNTY, NEVADA  
RECORDED AT REQUEST OF: PIONEER NATIONAL TITLE  
10-17-2002 10:10 AM PAGE COUNT: 2  
OFFICIAL RECORDS  
BOOK/INSTR: 20021017-01112 FEE: 15.00  
RPT: 1,105.00

## **Exhibit 2**

20031016  
01640

**STATE OF NEVADA  
DECLARATION OF VALUE**

1. Assessor Parcel Number(s) 162-10-812-185

38

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY	
Document Instrument No.:	
Book:	Page:
Date of Recording:	
Notes:	

3. Total Value/Sales Price of Property:

\$0.00

Deed in Lieu of Foreclosure Only (value of property)

\$

Transfer Tax Value per NRS 375.010, Section 2:

\$0.00

Real Property Transfer Tax Due:

\$0.00

4. Exemption Claimed

a. Transfer Tax Exemption, per NRS 375.090, Section 5

b. Explain Reason for Exemption: Release spouse's interest

5. Partial Interest: Percentage being transferred: %

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 375.090, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature:

Signature:

Capacity:

Capacity:

**SELLER (GRANTOR) INFORMATION**

**BUYER (GRANTEE) INFORMATION**

(Required)

(Required)

Print Name: Regan Dawn Elliott

Print Name: Michael T. Elliott

Address: 3440 Bel Air Dr

Address: 3440 Bel Air Dr

City/State/Zip: Las Vegas NV 89109

City/State/Zip: Las Vegas NV 89109

**COMPANY REQUESTING RECORDING**

Co. Name: Ticor Title of Nevada, Inc.  
777 North Rainbow Blvd. #150,  
Las Vegas, NV 89107

Esc #: 3510674-YT

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

1680

RECORDING REQUESTED BY:  
United Title Company - Orange County

AND WHEN RECORDED MAIL TO:  
Michael T. Elliott  
P.O. Box 24  
Rancho Santa Fe, CA 92087

Title Order No. 13828  
Escrow No. 53005499-LW

03510674 YT

20031016  
01640

CLARK COUNTY, NEVADA  
FRANCES DEANE, RECORDER

RECORDED AT THE REQUEST OF

TICOR TITLE OF NEVADA INC

10-16-2003 10:19 CAB

OFFICIAL RECORDS

BOOK/INSTR: 20031016-01640

PAGE COUNT: 2

FILE: 15.00  
RST: 10.00

A.P.N. 162-10-812-185

### GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

City Transfer Tax is \$0.00

County Transfer Tax is \$0.00

- (X) Computed on the full consideration or value of property conveyed  
OR  
( ) Computed on the full consideration or value less liens or encumbrances remaining at time of sale  
(X) Unincorporated Area, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Regan Dawn Elliott, a married woman

hereby GRANT(S) to Michael T. Elliott, A Married Man as his sole and separate property

the real property in the Unincorporated Area, County of Clark, State of California, described as:  
Legal Description as per Exhibit "A" Attached Hereto and Made a part Hereof:

Dated: October 9, 2003

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

Regan Dawn Elliott  
Regan Dawn Elliott

On Oct 9, 2003 before me

SCOTT WILLIAM DECKARD  
Personally appeared REGAN DAWN ELLIOTT



I, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Scott William Deckard

MAIL TAX STATEMENTS AS DIRECTED ABOVE

20031016  
01640

**EXHIBIT A**

**PARCEL 1:**

UNIT ONE HUNDRED EIGHTY-FIVE (185) AS AMENDED PLAT OF REGENCY TOWERS, AS THE SAME IS ESTABLISHED AND IDENTIFIED IN THE PLAN OF CONDOMINIUM FILES PURSUANT TO THE PROVISIONS OF NRS 117.020 ON APRIL 12, 1972 IN BOOK 14 OF PLATS, PAGE 37, AS CLARIFIED BY AFFIDAVITS RECORDED SEPTEMBER 5, 1972, DOCUMENT NO. 285994, AND AS AMENDED ON AUGUST 10, 1973 IN BOOK 16 OF PLATS, PAGE 27, IN THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA ("PLAN"), AND AMENDED HERETO.

**PARCEL 2:**

AN UNDIVIDED .549% INTEREST IN THE COMMON AREAS INCLUDED IN THE PLAN.

**PARCEL 3:**

AN UNDIVIDED .549% INTEREST IN THE ESTATE FOR YEARS CREATED BY THAT CERTAIN LEASE DATED JANUARY 1, 1971 BETWEEN CHAININ NEVADA PROPERTIES, INC., AS LANDLORD AND REGENCY HOLDING CORP. AS TENANT, RECORDED ON JANUARY 7, 1971 AS INSTRUMENT NO. 72485, BOOK NO. 91, IN OFFICIAL RECORDS OF CLARK COUNTY NEVADA.

COPY

## **Exhibit 3**

20031016  
01641

RECORDED AT THE REQUEST OF:

TICOR TITLE OF NEVADA INC

AFTER RECORDING RETURN TO:

Washington Mutual Bank, FA  
C/O ACS Image Solutions  
12691 Pala Drive MS156DPCA  
Garden Grove, California 92841

10-16-2003 10:19 CAB

OFFICIAL RECORDS

BOOK/INSTR:20031016-01641

PAGE COUNT: 28

FEE: 66.00  
RPTT: .00

NON-COMPLIANCE CHARGE INC: 25.00

39

~~SECURITY INSTRUMENT~~

Loan Number: 0081699902

Please print or type information  
Document Title(s) (or transactions contained therein):

1. Deed of Trust

Grantor/Trustor/Mortgagor(s) (Last name first, then first name and initials)

1. MICHAEL T. ELLIOTT, A MARRIED MAN AS HIS SOLE AND SEPARATE
2. PROPERTY
- 3.
- 4.

☐ Additional names on page \_\_\_\_\_ of document.

Grantee/Beneficiary/Mortgagee(s)

1. Washington Mutual Bank, FA

Legal Description (abbreviated: i.e. lot, block, plat or section, township, range)  
LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

☐ Additional legal is on page \_\_\_\_\_ of document.

Assessor's Property Tax Parcel/Account Number(s)

- |                   |    |
|-------------------|----|
| 1. 162-10-812-185 | 2. |
| 3.                | 4. |

This document prepared by: Shelley Castellanos  
17901 Von Karman Avenue, 4th Floor 3456LCCA  
Irvine, California 92614

028



20031016  
.01641

ASSESSOR'S PARCEL NUMBER: 162-10-812-185

AFTER RECORDING RETURN TO:  
Washington Mutual Bank, FA  
C/O ACS Image Solutions  
12691 Pala Drive MS155DPCA  
Garden Grove, California 92841

03510674YT

[Space Above This Line For Recording Data]

Ticor Title of Nevada Inc 3510674-yt

## DEED OF TRUST

Loan Number: 0081699902

### DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated OCTOBER 2, 2003, together with all Riders to this document.

(B) "Borrower" is MICHAEL T. ELLIOTT, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Washington Mutual Bank, FA, a federal association, Lender is a BANK organized and existing under the laws of UNITED STATES OF AMERICA. Lender's address is 400 East Main Street, Stockton, California 95290

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is CALIFORNIA RECONVEYANCE COMPANY

(E) "Note" means the promissory note signed by Borrower and dated OCTOBER 2, 2003. The Note states that Borrower owes Lender THREE HUNDRED FIFTEEN THOUSAND AND 00/100

Dollars (U.S. \$315,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than NOVEMBER 1, 2033.

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

(G) "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.

(H) "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 checked="" type="checkbox"/> Condominium Rider   | <input checked="" type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> Graduated Payment Rider          | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider      |
| <input type="checkbox"/> Balloon Rider                    | <input type="checkbox"/> Rate Improvement Rider         | <input type="checkbox"/> Second Home Rider           |
| <input type="checkbox"/> Other(s) (specify)               |   |  |

(I) "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.

(J) "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.

(K) "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.

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

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds, whether by way of judgment, settlement or otherwise, 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.

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

(O) "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.

(P) "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.

(Q) "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

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note; and (iii) the performance of all agreements of Borrower to pay fees and charges arising out of the loan whether or not herein set forth. For this purpose, Borrower

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.01641

0081699902

irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in CLARK County, Nevada:

**LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF**

which currently has the address of 3111 BEL AIR DRIVE UNIT #24-G,  
(Street)

Las Vegas, Nevada 89109 ("Property Address");  
(City) (Zip Code)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier,

such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance of the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured)

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Lender may purchase such insurance from or through any company acceptable to Lender including, without limitation, an affiliate of Lender, and Borrower

acknowledges and agrees that Lender's affiliate may receive consideration for such purchase. 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 and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. 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.

Borrower hereby absolutely and irrevocably assigns to Lender all of Borrower's right, title and interest in and to all proceeds from any insurance policy (whether or not the insurance policy was required by Lender) that are due, paid or payable with respect to any damage to such property, regardless of whether the insurance policy is established before, on or after the date of this Security Instrument. By absolutely and irrevocably assigning to Lender all of Borrower's rights to receive any and all proceeds from any insurance policy, Borrower hereby waives, to the full extent allowed by law, all of Borrower's rights to receive any and all of such insurance proceeds.

Borrower hereby absolutely and irrevocably assigns to Lender all of Borrower's right, title and interest in and to (a) any and all claims, present and future, known or unknown, absolute or contingent, (b) any and all causes of action, (c) any and all judgments and settlements (whether through litigation, mediation, arbitration or otherwise), (d) any and all funds sought against or from any party or parties whatsoever, and (e) any and all funds received or receivable in connection with any damage to such property, resulting from any cause or causes whatsoever, including but not limited to, land subsidence, landslide, windstorm, earthquake, fire, flood or any other cause.

Borrower agrees to execute, acknowledge if requested, and deliver to Lender, and/or upon notice from Lender shall request any insurance agency or company that has issued any insurance policy to execute and deliver to Lender, any additional instruments or documents requested by Lender from time to time to evidence Borrower's absolute and irrevocable assignments set forth in this paragraph.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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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 sixty 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, or remove or demolish any building thereon, 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 good condition and repair 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 in good and workmanlike manner if damaged to avoid further deterioration or damage. Lender shall, unless otherwise agreed in writing between Lender and Borrower, have the right to hold insurance or condemnation proceeds. 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. Lender does not make any warranty or representation regarding, and assumes no responsibility for, the work done on the Property, and Borrower shall not have any right to rely in any way on any inspection(s) by or for Lender or its agent. Borrower shall be solely responsible for determining that the work is done in a good, thorough, efficient and workmanlike manner in accordance with all applicable laws.

Borrower shall (a) appear in and defend any action or proceeding purporting to affect the security hereof, the Property or the rights or powers of Lender or Trustee; (b) at Lender's option, assign to Lender, to the extent of Lender's interest, any claims, demands, or causes of action of any kind, and any award, court judgment, or proceeds of settlement of any such claim, demand or cause of action of any kind which Borrower now has or may hereafter acquire arising out of or relating to any interest in the acquisition or ownership of the Property. Lender and Trustee shall not have any duty to prosecute any such claim, demand or cause of action. Without limiting the foregoing, any such claim, demand or cause of action arising out of or relating to any interest in the acquisition or ownership of the Property may include (i) any such injury or damage to the Property including without limit injury or damage to any structure or improvement situated thereon, (ii) or any claim or cause of action in favor of Borrower which arises out of the transaction financed in whole or in part by the making of the loan secured hereby, (iii) any claim or cause of action in favor of Borrower (except for bodily injury) which arises as a result of any negligent or improper construction, installation or repair of the Property including without limit, any surface or subsurface thereof, or of any building or structure thereon or (iv) any proceeds of insurance, whether or not required by Lender, payable as a result of any damage to



or otherwise relating to the Property or any interest therein. Lender may apply, use or release such monies so received by it in the same manner as provided in Paragraph 5 for the proceeds of insurance.

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such



termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

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

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

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

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

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

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

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

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

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

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

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

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

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

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** This Security Instrument cannot be changed or modified except as otherwise provided herein or by agreement in writing signed by Borrower, or any Successor in Interest of Borrower and Lender. 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 Successor 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. No waiver by Lender of any right under this Security Instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Security Instrument or of any provision of this Security Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence.

**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.

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**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. Borrower shall pay such other charges as Lender may deem reasonable for services rendered by Lender and furnished at the request of Borrower, any Successor in Interest of Borrower or any agent of Borrower. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

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

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

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

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

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

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

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

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

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

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

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

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

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

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

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

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence. If Borrower or any Successor in Interest of Borrower files (or has filed against Borrower or any Successor in Interest of Borrower) a bankruptcy petition under Title 11 or any successor title of the United States Code which provides for the curing of prepetition default due on the Note, interest at a rate determined by the court shall be paid to Lender on post-petition arrears.

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 other 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.

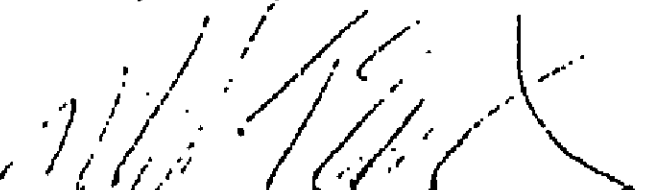
Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following 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 or the Trustee (whether or not the Trustee is affiliated with Lender) may charge such person or persons a fee for reconveying the Property, but only if the fee is not Prohibited by 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. Trustee may destroy the Note and the Security Instrument three (3) years after issuance of a full reconveyance or release (unless directed in such request to retain them).

25. **Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ 3,450.00.

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.

  
MICHAEL T. ELLIOTT

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\_\_\_\_\_  
(Space Below This Line For Acknowledgment)

STATE OF NEVADA CALIFORNIA )  
COUNTY OF SAN DIEGO ) ss.

This instrument was acknowledged before me on Oct. 9, 2003 by  
(date)

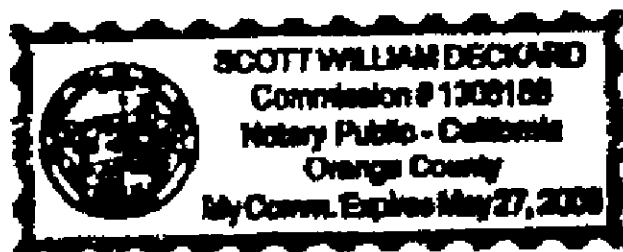
MICHAEL T. ELLIOTT

(name(s) of person(s))

\_\_\_\_\_  
(type of authority, e.g., officer, trustee, etc.)

of \_\_\_\_\_  
(name of party on behalf of whom instrument was executed)

[NOTARY STAMP]



Scott William Deckard  
(Signature of notarial officer)

Notary Public  
(Title and rank)

My commission expires: MAY 27, 2005

Mail Tax Statements To:  
P.O. BOX 24  
Rancho Santa Fe, California 92067

**EXHIBIT A**

**PARCEL 1:**

**UNIT ONE HUNDRED EIGHTY-FIVE (185) AS AMENDED PLAT OF REGENCY TOWERS, AS THE SAME IS ESTABLISHED AND IDENTIFIED IN THE PLAN OF CONDOMINIUM FILES PURSUANT TO THE PROVISIONS OF NRS 117.020 ON APRIL 12, 1972 IN BOOK 14 OF PLATS, PAGE 37, AS CLARIFIED BY AFFIDAVITS RECORDED SEPTEMBER 5, 1972, DOCUMENT NO. 285994, AND AS AMENDED ON AUGUST 10, 1973 IN BOOK 16 OF PLATS, PAGE 27, IN THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA ("PLAN"), AND AMENDED HERETO.**

**PARCEL 2:**

**AN UNDIVIDED .549% INTEREST IN THE COMMON AREAS INCLUDED IN THE PLAN.**

**PARCEL 3:**

**AN UNDIVIDED .549% INTEREST IN THE ESTATE FOR YEARS CREATED BY THAT CERTAIN LEASE DATED JANUARY 1, 1971 BETWEEN CHAININ NEVADA PROPERTIES, INC., AS LANDLORD AND REGENCY HOLDING CORP. AS TENANT, RECORDED ON JANUARY 7, 1971 AS INSTRUMENT NO. 72485, BOOK NO. 91, IN OFFICIAL RECORDS OF CLARK COUNTY NEVADA.**



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## CONDOMINIUM RIDER

Loan Number: 0081699902

THIS CONDOMINIUM RIDER is made this 2nd day of OCTOBER, 2003, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to Washington Mutual Bank, FA (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

3111 BEL AIR DRIVE UNIT #24-G, Las Vegas, Nevada 89109

(Property Address)

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as: REGENCY TOWERS (the "Condominium Project").

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

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

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

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which the Lender requires insurance, then:

(i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and

(ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

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

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

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

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

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

E. **Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to:

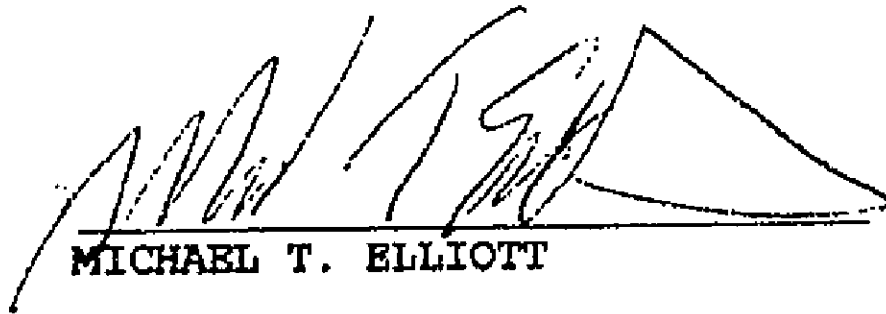
- (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender;
- (iii) termination of professional management and assumption of self-management of the Owners Association; or
- (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

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

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

  
MICHAEL T. ELLIOTT

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**ADJUSTABLE RATE RIDER  
(12-MTA Index - Payment and Rate Caps)**

Loan Number: 0081699902

THIS ADJUSTABLE RATE RIDER is made this 2nd day of OCTOBER, 2003, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Washington Mutual Bank, FA (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

3111 BEL AIR DRIVE UNIT #24-G, Las Vegas, Nevada 89109  
(Property Address)

THIS RIDER CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 125% OF THE ORIGINAL AMOUNT (OR \$ 393,750.00). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THE NOTE AND RIDER. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

**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**

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 payment due date set forth in Section 3 of this Note, I will pay interest at a yearly rate of 5.625 %. Thereafter until the first Change Date (as defined in Section 4 of this Note) I will pay interest at a yearly rate of 5.625 %. The interest rate I will pay will thereafter change in accordance with Section 4 of the Note.

Section 4 of the Note provides for changes in the interest rate and monthly payment as follows:

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

The interest rate I will pay may change on the 1st day of NOVEMBER, 2006, and on that day every month thereafter. Each such day is called a "Change Date".

**(B) The Index**

On each Change Date, my interest rate will be based on an Index. The "Index" is the Twelve-Month Average, determined as set forth below, 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 Change Date is called the "Current Index".

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

**(C) Interest Rate Change**

Before each Change Date, the Note Holder will calculate my new interest rate by adding THREE AND 100/1000 percentage points 3.100 % ("Margin") to Current Index. The Note Holder will then round the result of this addition to the nearest one thousandth of one percentage point (0.001%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. The new Margin will be the difference between the average of the old Index for the most recent three year period which ends on the last date the Index was available plus the Margin on the last date the old Index was available and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). The difference will be rounded to the next higher 1/8 of 1%.

**(D) Interest Rate Limit**

My interest rate will never be greater than 12.450 % ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

**(E) Payment Change Dates**

Effective every year commencing DECEMBER 1, 2006, and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected Principal balance I am expected to owe as of the Payment Change Date in full on the maturity date at the interest rate in effect

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45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my monthly payment, subject to Section 4(F) below, and I will make payments in the new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of the Note.

**(F) Monthly Payment Limitations**

Unless Section 4(H) and 4(I) below apply, the amount of my new monthly payment, beginning with a Payment Change Date, will be limited to 7 1/2% more or less than the amount I have been paying. This payment cap applies only to the Principal Payment and does not apply to any escrow payments Lender may require under the Security Instrument.

**(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization**

Since my payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 4(F), my monthly payment could be less 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 the monthly payment is less than the interest portion, the Note Holder will subtract the 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 current interest rate. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a Principal reduction of the Note.

**(H) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid Principal can never exceed a maximum amount equal to 125% of the principal amount originally borrowed. In the event my unpaid Principal would otherwise exceed that 125% limitation, I will begin paying a new monthly payment until the next Payment Change Date notwithstanding the 7 1/2% annual payment increase limitation. The new monthly payment will be an amount which would be sufficient to repay my then unpaid principal in full on the maturity date at my interest rate in effect the month prior to the payment due date in substantially equal payments.

**(I) Required Full Monthly Payment**

On the FIFTH anniversary of the due date of the first monthly payment, and on that same day every FIFTH year thereafter, the monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

**(J) Notice of Changes**

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

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**(K) Failure to Make Adjustments**

If for any reason Note Holder fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree that Note Holder may, upon discovery of such failure, then make the adjustment as if they had been made on time. I also agree not to hold Note Holder responsible for any damages to me which may result from Note Holder's failure to make the adjustment and to let the Note Holder, at its option, apply any excess monies which I may have paid to partial prepayment of unpaid "Principal."

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

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

**Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser. If all or any part of the Property or any interest in the Property is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) 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 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; (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 Agreement or other obligations related to the Note or other loan document is acceptable to Lender; (c) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below and (d) payment of Assumption Fee if requested by Lender.

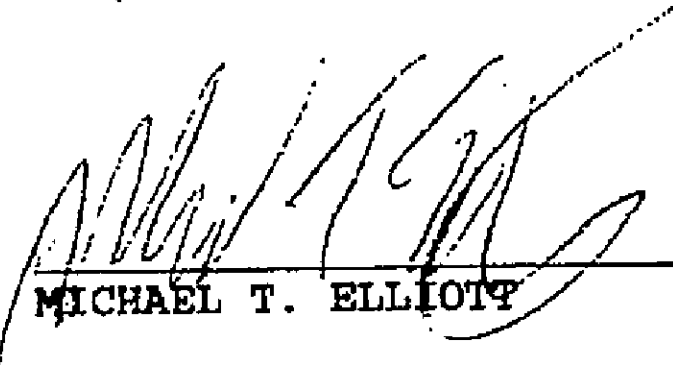
To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption, and Lender may increase the maximum interest rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. 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 has entered into a written assumption agreement with transferee and formally releases Borrower.

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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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider. Borrower agrees to execute any document necessary to reform this Agreement to accurately reflect the terms of the Agreement between Borrower and Beneficiary or if the original Note, Trust Deed or other document is lost, mutilated or destroyed.

  
\_\_\_\_\_  
MICHAEL T. ELLIOTT  
  
\_\_\_\_\_  
  
\_\_\_\_\_



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**1-4 FAMILY RIDER**  
**Assignment of Rents**

Loan Number: 0081699902

THIS 1-4 FAMILY RIDER is made this 2nd day of OCTOBER, 2003, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to Washington Mutual Bank, FA (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

3111 BEL AIR DRIVE UNIT #24-G, Las Vegas, Nevada 89109

[Property Address]

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

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

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

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

**D. RENT LOSS INSURANCE.** Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

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

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

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

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

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

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

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

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default

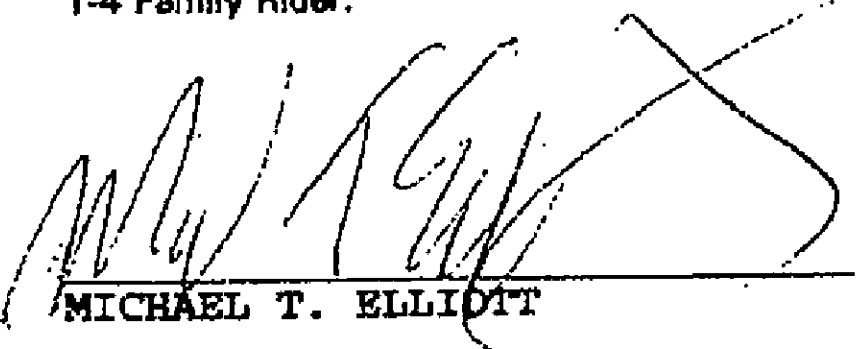
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occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

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

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

  
\_\_\_\_\_  
MICHAEL T. ELLIOTT

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\_\_\_\_\_  
\_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_

## **Exhibit 4**


  
20041020-0001569

Assessor's Parcel Number: 18210812185

Return To: FL9-700-05-22  
 JACKSONVILLE POST CLOSING  
 9000 SOUTHSIDE BLVD.  
 BLDG 700, FILE RECEIPT DEPT.  
 JACKSONVILLE, FL 32256  
 Prepared By: DEBRA KRAFCSIK  
 BANK OF AMERICA, N.A.  
 901 GEORGE WASHINGTON  
 WICHITA, KS 67211-3901

Fee: \$42.00

V/C Fee: \$0.00

10/20/2004

10:32:56

T26048116980

Requestor:

BANK OF AMERICA

Frances Deane

SU0

Clark County Recorder

Pgs 29

Recording Requested By:  
 BANK OF AMERICA POST CLOSE  
 9000 SOUTHSIDE BLVD , BLDG 700  
 JACKSONVILLE, FL

- [Space Above This Line For Recording Data] -

LOAN # 33C0690454

**DEED OF TRUST****DEFINITIONS**

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

(A) "Security Instrument" means this document, which is dated OCTOBER 06, 2004, together with all Riders to this document.

(B) "Borrower" is MICHAEL T. ELLIOTT, AN UNMARRIED PERSON

Borrower is the trustor under this Security Instrument.

NEVADA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
 Form 3029 1101

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Initials: \_\_\_\_\_

VMP Mortgage Solutions (800) 521-7291

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(C) "Lender" is BANK OF AMERICA, N.A.

Lender is a NATIONAL BANKING ASSOCIATION  
organized and existing under the laws of THE UNITED STATES OF AMERICA  
Lender's address is 801 GEORGE WASHINGTON, WICHITA, KS 672113901

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is PRLAP, INC

(E) "Note" means the promissory note signed by Borrower and dated OCTOBER 06, 2004  
The Note states that Borrower owes Lender THREE HUNDRED TWENTY TWO THOUSAND ONE  
HUNDRED AND 00/100 Dollars

(U.S. \$ 322,100.00 ) plus interest. Borrower has promised to pay this debt in regular  
Periodic Payments and to pay the debt in full not later than NOVEMBER 01, 2034

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

(G) "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.

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

(I) "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.

(J) "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.

(K) "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.

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

(M) "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.

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

(O) "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.

(P) "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.

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(Q) "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**

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the \_\_\_\_\_ COUNTY of CLARK \_\_\_\_\_

(Type of Recording Jurisdiction)

(Name of Recording Jurisdiction)

"LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF."

SEE ATTACHED EXHIBIT "A"

Parcel ID Number: 16212912105  
3111 BEL AIR DR UNIT 24G  
LAS VEGAS

which currently has the address of  
[Street]  
[City], Nevada 89109 [Zip Code]

("Property Address"): LAS VEGAS AREA

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

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

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

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be

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made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

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

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

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

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

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

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Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible

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level(s) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

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

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

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

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

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

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

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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 23 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

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

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

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

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

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

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

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

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

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

**25. Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ 1% UPB, MIN \$400, MAX \$900

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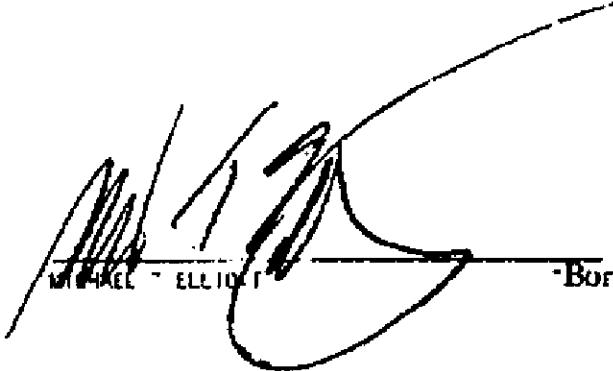
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_

  
MICHAEL ELLIOTT (Seal)  
-Borrower

\_\_\_\_\_

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

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

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

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

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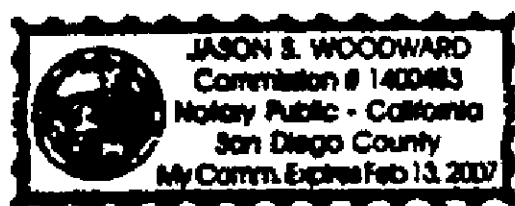
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STATE OF NEVADA *California*  
COUNTY OF *San Diego* *October 6th 2004*  
by This instrument was acknowledged before me on *Jason Woodward*

*Michael T Elliott*



Mail Tax Statements To: MICHAEL T ELLIOTT  
3111 BEL AIR DR UNIT 240  
LAS VEGAS, NV 89109

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### **LEGAL ADDENDUM**

THE FOLLOWING DESCRIBED REAL PROPERTY SITUATE IN THE CITY OF LAS VEGAS, COUNTY OF CLARK, AND STATE OF NEVADA. TO WIT:

**PARCEL 1:**

UNIT 3 OF AMENDED PLAT OF REGENCY TOWERS AS THE SAME IS ESTABLISHED AND IDENTIFIED IN THE PLAN OF CONDOMINIUMS FILED PURSUANT TO THE PROVISIONS OF NRS 117.020 ON APRIL 12, 1972 IN BOOK 14 OF PLATS, PAGE 37 AND ON AUGUST 10, 1973 IN BOOK 16 OF PLATS, PAGE 27 IN THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA ("PLAN").

**PARCEL 2:**

AN UNDIVIDED .153% INTEREST IN THE COMMON AREAS INCLUDED IN THE PLAN.

TAX ID #: 16210812003

BY FEE SIMPLE DEED FROM REGAN ELLIOTT, A MARRIED WOMAN, WIFE OF THE WITHIN GRANTEE TO MICHAEL ELLIOTT, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY AS SET FORTH IN DEED BOOK 20630131, PAGE 04430 AND RECORDED ON 1/31/2003, CLARK COUNTY RECORDS.

THE SOURCE DEED AS STATED ABOVE IS THE LAST RECORD OF VESTING FILED FOR THIS PROPERTY. THERE HAVE BEEN NO VESTING CHANGES SINCE THE DATE OF THE ABOVE REFERENCED SOURCE.

LOAN # 3300690454

**ADJUSTABLE RATE RIDER**

THIS ADJUSTABLE RATE RIDER is made this 6TH day of OCTOBER, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to BANK OF AMERICA, N.A.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 3111 BEL AIR DR UNIT 24G, LAS VEGAS, NV 89109

LAS VEGAS AREA

(Property Address)

**THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.**

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

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for an initial interest rate of 4.500 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

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

The interest rate I will pay may change on the FIRST day of NOVEMBER, 2007, and on that day every 12TH month thereafter. Each date on which my interest rate could change is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is:

MULTISTATE ADJUSTABLE RATE RIDER - Single Family

Page 1 of 8

BS889R 05101 01

VMP MORTGAGE FORMS - (800)521-7291

MCMR 10/25/04 7:59 AM 3300690454

THE ONE-YEAR LONDON INTERBANK OFFERED RATE ("LIBOR") WHICH IS THE AVERAGE OF INTERBANK OFFERED RATES FOR ONE-YEAR U.S. DOLLAR-DENOMINATED DEPOSITS IN THE LONDON MARKET, AS PUBLISHED IN THE WALL STREET JOURNAL. THE MOST RECENT INDEX FIGURE AVAILABLE AS OF THE DATE 45 DAYS BEFORE EACH CHANGE DATE IS CALLED THE "CURRENT INDEX."

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

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE-QUARTER (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the ☐ Nearest ☒ Next Highest ☐ Next Lowest ONE-EIGHTH OF ONE PERCENTAGE POINT (0.125 %). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

☐ **Interest-Only Period**

The "Interest only Period" is the period from the date of this Note through

For the interest-only period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to pay the interest which accrues on the unpaid principal of my loan. The result of this calculation will be the new amount of my monthly payment.

The "Amortization Period" is the period after the interest-only period. For the amortization period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

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Page 2 of 5

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**(D) Limits on Interest Rate Changes**

**(Please check appropriate boxes; if no box is checked, there will be no maximum limit on changes.)**

- ☐ (1) There will be no maximum limit on interest rate changes.
- ☐ (2) The interest rate I am required to pay at the first Change Date will not be greater than \_\_\_\_\_ % or less than \_\_\_\_\_ %.
- ☐ (3) My interest rate will never be increased or decreased on any single Change Date by more than \_\_\_\_\_ percentage points ( \_\_\_\_\_ %) from the rate of interest I have been paying for the preceding period.
- ☒ (4) My interest rate will never be greater than 10.500 %, which is called the "Maximum Rate."
- ☐ (5) My interest rate will never be less than \_\_\_\_\_ %, which is called the "Minimum Rate."
- ☐ (6) My interest rate will never be less than the initial interest rate.
- ☒ (7) The interest rate I am required to pay at the first Change Date will not be greater than 6.500 % or less than 2.500 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO percentage points ( 2.000 %) from the rate of interest I have been paying for the preceding period.

**(E) Effective Date of Changes**

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

**(F) Notice of Changes**

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

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**  
Uniform Covenant 18 of the Security Instrument is amended to read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of the 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 a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

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



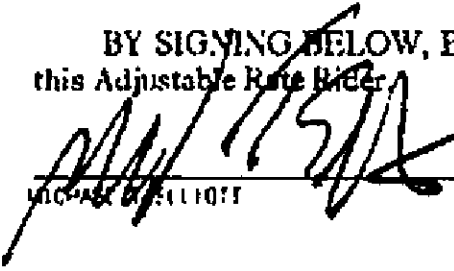
If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security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

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

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

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

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

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

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

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

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

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

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MGNR 10/25/04 7:59 AM 3300650454

LOAN # 3300690454

**CONDOMINIUM RIDER**

THIS CONDOMINIUM RIDER is made this 6TH day of OCTOBER, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to BANK OF AMERICA, N.A.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 3111 BEL AIR DR UNIT 24G  
LAS VEGAS, NV 89109

(Property Address)

LAS VEGAS AREA

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

REGENCY TOWERS

(Name of Condominium Project)

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

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

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

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is

MULTISTATE CONDOMINIUM RIDER - Single Family

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BSBR (0008)

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

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

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

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

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

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

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

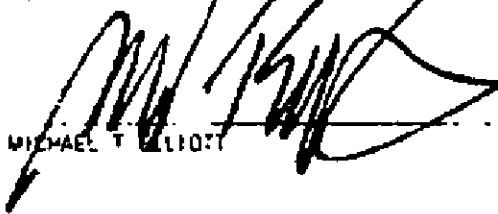
**F. Remedies.** If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment,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

BSBA (DOOR)

Page 2 of 3

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

  
MICHAEL T. ELLIOTT

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

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W38C 10/05/04 7:59 AM 3300590454

LOAN # 3300690454

## **1-4 FAMILY RIDER**

(Assignment of Rents)

THIS 1-4 FAMILY RIDER is made this 6TH day of OCTOBER, 2004 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to BANK OF AMERICA, N.A.

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

3117 BEL AIR DR UNIT 24G, LAS VEGAS, NV 89109

LAS VEGAS AREA

(Property Address)

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

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

**MULTISTATE 1-4 FAMILY RIDER**

Page 1 of 4

BS57R (10018)

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

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

**D. RENT LOSS INSURANCE.** Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

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

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

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

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

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the

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

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

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

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

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



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

  
MICHAEL ELLIOTT (Seal)  
-Borrower

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

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

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(Seal)  
-Borrower

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(Seal)  
-Borrower

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(Seal)  
-Borrower

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(Seal)  
-Borrower

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

BS57R (0008)

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MSFE 10/05/04 7:59 AM 3300690454

## **Exhibit 5**

Assessor Parcel Number: 162-10-812-185  
File Number: R73103

Inst #: 201011120004451  
Fees: \$14.00  
N/C Fee: \$0.00  
11/12/2010 09:46:04 AM  
Receipt #: 575987  
Requestor:  
NORTH AMERICAN TITLE COMPAN  
Recorded By: SOL 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 Regency Towers Association, Inc., 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 10/26/2000, in Book Number 20001026, as Instrument Number 01384 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:

3111 Bel Air Dr #24G, Las Vegas, NV 89109

REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37 UNIT 185, in the County of Clark

Current Owner(s) of Record:

MICHAEL T. ELLIOTT

The amount owing as of the date of preparation of this lien is \*\*\$5,183.13.

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: November 8, 2010



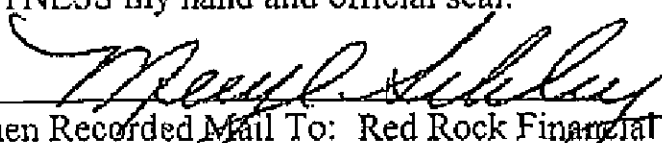
Prepared By Anna Romero, Red Rock Financial Services, on behalf of Regency Towers Association, Inc.

STATE OF NEVADA )

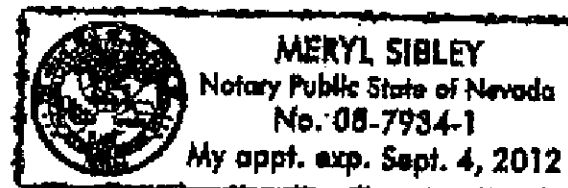
COUNTY OF CLARK )

On November 8, 2010, 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 Amigo Street, Suite 100  
Las Vegas, Nevada 89119  
702-932-6887



## **Exhibit 6**

Assessor Parcel Number: 162-10-812-185  
File Number: R73103  
Property Address: 3111 Bel Air Dr #24G  
Las Vegas, NV 89109  
Title Order Number: **1036718**

Inst #: 201102010002543  
Fees: \$14.00  
N/C Fee: \$0.00  
02/01/2011 02:48:26 PM  
Receipt #: 661327  
Requestor:  
**STEWART TITLE LAS VEGAS WAR**  
Recorded By: BGN Pgs: 1  
**DEBBIE CONWAY**  
**CLARK COUNTY RECORDER**

**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE  
LIEN FOR DELINQUENT ASSESSMENTS**

◆ IMPORTANT NOTICE ◆

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

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

**NOTICE IS HEREBY GIVEN:** Red Rock Financial Services officially assigned as agent by the Regency Towers Association, Inc., under the Lien for Delinquent Assessments, recorded on 11/12/2010, in Book Number 20101112, as Instrument Number 0004451, reflecting MICHAEL T. ELLIOTT as the owner(s) of record on said lien, land legally described as REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37 UNIT 185, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 10/26/2000, in Book Number 20001026, as Instrument Number 01384, has been breached. As of 07/01/2010 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restriction in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 116, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of January 21, 2011, the amount owed is \$ 8,728.16. This amount will continue to increase until paid in full.

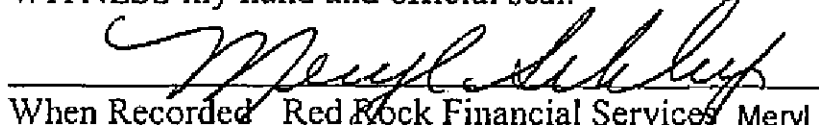
  
Prepared By Joshua Wood, Red Rock Financial Services, on behalf of Regency Towers Association, Inc.

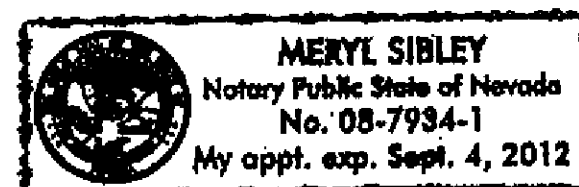
Dated: January 21, 2011

STATE OF NEVADA )  
COUNTY OF CLARK )

On January 21, 2011, before me, personally appeared Joshua Wood, 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 Red Rock Financial Services Meryl Sibley  
Mail To: 7251 Amigo Street, Suite 100 Notary Public State  
Las Vegas, Nevada 89119 of Nevada  
702-932-6887 No.08-7934-1 My Appt Expires Sept. 4, 2012



Assessor Parcel Number: 162-10-812-185  
File Number: R73103  
Property Address: 3111 Bel Air Dr #24G  
Las Vegas, NV 89109  
Title Order Number: 32916

Inst #: 201107130000603  
Fees: \$14.00  
N/C Fee: \$0.00  
07/13/2011 09:06:50 AM  
Receipt #: 842559  
Requestor:  
NORTH AMERICAN TITLE COMPAN  
Recorded By: KXC Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE**  
**LIEN FOR DELINQUENT ASSESSMENTS**  
◆ IMPORTANT NOTICE ◆

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

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

**NOTICE IS HEREBY GIVEN:** Red Rock Financial Services officially assigned as agent by the Regency Towers Association, Inc., under the Lien for Delinquent Assessments, recorded on 11/12/2010, in Book Number 20101112, as Instrument Number 0004451, reflecting MICHAEL T. ELLIOTT as the owner(s) of record on said lien, land legally described as REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37 UNIT 185, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 10/26/2000, in Book Number 20001026, as Instrument Number 01384, has been breached. As of 07/01/2010 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restriction in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 116, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of July 5, 2011, the amount owed is \$15,948.63. This amount will continue to increase until paid in full.


  
Prepared By Joshua Wood, Red Rock Financial Services, on behalf of Regency Towers Association, Inc.

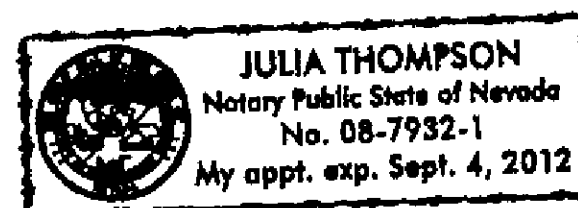
Dated: July 5, 2011

STATE OF NEVADA )  
COUNTY OF CLARK )

On July 5, 2011, before me, personally appeared Joshua Wood, 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 Red Rock Financial Services  
Mail To: 7251 Amigo Street, Suite 100  
Las Vegas, Nevada 89119  
702-932-6887



## **Exhibit 7**

Inst #: 201103280002335

Fees: \$14.00

N/C Fee: \$0.00

03/28/2011 01:26:35 PM

Receipt #: 719456

Requestor:

COLLECTIONS OF AMERICA

Recorded By: ARO Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 162-10-812-185

Collections of America, Inc.

1500 East Tropicana #108

Las Vegas, NV. 89119

(702) 806-0989 or (702) 463-3285

FAX: (702) 361-0196

March 28, 2011

Michael T. Elliott

3111 Bel Air Drive #24G

Las Vegas, NV 89109

APN: 162-10-812-185

**NOTICE OF CLAIM OF LIEN-DELINQUENT HOMEOWNERS ASSESSMENT**

NOTICE is hereby given that Las Vegas International Country Club Estates Association, A Nevada Corporation, and its successors and assigns, hereinafter called "the Association," formed to provide the maintenance, preservation, and architectural control of the residence lots and common area of the Association homeowners in the County of Clark, State of Nevada, entitled N. R. S. Section 1,144.17 et. Seq. and N. R. S. 116.3115 et. Seq., for the services performed which were to be and were actually furnished, used and performed on the said premises, located in the county of Clark, State of Nevada, more particularly described as follows:

**PARCEL# 162-10-812-185**

**COMMONLY KNOWN AS: 3111 Bel Air Drive #24G Las Vegas, NV 89109**

**Legal Description: REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37 UNIT 185 SEC 10 TWP 21  
RNG 61**

And that the whole of said real estate upon which the buildings are situated is reasonably necessary for the convenient use and occupancy of said building(s).

That Michael T. Elliott own(s) and reputedly own(s) said real property and improvements herein above described. THAT THE AMOUNT OWING AND UNPAID TOTALS \$1,320.00 AS OF March 28, 2011.

This amount includes collections fees, trustees fees, and ATTORNEY FEES AND THE FEES OF THE MANAGEMENT BODY INCURRED IN CONNECTION WITH PREPARATION, RECORDING, AND FORECLOSURE OF THIS LIEN.

Dated: March 28, 2011

By

Steve Yarmy, Esq.

STATE OF NEVADA

County of Clark

When Recorded Mail to:  
Collections of America, Inc.  
1500 East Tropicana #108  
Las Vegas, NV. 89119



THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME,  
A NOTARY PUBLIC OF THIS 28th DAY OF March 2011.  
BY Steven Yarmy Carol Salmon NOTARY PUBLIC



## **Exhibit 8**

**APN#: 162-10-812-185**  
Collections of America, Inc.  
1500 East Tropicana # 108  
Las Vegas, NV. 89119  
(702) 806-0989 FAX(702)361-0196

Inst #: 201112010002276  
Fees: \$18.00  
N/C Fee: \$0.00  
12/01/2011 02:13:51 PM  
Receipt #: 995019  
Requestor:  
COLLECTIONS OF AMERICA  
Recorded By: ECM Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

## **NOTICE OF DEFAULT AND ELECTION TO SELL**

Michael T. Elliott  
3111 Bel Air Drive #24G  
Las Vegas, NV 89109

December 1, 2011

**RE: NOTICE OF DEFAULT AND ELECTION TO SELL**  
**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS**  
**NOTICE YOU COULD LOSE YOUR HOME EVEN IF THE AMOUNT IS**  
**IN DISPUTE. A NOTICE OF DEFAULT AND ELECTION TO SELL**  
**UNDER NOTICE ASSESSMENT CLAIM AND LIEN HAS BEEN FILED.**  
**YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE**  
**DELINQUENT IN YOUR HOMEOWNER ASSOCIATION ASSESSMENTS.**  
**YOUR PROPERTY MAY BE SOLD WITHOUT ANY COURT ACTION.** And  
this is to advise you that you have the legal right to bring your account current by paying  
all of the past due assessments plus permitted costs and expenses, including interest  
and late fees within the time permitted by law for the reinstatement of your account Ninety  
(90) days from the recorded date of this Notice of Default, a sale date will be set. NOTICE  
IS HEREBY GIVEN that Las Vegas International Country Club Estates located at 2854  
Geary Place #3809 Las Vegas, NV 89109, is the lien holder and beneficiary under an  
Assessment Lien dated March 28, 2011 and recorded as instrument #0002335 Book  
#20110328 of Official Records, in Clark County, Nevada to secure certain obligations  
under the Declaration of Covenants, Conditions, and Restrictions. Carol Salmon of  
Collections of America, Inc. has been appointed as agent for Las Vegas International  
Country Club Estates to conduct the foreclosure of this property described therein as:  
Commonly known as: 3111 Bel Air #24G Drive Las Vegas, NV 89109  
Legal Description: Regency Towers AMD PLAT BOOK 14 PAGE 37 UNIT 185 SEC 10  
TWP 21 RNG 61

December 1, 2011

**Amount due is \$3,366.00 as of December 1, 2011. This amount includes collection fees, late fees, interest, and attorney fees.**

The beneficial Interest under such claim of Lien and the obligations secured thereby are presently held by the undersigned. A breach of, and default in the obligations for which such lien is secured has occurred. In that payment has not been made. By reason thereof, the present beneficiary under such Claim of Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected to cause APN# 162-10-812-185

Notice of Default and Election to Sell  
the property to be sold to satisfy the obligations secured thereby.

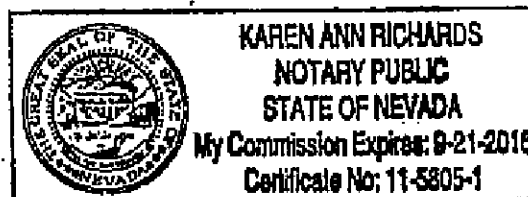
**PURSUANT TO NEVADA REVISED STATUTES, CHAPTER 116, a sale will be held if this obligation is not completely satisfied and paid within (90) days from the date of recording of this Notice and on the property described herein above.**

DATED this 1 day of December, 2011. Las Vegas International Country Club Estates

BY: Sara Olen  
Sara Olen

State of Nevada )

) SS;  
County of Clark )



THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME, NOTARY PUBLIC ON THIS 1 DAY OF December, 2011

SIGNATURE: Karen Ann Richards  
(Notary Public)

## **Exhibit 9**

Inst #: 201206210001804

Fees: \$17.00

N/C Fee: \$0.00

06/21/2012 12:29:12 PM

Receipt #: 1206223

Requestor:

COLLECTIONS OF AMERICA

Recorded By: MSH Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 162-10-812-185

Collections of America, Inc.

1500 East Tropicana #108

Las Vegas, NV. 89119

(702) 806-0989 or (702) 463-3285

FAX: (702) 361-0196

June 21, 2012

Elliott, Michael T.

3111 Bel Air Drive #24 G

Las Vegas, NV 89109

APN: 162-10-812-185

**NOTICE OF CLAIM OF LIEN-DELINQUENT HOMEOWNERS ASSESSMENT NOTICE** is hereby given that **Las Vegas International Country Club Estates Association**, A Nevada Corporation, and its successors and assigns, hereinafter called "the Association," formed to provide the maintenance, preservation, and architectural control of the residence lots and common area of the Association homeowners in the County of Clark, State of Nevada, entitled N. R. S. Section 1,144.17 et. Seq. and N. R. S. 116.3115 et. Seq., for the services performed which were to be and were actually furnished, used and performed on the said premises, located in the county of Clark, State of Nevada, more particularly described as follows:

**PARCEL# 162-10-812-185**

**COMMONLY KNOWN AS: 3111 Bel Air Drive # 24G Las Vegas, NV 89109**

**Legal Description: REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37 UNIT 185  
SEC 10 TWP 21 RNG 61**

And that the whole of said real estate upon which the buildings are situated is reasonably necessary for the convenient use and occupancy of said building(s).

That **Elliott, Michael T.** own(s) and reputedly own(s) said real property and improvements herein above described. THAT THE AMOUNT OWING AND UNPAID TOTALS \$4,366.00 AS OF June 21, 2012.

This amount includes collections fees, trustees fees, and ATTORNEY FEES AND THE FEES OF THE MANAGEMENT BODY INCURRED IN CONNECTION WITH PREPARATION, RECORDING, AND FORECLOSURE

June 21, 2012

By

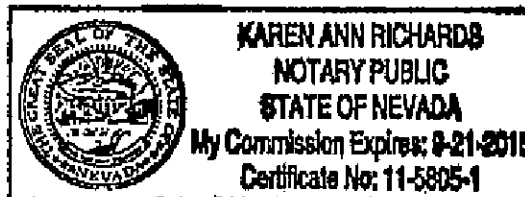
*Sara Olen*

Sara Olen

STATE OF NEVADA

County of Clark

When Recorded Mail to:  
Collections of America, Inc.  
1500 East Tropicana #108  
Las Vegas, NV. 89119



THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME,  
A NOTARY PUBLIC OF THIS 21<sup>st</sup> DAY OF June 2012.  
BY Sara Olen Karen Ann Richards NOTARY PUBLIC

## **Exhibit 10**

**APN#: 162-10-812-185**  
Collections of America, Inc.  
1500 East Tropicana # 108  
Las Vegas, NV. 89119  
(702) 806-0989 FAX(702)361-0196

Inst #: 201207250002134  
Fees: \$18.00  
N/C Fee: \$0.00  
07/25/2012 01:09:28 PM  
Receipt #: 1247151  
Requestor:  
COLLECTIONS OF AMERICA  
Recorded By: ADF Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

## **NOTICE OF DEFAULT AND ELECTION TO SELL**

Michael T. Elliott  
3111 Bel Air Drive #24G  
Las Vegas, NV 89109

July 25, 2012

**RE: NOTICE OF DEFAULT AND ELECTION TO SELL**  
**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE YOU COULD LOSE YOUR HOME EVEN IF THE AMOUNT IS IN DISPUTE. A NOTICE OF DEFAULT AND ELECTION TO SELL UNDER NOTICE ASSESSMENT CLAIM AND LIEN HAS BEEN FILED. YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE DELINQUENT IN YOUR HOMEOWNER ASSOCIATION ASSESSMENTS. YOUR PROPERTY MAY BE SOLD WITHOUT ANY COURT ACTION. And this is to advise you that you have the legal right to bring your account current by paying all of the past due assessments plus permitted costs and expenses, including interest and late fees within the time permitted by law for the reinstatement of your account Ninety (90) days from the recorded date of this Notice of Default, a sale date will be set. NOTICE IS HEREBY GIVEN that Las Vegas International Country Club Estates located at 2854 Geary Place #3809 Las Vegas, NV 89109 is the lien holder and beneficiary under an Assessment Lien dated June 21, 2012 and recorded as instrument #0001804 Book #20120621 of Official Records, in Clark County, Nevada to secure certain obligations under the Declaration of Covenants, Conditions, and Restrictions. Carol Salmon of Collections of America, Inc. has been appointed as agent for Las Vegas International Country Club Estates the foreclosure of this property described therein as:**

July 25, 2012

**Commonly known as: 3111 Bel Air Drive #24G Las Vegas, NV 89109**  
**Legal Description: REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37**  
**UNIT 185 SEC 10 TWP 21 RNG 61**

**Amount due is \$5,184.50 as of July 25, 2012. This amount includes collection fees, late fees, interest, and attorney fees.**

The beneficial Interest under such claim of Lien and the obligations secured thereby are presently held by the undersigned. A breach of, and default in the obligations for which such lien is secured has occurred. In that payment has not been made. By reason thereof, the present beneficiary under such Claim of Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected to cause  
**APN# 162-10-812-185**

Notice of Default and Election to Sell  
the property to be sold to satisfy the obligations secured thereby.

**PURSUANT TO NEVADA REVISED STATUTES, CHAPTER 116, a sale will be held if this obligation is not completely satisfied and paid within (90) days from the date of recording of this Notice and on the property described herein above.**

DATED this 25 day of July, 2012. Las Vegas International Country Club Estates

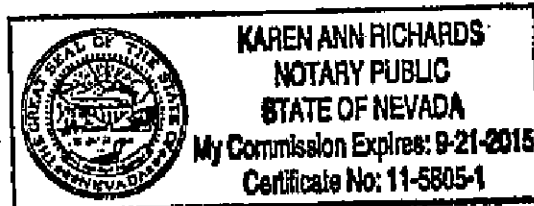
BY: \_\_\_\_\_

Amanda Olen

State of Nevada )

) SS;

County of Clark )



THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME NOTARY PUBLIC ON  
THIS 25 DAY OF July, 2012.

SIGNATURE \_\_\_\_\_

*Karen Ann Richards*  
(Notary Public)



## CIVIL COVER SHEET A - 13 - 682055 - C

Clark County, Nevada

XIV

Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)**I. Party Information**

Plaintiff(s) (name/address/phone): LN Management LLC Series  
3111 Bel Air 24G, P.O. Box  
P.O. Box 36208, Las Vegas,  
NV 89133  
Attorney (name/address/phone): Kerry P. Faughnan, Esq.  
P.O. Box 335361, NLV, NV  
89033, (702) 301-3096

Defendant(s) (name/address/phone): Michael T. Elliot et al, 3111  
Bel Air Drive, #24G, Las  
Vegas, Nevada 89109  
Attorney (name/address/phone):

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

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

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

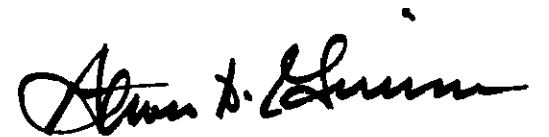
- |   |  |   |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88   | <input type="checkbox"/> Investments (NRS 104 Art. 8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business  |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90)  | <input type="checkbox"/> Trademarks (NRS 600A)               |   |

May 17, 2013

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

**COMP**

Kerry Faughnan, Esq.  
Nevada Bar No.12204  
P.O. Box 335361  
North Las Vegas, NV 89086  
(702) 301-3096  
(702) 331-4222- Fax  
Kerry.faughnan@gmail.com

Attorney for Plaintiff

**EIGHTH JUDICIAL DISTRICT COURT FOR  
CLARK COUNTY, NEVADA**

LN MANAGEMENT LLC SERIES 3111  
BEL AIR 24G

Plaintiff,

v.

MICHAEL T. ELLIOT, an individual;  
BANK OF AMERICA, N.A.; and DOES 1  
through 10, inclusive;

Defendants.

Case No. A - 1 3 - 6 8 2 0 5 5 - C

Dept. No. X I V

**COMPLAINT FOR QUIET TITLE AND  
DECLARATORY RELIEF**

**Exempt from Arbitration: Concerns Title  
to Property**

Plaintiff LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G, by and through its  
counsel of record, Kerry P. Faughnan, Esq., hereby complains against the above-named  
Defendants as follows:

**PARTIES, JURISDICTION AND VENUE**

1. This action relates to the ownership and title of certain real property located in  
Clark County, Nevada, commonly known as 3111 Bel Air Drive, #24G, Las Vegas, Nevada  
89109 (the "Property"). Accordingly, jurisdiction and venue are appropriate in Clark County,  
Nevada.

2. Plaintiff LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G ("Plaintiff") is a  
Nevada Limited Liability Company formed under the laws of the state of Nevada.

3. Upon information and belief, Defendant, Michael T. Elliot was a Nevada resident  
holding title to the Property prior to a foreclosure sale through which Plaintiff derives its title.

4. Upon information and belief, Defendant Bank of America, N.A. held a mortgage against the Property prior to a foreclosure sale through which Plaintiff derives its title.

5. The true names and capacities of Does 1 through 10 (“Doe Defendants”) are currently unknown to Plaintiff, who therefore sues such Doe Defendants by fictitious names. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of each of the Doe Defendants as and when such information is ascertained. (The above-identified defendants, including the Doe Defendants, are referred to collectively herein as “Defendants.”)

## GENERAL ALLEGATIONS

6. On or about April 26, 2013, Plaintiff acquired by deed that certain real property commonly known as 3111 Bel Air Drive, #24G, Las Vegas, Nevada 89109 (the “Property”) from the 3111 Bel Air Drive 24G Trust. A true and correct copy of the Quitclaim Deed is attached hereto as Exhibit 1.

7. The 3111 Bel Air Drive 24G Trust acquired the Property at a properly noticed foreclosure sale in accordance with NRS 116.3116 through 116.31168, inclusive.

8. The Foreclosure Deed conveying the Property to 3111 Bel Air Drive 24G Trust was recorded on December 17, 2012 with the Clark County Recorder's Office in Book/Instrument Number 201212170000834. A true and correct copy of the Foreclosure Deed is attached hereto as Exhibit 2.

9. Upon information and belief, Defendants may have had an interest in the Property at one time.

10. Upon information and belief, none of the Defendants have a valid interest in the Property subsequent to the foreclosure sale.

11. Plaintiff is unable to obtain title insurance on the Property without first quieting claims against all known persons and/or entities claiming legal or equitable interests in the Property.

1 **FIRST CLAIM FOR RELIEF**

2 **(Quiet Title)**

3 12. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1  
4 through 11 of this Complaint, as though fully set forth herein.

5 13. Plaintiff is the rightful owner of the Property by virtue of their Quitclaim Deed.

6 14. Upon information and belief, none of the Defendants have a valid interest in the  
7 Property subsequent to the foreclosure sale.

8 15. Plaintiff is entitled to a determination from this Court, pursuant to NRS 40.010,  
9 that Plaintiff is the rightful owner of the Property and that Defendants, and each of them, have no  
10 right, title, or interest in the Property.

11 16. In the alternative, Plaintiff is entitled to a determination of what remaining interest  
12 Defendants have in the Property, an accounting of Defendant's claims, an order of the Court  
13 recognizing Plaintiff as the legal owner of the Property, subject to any unextinguished claims, and  
14 an order of the Court requiring Defendant(s) to accept payments under the terms of any surviving  
15 lien, from Plaintiff.

16 **SECOND CLAIM FOR RELIEF**

17 **(Declaratory Relief)**

18 17. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1  
19 through 16 of this Complaint, as though fully set forth herein.

20 18. Plaintiff seeks a declaration from this Court, pursuant to NRS 30.010, that title in  
21 the Property is vested in Plaintiff free and clear of all claims of Defendants, and that Defendants  
22 herein have no estate, right, title or interest in the Property, and that Defendants are forever  
23 enjoined from asserting any estate, title, right, or interest in the Property adverse to Plaintiff.

24  
25 19. In the alternative, for a determination of what remaining interest Defendants have  
26 in the Property, an accounting of Defendant's claims, an order of the Court recognizing Plaintiff  
27 as the legal owner of the Property, subject to any unextinguished claims, and an order of the Court  
28 requiring Defendant(s) to accept payments under the terms of any surviving lien, from Plaintiff.

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WHEREFORE, Plaintiff prays for the following relief:

- 1. For a determination and declaration that Plaintiff is the rightful holder of title to the Property, free and clear of all claims of the Defendants;
- 2. In the alternative, for a determination of what remaining interest Defendants have in the Property, an accounting of Defendant’s claims, an order of the Court recognizing Plaintiff as the legal owner of the Property, subject to any unextinguished claims, and an order of the Court requiring Defendant(s) to accept payments under the terms of any surviving lien, from Plaintiff;
- 3. For such other and further relief as this Court may deem just and proper.

DATED May 8, 2013.

/s/ Kerry P. Faughnan  
Kerry P. Faughnan, Esq.  
Nevada Bar No. 12204  
P.O. Box 335361  
North Las Vegas, Nevada 89033  
(702) 301-3096  
(702) 331-4222- Fax  
Kerry.faughnan@gmail.com  
  
Attorney for Plaintiff

# **EXHIBIT 1**

31

A.P.N.: 162-10-812-185

R.P.T.T.: \$None-Exempt 7

When Recorded Mail To and Mail Tax Statements To:  
LN MANAGEMENT LLC, SERIES 3111 BEL AIR 24G  
PO Box 36208  
Las Vegas NV 89133

Inst #: 201304260003246  
Fees: \$18.00 N/C Fee: \$0.00  
RPTT: \$0.00 Ex: #007  
04/26/2013 04:36:34 PM  
Receipt #: 1591902  
Requestor:  
LAW OFFICES OF KERRY  
FAUGHN  
Recorded By: COJ Pgs: 3  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

### ***QUITCLAIM DEED***

*FOR NO CONSIDERATION,*

3111 BEL AIR DRIVE 24G TRUST do(es) hereby remise, release and forever quitclaim to

LN MANAGEMENT LLC, SERIES 3111 BEL AIR 24G

the real property situate in the County of Clark, State of Nevada, described as follows:

Parcel One:

Unit One Hundred Eighty-Five (185) of the Amended Plat of the Regency Towers as the same is established and identified in the plan of Condominium filed pursuant to the provisions of NRS 117.020 on April 12, 1972 in Book 14 of Plats, page 37 as Clarified by Affidavits recorded September 5, 1972, Document No. 220126 and May 10, 1973, Document No. 285994 and on August 10, 1973 in Book 16 of Plats, page 27, in the Official Records of Clark County, Nevada ("Plan") and Amendments thereto.

Parcel Two:

An undivided .549% interest in the Common Areas included in the Plan.

Parcel Three:

An undivided .549% interest in the Estate for Years created by that certain lease ("Lease") dated January 1, 1971, between Chanin Nevada Properties, Inc., as landlord and Regency Holding Corp., as tenant, recorded on January 7, 1971, in Book 91 as Instrument No. 72485, of Official Records, Clark County, Nevada.

Subject to:

1. All general and special taxes for the current fiscal year.
2. Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements now of record.

*TOGETHER* with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

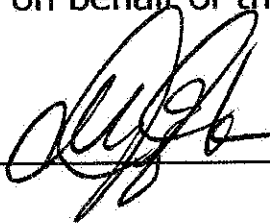
Date: 4/22/2013

3111 Bel Air Drive 24G Trust

By: Iyad Haddad, Trustee

STATE OF **NEVADA** )  
 )  
 ) **SS.**  
COUNTY OF **CLARK** )

On April 25, 2013, before me, a Notary Public, personally appeared Iyad Haddad, known to me to be the person who executed the foregoing, and who acknowledged to me he executed it on behalf of the entity named therein.

  
Notary Public  
(My commission expires: 10/17/2015 )





**STATE OF NEVADA  
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a) 162-10-812-185  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

2. Type of Property

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

**FOR RECORDERS OPTIONAL USE**

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

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

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

3. Total Value/Sales Price of Property:

\$ 0

Deed in Lieu of Foreclosure Only (value of property) ( \$ \_\_\_\_\_ )

Transfer Tax Value: \$N/A

Real Property Transfer Tax Due \$NONE

4. **If Exemption Claimed:**

a. Transfer Tax Exemption, per 375.090, Section: 7

b. Explain reason for exemption: Transfer from a trust without consideration

5. Partial Interest: Percentage being transferred: 100 %

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

Signature: \_\_\_\_\_

Capacity: Grantor

Signature: \_\_\_\_\_

Capacity: Grantee

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

Print Name: 3111 Bel Air Drive 24G Trust

Address: PO Box 36208

City: Las Vegas

State: NV Zip: 89133

**BUYER (GRANTEE) INFORMATION**  
**(REQUIRED)**

LN Management LLC,  
Print Name: Series 3111 Bel Air 24G

Address: PO Box 36208

City: Las Vegas

State: NV Zip: 89133

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

Print Name: Kerry Faughnan, Esq.

File Number: \_\_\_\_\_

Address: PO Box 335361

City: North Las Vegas

State: NV Zip: 89086

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

# **EXHIBIT 2**

(2)-1

RECORDING REQUESTED BY &  
WHEN RECORDED RETURN TO:  
Collections of America, INC.  
1500 East Tropicana Avenue #108  
Las Vegas, Nevada 89119

Forward Tax Statements to Address listed below

3111 Bel Air Drive 24G Trust  
900 South Las Vegas Blvd. #810  
Las Vegas, NV 89101  
T.S. 4936  
Title Oder No.

Inst #: 201212170000834  
Fees: \$18.00 N/C Fee: \$25.00  
RPTT: \$38.25 Ex: #  
12/17/2012 10:09:52 AM  
Receipt #: 1423129  
Requestor:  
COLLECTIONS OF AMERICA INC  
Recorded By: ANI Pgs: 3  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

---

## TRUSTEE'S DEED UPON SALE NEVADA

**A.P.N.: 162-10-812-185**

The amount of the unpaid debt was \$ 7,000.00

Grantee: 3111 Bel Air Drive 24G Trust  
900 South Las Vegas Blvd. #810  
Las Vegas, NV 89101

The amount paid by the Grantee was \$7,001.00

The property is located in the city of Las Vegas, County of Clark

The documentary transfer tax is \$ 38.25                      The Grantee herein was the beneficiary

Grantor: Collections of America  
1500 East Tropicana Avenue #108  
Las Vegas, NV 89119

Collections of America, Inc. as duly appointed Agent and authorized Trustee, under the Notice of Default and Election to Sell referred to below, and herein called "Trustee," does hereby grant without covenant or warranty to 3111: Bel Air Drive 24G Trust herein called "Grantee", the following described real property situated in Clark County Nevada:

PROPERTY: 3111 Bel Air Drive #24G Las Vegas, NV 89109

LEGAL DESCRIPTION: REGENCY TOWERS AMD PLAT BOOK14 PAGE 37 UNIT 185 SEC 10 TWP 25 RNG 61

APN: 162-10-812-185

This conveyance is made pursuant to the powers conferred upon Trustee by N.R.S. 116.33162 to N.R.S 116.33168 pursuant to the Notice of Delinquent Assessment recorded on behalf of Las Vegas International Country Club Estates against the Trustor Michael T. Elliott, which was duly recorded on June 21, 2012 in Book 20120621 as Document No. 0001804 in the office of the County Recorder of Clark County, Nevada, and pursuant to the Notice of Default and Election to sell recorded on behalf of Las Vegas International Country Club Estates against the Trustor Michael T. Elliott, which was duly recorded on July 25, 2012 in Book 20120725, as Document No. 0002134 in the office of the County Recorder of Clark County, Nevada. Notice of Trustee Sale recorded November 15, 2012 in Book 20121115 and as Document Number 0002365 in the office of the County Recorder of Clark County, Nevada. All requirements of law regarding the recording of the Notice of Delinquent Assessments, mailing of the Notice of Delinquent Assessments, recording of the Notice of Default and Election to Sell, mailing of the Notice of Default and Election to Sell, the lapsing of ninety days after the recording of the Notice of Default and Election to Sell, and the mailing, posting, and publication of the Notice of Sale have been complied with. Trustee,

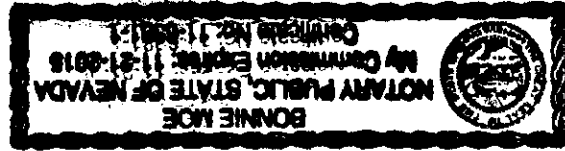
in compliance with said Notice of Trustee's Sale, and pursuant to powers conferred upon them under N.R.S. 116.33162 to N.R.S. 116.33168 sold said real property at public auction on December 12, 2012. Grantee at said sale became the purchaser of said property for the amount of sale bid price which was \$7,001.00.

Dated: December 14, 2012

Collections of America, Inc. Trustee

STATE OF NEVADA ) ss  
COUNTY OF CLARK )

BY: Carol Salmon  
Carol Salmon  
Collections of America, Inc.  
1500 East Tropicana Avenue #108  
Las Vegas, NV 89119



APN: 162-10-8121-185  
TS#: 4936



On this 14<sup>th</sup> day of December, 2012, before me, the undersigned Notary Public, duly commissioned and sworn, personally appeared Carol Salmon, known to me, or proved on the basis of satisfactory evidence to be the person whose name is subscribed to the written instrument, and who acknowledged to me that she executed the same freely and voluntarily, and for uses and purposes therein mentioned.

SIGNATURE: Bonnie Moe  
(Notary Public)

STATE OF NEVADA  
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

- a) 162-10-812-185  
b)  
c)

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

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

\$ 7,001.00

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

( )

c. Transfer Tax Value:

\$ 7,001.00

d. Real Property Transfer Tax Due:

\$ 38.25

4. If Exemption Claimed:

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

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

5. Partial Interest: Percentage being transferred: 100%

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

Signature Carol Lee

Capacity Grantor

Signature \_\_\_\_\_

Capacity Grantee

SELLER (GRANTOR) INFORMATION  
(REQUIRED)

Print Name Collections of America  
Address: 1500 East Tropicana Ave  
City, St., Zip: Las Vegas, NV 89119  
#108

BUYER (GRANTEE) INFORMATION  
(REQUIRED)

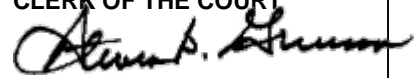
Print Name: 3111 Bel Air Drive # 246  
Address: 900 South Las Vegas Blvd # 810  
City, St., Zip: Las Vegas, NV 89101  
Trust

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

Print Name:  
Address:  
City/State/Zip:

Escrow #:

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



**FFCL**

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

NICHOLAS E. BELAY, ESQ.

Nevada Bar No. 15175

**AKERMAN LLP**

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: ariel.stern@akerman.com

Email: natalie.winslow@akerman.com

Email: nicholas.belay@akerman.com

*Attorneys for Bank of America, N.A. and Ditech  
Financial LLC f/k/a Green Tree Servicing LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LN MANAGEMENT LLC SERIES 3111 BEL  
AIR 24G,

Plaintiff,

v.

MICHAEL T. ELLIOTT, an individual; BANK  
OF AMERICA, N.A.; and DOES 1 through 10,  
inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No. : A-12-669570-C  
Consolidated with: A-13-682055-C

Dept. No.: XIII

**~~PROPOSED~~ FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
JUDGMENT**

Ditech Financial LLC f/k/a Green Tree Servicing LLC (**Ditech**) and Bank of America, N.A. (collectively, **defendants**) filed a summary judgment motion on September 29, 2020. LN Management LLC Series 3111 Bel Air 24G filed an opposition on November 11, 2020, and defendants filed reply on November 20, 2020. The court held a hearing on the motion on December 3, 2020. Following the hearing, the court took the matter under advisement.

1 On December 14, 2020, the court entered a minute order granting defendants' summary  
2 judgment motion. The court now enters the following findings of fact and conclusions of law.

3 **FINDINGS OF FACT**

4 ***The Subject Property, Note, and Deed of Trust***

5 1. A deed of trust listing Michael T. Elliott as the borrower (**Borrower**) and Bank of  
6 America as the lender and beneficiary was executed on October 6, 2004 and recorded on October 20,  
7 2004 (**Deed of Trust**). The Deed of Trust granted Lender a security interest in real property known  
8 as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada 89109 (the **Property**) to secure the repayment of  
9 a promissory note (the **Note**) in the original amount of \$322,100.00 to the Borrower (the Note and  
10 Deed of Trust together are the **Loan**). The Deed of Trust listed the APN number as 162-10-812-185.

11 2. In November 2004, Fannie Mae purchased the Loan, thereby acquiring ownership of  
12 the Deed of Trust. Fannie Mae maintained that ownership at the time of the HOA Sale on December  
13 12, 2012.

14 3. In September 2008, Federal Housing Finance Agency (**FHFA**) placed Fannie Mae  
15 into conservatorship "for the purpose of reorganizing, rehabilitating, or winding up [its] affairs." 12  
16 U.S.C. § 4617(a)(2). Fannie Mae remains in conservatorship today.

17 4. At the time of the HOA Sale, Bank of America was the servicer of the Loan for  
18 Fannie Mae.

19 5. Bank of America serviced the Loan for Fannie Mae up until on or about April 30,  
20 2013, when the servicing rights were transferred to Ditech.

21 6. On July 30, 2013, Bank of America recorded an assignment of the Deed of Trust to  
22 Ditech.

23 7. On December 20, 2019, Ditech recorded an assignment of the Deed of Trust to New  
24 Residential Mortgage, LLC.

25 8. On March 17, 2020, New Residential Mortgage, LLC recorded an assignment of the  
26 Deed of Trust to NewRez LLC d/b/a Shellpoint Mortgage Servicing (**NewRez**).

27 . . .

28 . . .

1 ***Fannie Mae's Contract with Its Servicers, Including Bank of America, Ditech, and NewRez***

2 9. The relationship between Bank of America, Ditech, and NewRez, as the servicers of  
3 the Loan, and Fannie Mae, as owner of the Loan, is governed by the Fannie Mae's Single-Family  
4 Selling Guide at A2-1-01 and Fannie Mae's Single-Family Servicing Guide (**Guide**), a central  
5 governing document for Fannie Mae's relationship with servicers nationwide. Among other things,  
6 the Guide provides that Fannie Mae's servicers may act as record beneficiaries for the deeds of trust  
7 owned by Fannie Mae and requires that servicers assign these deeds of trust to Fannie Mae upon  
8 Fannie Mae's demand. Selling Guide at A2-1-01, Servicing Guide F-1-11.

9 10. The Guide provides that:

10 The servicer ordinarily appears in the land records as the mortgagee to  
11 facilitate performance of the servicer's contractual responsibilities, including  
12 (but not limited to) the receipt of legal notices that may impact Fannie Mae's  
13 lien, such as notices of foreclosure, tax, and other liens. However, *Fannie*  
14 *Mae may take any and all action with respect to the mortgage loan it deems*  
15 *necessary to protect its ... ownership of the mortgage loan, including*  
16 *recordation of a mortgage assignment, or its legal equivalent, from the*  
17 *servicer to Fannie Mae or its designee.* In the event that Fannie Mae  
18 determines it necessary to record such an instrument, the servicer must assist  
19 Fannie Mae by

- 16 • preparing and recording any required documentation, such as  
17 mortgage assignments, powers of attorney, or affidavits; and
- 18 • providing recordation information for the affected mortgage loans.

19 Selling Guide at A2-1-03 (emphasis added).

20 11. The Guide also provides for a temporary transfer of possession of the note when  
21 necessary for servicing, such as managing litigation on behalf of Fannie Mae:

22 In order to ensure that a servicer is able to perform the services and duties  
23 incident to the servicing of the mortgage loan, Fannie Mae temporarily  
24 gives the servicer possession of the mortgage note whenever the servicer,  
25 acting in its own name, represents the interests of Fannie Mae in  
26 foreclosure actions, bankruptcy cases, probate proceedings, or other legal  
27 proceedings.

28 This temporary transfer of possession occurs automatically and  
immediately upon the commencement of the servicer's representation, in



its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding.

Selling Guide at A2-1-04.

11. The Guide includes a chapter describing how and when servicers should pursue foreclosure. *See generally* Guide at E-3 (Managing Foreclosure Proceedings). The chapter includes detailed provisions for how servicers may foreclose on properties when either Fannie Mae, MERS, or the servicer itself is the beneficiary of record of the relevant deed of trust. Guide at E-3.2-09.

12. The Guide also includes a chapter that explains how servicers should manage litigation on behalf of Fannie Mae. *See generally* Guide at E-1 (Referring Default-Related Legal Matters and Non-Routine Litigation to Law Firms).

13. The Guide states that "Fannie Mae is at all times the owner of the mortgage note," and "[a]t the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure . . . possession automatically reverts to Fannie Mae." Guide at A2-1-04.

14. Pursuant to the Guide, a servicer is required to "maintain in the individual mortgage loan file all documents and system records that preserve Fannie Mae's ownership interest in the individual mortgage loan." Guide at A2-4-01.

15. Any servicer retaining documents related to a particular loan, such as a deed of trust, has "no right to possess these documents and records except under the conditions specified by Fannie Mae." Guide at A2-5.1-02.

***The HOA Foreclosure Sale and LN Management's Purported Acquisition of the Property***

16. On June 21, 2012, Collections, as agent for the HOA, recorded a Notice of Claim – Delinquent Assessment Notice.

17. On July 25, 2012, Collections, as agent for the HOA, recorded a Notice of Default and Election to Sell.

18. After the Notice of Default was recorded, on or about August 16, 2012, Bank of America, through counsel at Miles, Bauer, Bergstrom, & Winters, LLP (**Miles Bauer**), contacted the HOA through Collections and requested the super-priority amount.

...

1           19. Collections responded on or about November 27, 2012, and provided a Statement of  
2 Account.

3           20. Following receipt of the Statement of Account, Miles Bauer and Collections  
4 discussed the HOA Sale via telephone. In email correspondence recounting the details of the  
5 telephone conversation, Collections confirmed that neither it nor the HOA was "foreclosing on a  
6 super-priority lien pursuant to NRS 116.3116."

7           21. Collections further confirmed that it and the HOA were "not claiming to have a  
8 super-priority lien since the first mortgage [had] not been foreclosed on the property."

9           22. Miles Bauer advised Collections that if the HOA and Collections were to conduct a  
10 super-priority sale, "Bank of America would like to payoff any potential senior lien, should one  
11 exist, to protect its first mortgage security interest."

12           23. Collections, on behalf of the HOA, then recorded a Notice of Trustee Sale on  
13 November 15, 2012.

14           24. On December 17, 2012, a foreclosure deed was recorded against the Property. The  
15 foreclosure deed states that the Property was sold at an HOA foreclosure sale on December 12, 2012,  
16 to 3111 Bel Air Drive 24G Trust for \$7,001.00.

17           25. 3111 Bel Air Drive 24G Trust subsequently conveyed the Property to LN  
18 Management via a Quitclaim Deed recorded on April 26, 2013.

19           26. At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing  
20 Fannie Mae's interest in the Property. (FHFA's Statement on HOA Super-Priority Lien Foreclosures  
21 (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)  
22 [Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)).

23           27. The fair market value of the Property at the time of the HOA Sale was \$360,000. The  
24 purchase price at the HOA Sale was less than 2% of the fair market value.

25 ***Procedural History***

26           28. LN Management initiated an action for quiet title/declaratory relief on May 17, 2013.  
27 See Case No. A-13-682055-C. The court consolidated the case with the above-captioned action on  
28 October 29, 2013.



1           3.       NRS 30.010 *et seq.* gives courts "power to declare rights, status and other legal  
2 relations." LN Management and defendants both seek declaratory relief under that statute.

3           4.       Here, defendants request declaratory relief and quiet title. LN Management contends  
4 that it bought the property and the first deed of trust was extinguished. Defendants assert the sale  
5 did not extinguish the deed of trust because: (1) Fannie Mae owned the loan, and Bank of America  
6 was the beneficiary of record of the deed of trust in its capacity as the servicer of the loan for Fannie  
7 Mae at the time of the HOA foreclosure sale in December 2012, and thus, the Federal Foreclosure  
8 Bar applies; (2) the HOA foreclosed on only the sub-priority portion of its statutory lien; (3) the deed  
9 of trust survived as a matter of equity.

10          5.       In an action such as the present one, the parties must prove their claims and  
11 affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law,  
12 "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that  
13 opposed to it, has more convincing force, and from which it appears that the greater probability of  
14 truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding  
15 entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that  
16 opposed to it, has more convincing force and the greater probability of truth.").

17          6.       Nevada law draws no distinction between circumstantial and direct evidence.  
18 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction  
19 between the weight to be given either direct or circumstantial evidence. Therefore, all of the  
20 evidence in the case, including circumstantial evidence, should be considered...").

21 ***B.       The Five-Year Rule under NRCP 41(e) Has Not Run***

22          7.       LN Management contends the court should dismiss this case under NRCP 41(e)  
23 because the five-year rule has expired. The court rejects this argument.

24 **The Action was Brought to Trial**

25          8.       NRCP 41(e) only applies if an action is not brought to trial within 5 years after the  
26 action was filed. *See* NRCP 41(e)(2)(B). The Nevada supreme court defines "trial" as "the  
27 examination before a competent tribunal, according to the law of the land, of questions of fact or of  
28 law put in issue by pleadings, for the purpose of determining the rights of the parties." *United Ass'n*

1 of *Journeyman & Apprentices of Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 819–20,  
2 783 P.2d 955, 957 (1989). Under this definition, "proceedings leading to a complete grant of  
3 summary judgment constitute a trial" for purposes of the five-year rule. *Monroe v. Columbia Sunrise*  
4 *Hosp. & Med. Ctr.*, 123 Nev. 96, 100, 158 P.3d 1008, 1010 (2007). This holds true even when third-  
5 party claims remain outstanding. *Id.* at 1011.

6 9. The court granted summary judgment in favor of Ditech on August 13, 2014. The  
7 order granted Ditech's motion "in its entirety" and constituted the "final order/judgment in this  
8 matter." While the court ultimately granted LN Management's motion to set aside the judgment in  
9 September 2014, nothing in either NRCP 41(e) or Nevada case law negates the fact Ditech brought  
10 the action "to trial" within the meaning of Rule 41(e).

11 10. Rule 41(e)'s plain language does not contemplate the five-year rule being reinstated  
12 after it has already been satisfied on summary judgment. *See Vanguard Piping v. Eighth Jud. Dist.*  
13 *Ct.*, 129 Nev. 602, 608, 309 P.3d 1017, 1020 (2013) (stating the rules of statutory interpretation  
14 apply to procedural rules and noting the court should look to the plain language of the rule); *Thran v.*  
15 *District Ct.*, 79 Nev. 176, 180-81 (1963) (Rule 41(e) is "clear, unambiguous and requires no  
16 construction other than its own language.").

17 11. Because Ditech already satisfied the five-year rule, it is no longer applicable to this  
18 action.

### 19 **LN Management Stipulated to Forego the Five-Year Rule**

20 12. Even if the five-year rule had not already been satisfied, the court finds the parties  
21 have stipulated to waive it.

22 13. NRCP 41(e)(5) provides a party may stipulate in writing to extend the time in which  
23 to prosecute an action.

24 14. The court finds this is precisely what LN Management did when it moved for  
25 reconsideration of the court's May 2018 order dismissing the action under Rule 41(e).

26 15. In the motion, LN Management argued the court should set aside the court's five-year  
27 rule dismissal and reopen the case so that the parties could obtain "final orders that would determine  
28

1 each of the parties rights as to the property." No other party filed an opposition to LN Management's  
2 motion.

3 16. By filing an unopposed motion to disregard the five-year rule dismissal and litigate  
4 the matter on the merits, the court finds LN Management and the remaining parties stipulated to  
5 forego application of the five-year rule to this matter.

6 **LN Management is judicially estopped from obtaining dismissal under the Five-Year**  
7 **Rule.**

8 17. Even assuming the five-year rule continues to apply, the court finds LN Management  
9 is judicially estopped from obtaining dismissal.

10 18. Judicial estoppel has five elements: "(1) the same party has taken two positions; (2)  
11 the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was  
12 successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true);  
13 (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of  
14 ignorance, fraud, or mistake." *Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 50, 56,  
15 390 P.3d 646, 652 (2017) (citation omitted). All elements are satisfied to prevent LN Management  
16 from now asserting the five-year rule.

17 19. *First*, LN Management has taken two positions. In its opposition, LN Management  
18 contends the five-year rule expired on October 3, 2017, necessitating dismissal of this action. But  
19 LN Management previously moved for reconsideration on June 21, 2018, of the court's order  
20 dismissing the action for want of prosecution under the very same rule LN Management now seeks  
21 to enforce.

22 20. *Second*, LN Management's positions were taken in this case, a judicial proceeding.

23 21. *Third*, LN Management successfully obtained reconsideration of the court's order  
24 dismissing the action under Rule 41(e). The court granted LN Management's motion and reopened  
25 the case on July 27, 2018.

26 22. *Fourth*, the positions are inconsistent. LN Management moved for (and obtained)  
27 reconsideration of the court's Rule 41(e) dismissal, explicitly arguing such relief was appropriate due  
28 to its own wrongful conduct. LN Management now seeks to undo its own motion by arguing the

1 five-year rule somehow expired in October 2017. These positions are entirely irreconcilable. LN  
2 Management cannot now argue for dismissal under Rule 41(e) when it previously moved to reopen  
3 the case (for the second time) notwithstanding this very rule.

4 23. *Finally*, LN Management's conduct cannot be found to result from ignorance, fraud or  
5 mistake. LN Management moved on its own volition for reconsideration of the court's dismissal  
6 order and directly argued the order should be set aside based on excusable neglect. In LN  
7 Management's own words, such reconsideration was justified because the parties "need" the court to  
8 determine the parties' respective rights in the property.

9 **LN Management's Five-Year Rule argument is barred by Waiver and Equitable**  
10 **Estoppel.**

11 24. In addition to being judicially estopped from arguing for five-year rule dismissal, LN  
12 Management also waived or else should be equitably estopped from raising the issue.

13 25. Waiver is the intentional relinquishment of a known right. *Nev. Yellow Cab Corp. v.*  
14 *Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 152 P.3d 737, 740 (Nev. 2007). Waiver of a right  
15 may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right  
16 as to induce a reasonable belief that the right has been relinquished. *Id.* Further, a party seeking  
17 equity is required to do equity. *Overhead Door Co. of Reno, Inc. v. Overhead Door Corp.*, 734 P.2d  
18 1233, 1235 (Nev. 1987). Equitable estoppel operates to prevent a party from asserting legal rights  
19 that, in equity and good conscience, they should not be allowed to assert because of their own  
20 conduct. *NGA #2 Liab. Co. v. Rains*, 946 P.2d 163, 168 (Nev. 1997).

21 26. Here, the court finds LN Management *twice* moved to reopen this case: First, after  
22 Ditech brought the action to trial; and second, after LN Management obtained reconsideration of the  
23 court's rule 41(e) dismissal order.

24 27. To the extent LN Management believed the five-year rule expired in October 2017,  
25 LN Management has intentionally relinquished any such argument.

26 28. Had LN Management indicated any intent to argue for five-year rule dismissal prior  
27 to its opposition to the instant motion, defendants could have acted accordingly to either obtain  
28

1 affirmative relief or request an expediated resolution of the matter. Instead, LN Management did the  
2 exact opposite, arguing the court should maintain the case notwithstanding any such rule.

3 29. Defendants reasonably relied on this relinquishment and would be severely  
4 prejudiced if the court dismissed the action without resolving the parties' respective interests in the  
5 property.

6 **Alternatively, the Five-Year Rule has not run due to tolling.**

7 30. To the extent the five-year rule was reinstituted based on its September 24, 2014  
8 order granting LN Management's post-trial motion to reopen the case, the court finds the deadline  
9 still would not have run due to tolling.

10 31. Under this scenario, the earliest the five-year rule could have expired is September  
11 24, 2019, or five-years after the court reinstituted the action.

12 32. But the Nevada supreme court has explicitly recognized the deadline can be tolled  
13 under certain circumstances, such as when the court stays proceedings. *Baker v. Noback*, 112 Nev.  
14 1106, 1110 (1996) (noting it would be "patently unfair" to dismiss an action for failure to bring to  
15 trial when a stay prevented the parties from going to trial within the period); *see also Boren v. City of*  
16 *N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982) ("**Any** period during which the parties are  
17 prevented from bringing an action to trial by reason of a stay order shall not be computed in  
18 determining the five-year period of [NRCPP] 41(e).") (emphasis added).

19 33. Here, this matter was closed between May 23, 2018 and July 27, 2018 before the  
20 court granted LN Management's motion to reopen. The matter was then stayed due to Ditech's  
21 bankruptcy on March 27, 2019, and it remains stayed to date.

22 34. Accounting for these tolling periods, the five-year deadline would be at least **246**  
23 **days** from when the stay is lifted and/or the case is reopened. Accordingly, the court finds there is  
24 no merit to LN Management's contention the five-year rule deadline has expired.

25 **C. Federal Foreclosure Bar – 12 U.S.C. § 4617(j)(3)**

26 Pursuant to the Housing and Economic Recovery Act of 2008 ("HERA"), Congress granted  
27 FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable  
28 FHFA to carry out its statutory functions when acting as Conservator of Fannie Mae and Freddie



1 Mac (together, the "enterprises"). Among these is a broad statutory "exemption" captioned  
2 "property protection" that provides when the enterprises are under the conservatorship of the FHFA,  
3 none of their property "shall be subject to ... foreclosure ... without the consent of [FHFA]." 12  
4 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").

5 35. The Federal Foreclosure Bar contains no conditions precedent to effectiveness of its  
6 statutory protections. Unless and until FHFA gives its consent, the federal protection "shall" be  
7 given full effect, which includes preemption of state law. *SFR Invs. Pool 1, LLC v. Green Tree*  
8 *Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016) (citing 12 U.S.C. § 4617(j)(3)). A  
9 contrary interpretation would invert the default rule provided in the statutory text on its head, as if  
10 Congress decreed that FHFA's property interests are subject to extinguishment by foreclosure unless  
11 FHFA affirmatively declares that it will not grant consent to the extinguishment of a specific  
12 property interest. This is not what the statute says, and courts should not rewrite a statute's text. *See*  
13 *Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004) (rejecting argument that "would result not  
14 [in] a construction of [the] statute, but, in effect, an enlargement of it by the court" (quoting *Iselin v.*  
15 *United States*, 270 U. S. 245, 251 (1926))); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54  
16 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all  
17 others . . . that a legislature says in a statute what it means and means in a statute what it says.").  
18 Here, there is no evidence FHFA consented to extinguishment of the deed of trust.

19 36. The Nevada supreme court and the Ninth Circuit have both held unequivocally that  
20 the Federal Foreclosure Bar, 12 U.S.C. § 4617(j)(3), protects Fannie Mae's property interests while it  
21 under the conservatorship of the FHFA by preempting the NRS 116.3116 (the **State Foreclosure**  
22 **Statute**), which would otherwise permit an HOA's foreclosure of its superpriority lien to extinguish  
23 Fannie Mae's deed of trust. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417  
24 P.3d 363 (Nev. 2018); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *FHFA v. SFR Invs. Pool*  
25 *1, LLC*, 893 F.3d 1136 (9th Cir. 2018); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir.  
26 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir. 2017).

27 37. In *Christine View*, the Nevada supreme court held that "according to the plain  
28 language of the statute, Fannie Mae's property interest effectively becomes the FHFA's while the

1 conservatorship exists. Thus, the Federal Foreclosure Bar protects Fannie Mae's deed of trust while  
2 Fannie Mae is under the conservatorship." *Christine View*, 417 P.3d at 367. *Christine View* is  
3 published precedent that forecloses any argument suggesting that the Federal Foreclosure Bar does  
4 not preempt the State Foreclosure Statute or does not protect Fannie Mae's property interest from  
5 extinguishment. *See id.* at 365 (holding that "the Federal Foreclosure Bar invalidates any purported  
6 extinguishment of a regulated entity's property interest while under the FHFA's conservatorship  
7 unless the FHFA affirmatively consents.").

8 38. Three other recent decisions from the Nevada supreme court, four Ninth Circuit  
9 decisions, and dozens of decisions from federal and state district courts in Nevada agree with the  
10 Nevada Supreme Court's decision in *Christine View*—an HOA foreclosure sale cannot extinguish  
11 property interests of the Enterprises while they are in conservatorship. *See, e.g., Guberland*, 2018  
12 WL 3025919, at \*2; *A&I Series 3, LLC v. Fannie Mae*, No. 71124, 2018 WL 3387787 (Nev. July 10,  
13 2018) (unpublished disposition); *5312 La Quinta Hills, LLC v. BAC Home Loans Servicing, LP*, No.  
14 71069, 2018 WL 3025927, at \*1 (Nev. June 15, 2018) (unpublished disposition); *Berezovsky*, 869  
15 F.3d 923; *FHFA v. SFR*, 893 F.3d 1136; *Elmer*, 707 F. App'x 426; *Flagstar Bank, FSB*, 699 F. App'x  
16 658; *see also* CMI's Motion for Summary Judgment at (citing dozens of state and federal district  
17 court cases in Nevada).

18 39. The preemption doctrine, which provides that federal law supersedes conflicting state  
19 law, arises from the Supremacy Clause of the U.S. Constitution. Here, the text of the Federal  
20 Foreclosure Bar declares that "[n]o property of the Agency shall be subject to levy, attachment,  
21 garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3).

22 40. The Federal Foreclosure Bar preempts the State Foreclosure Statute under a theory of  
23 conflict preemption because "state law is naturally preempted to the extent of any conflict with a  
24 federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*,  
25 530 U.S. 363, 372 (2000)).

26 41. Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect  
27 FHFA conservatorships from actions, such as the HOA Sale, that otherwise would deprive them of  
28 their property interests. "[T]he [State Foreclosure Statute] is in direct conflict with Congress's clear

1 and manifest goal to protect Fannie Mae's property interest while under the FHFA's conservatorship  
2 from threats arising from state foreclosure law." *Christine View*, 417 P.3d at 367; *Berezovsky*, 869  
3 F.3d at 930 ("[T]he Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the  
4 State Foreclosure Statute]."); *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d at 1146-47 (following  
5 *Berezovsky*); *Elmer*, 707 F. App'x at 427-28 (same); *Flagstar*, 699 F. App'x at 658-59 (same).

6 42. Accordingly, the Federal Foreclosure Bar preempts the State Foreclosure Statute to  
7 the extent a homeowner association's foreclosure of its super-priority lien cannot extinguish a Fannie  
8 Mae property interest while it is under FHFA's conservatorship, without the consent of FHFA.

9 43. At the time of the HOA foreclosure sale, Bank of America was the Deed of Trust  
10 beneficiary of record in its capacity as the servicer for Fannie Mae. The evidence, which includes a  
11 Fannie Mae employee declaration and supporting business records, proves Fannie Mae owned the  
12 note and deed of trust at the time of the HOA sale and was in a contractual relationship with Bank of  
13 America as the loan servicer. Fannie Mae maintained a property interest in the underlying collateral.  
14 *See Daisy Trust*, 135 Nev. at 233-34, 445 P.3d at 849; *In re Montierth*, 131 Nev. 543, 354 P.3d 648  
15 (2015); *CitiMortgage, Inc. v. SFR Invs. Pool 1, LLC*, No. 70237, 2019 WL 289690 (Nev. Jan. 18,  
16 2019) (unpublished disposition); *CitiMortgage, Inc. v. TRP Fund VI, LLC*, No. 71318, 2019 WL  
17 1245886, at \*1 (Nev. Mar. 14, 2019); *Guberland*, 2018 WL 3025919 at \*2-3 (citing *Montierth*);  
18 Restatement (Third) of Property: Mortgages § 5.4 (1997). In citing *Montierth* and the Nevada  
19 Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth Circuit held  
20 that a loan-owner servicer relationship "preserves the note owner's power to enforce its interest  
21 under the security instrument, because the note owner can direct the beneficiary to foreclose on its  
22 behalf." *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a  
23 secured property interest. *Id.* Therefore, an enterprise's "property interest is valid and enforceable  
24 under Nevada law even if the recorded document omits [the Enterprise]'s name, if the recorded  
25 beneficiary of the deed of trust is a party acting on [the Enterprise's] behalf." *Elmer*, 2017 WL  
26 3822061, at \*1.

27 44. The Nevada Supreme Court has held materially identical "business records and  
28 testimony" constitute "ample evidence" to demonstrate an Enterprise's ownership of a loan and the

1 contractual relationship between an Enterprise and its servicer. *See M&T Bank v. Wild Calla St. Tr.*,  
2 No. 74715, 2019 WL 1423107, at \*2 (Nev. Mar. 28, 2019) (unpublished disposition); *see also*  
3 *CitiMortgage v. SFR*, 2019 WL 289690, at \*1 & n.1 ("Although respondent contends that appellant's  
4 evidence[—"deposition testimony of appellant's NRCP 30(b)(6) witness, affidavit, and relied-upon  
5 business records"—] does not establish that Fannie Mae owned the loan at the time of the HOA  
6 foreclosure sale, we disagree."); *CitiMortgage v. TRP*, 2019 WL 1245886, at \*1; *SFR Invs. Pool 1,*  
7 *LLC v. Green Tree Servicing, LLC*, No. 72010, 2018 WL 6721370, at \*1 (Dec. 17, 2018)  
8 (unpublished disposition).

9 45. The Ninth Circuit agrees and has held materially the same evidence was admissible  
10 and sufficient to establish an Enterprise's property interest for the purposes of summary judgment.  
11 *See, e.g., Berezovsky*, 869 F.3d at 933; *Elmer*, 707 F. App'x at 428; *Williston*, 736 F. App'x at 169;  
12 *G&P Investments*, 740 F. App'x at 564.

13 46. Nevada law does not require Fannie Mae's ownership interest to be recorded in its  
14 own name. *Daisy Trust*, 445 P.3d at 849; *JPMorgan Chase Bank, N.A. v. Guberland LLC-Series 2*,  
15 No. 73196, 2019 WL 2339537, at \*1 (Nev. May 31, 2019) ("*Guberland II*"). The protection of the  
16 Federal Foreclosure Bar is not limited to the interest Fannie Mae might have if it were *record*  
17 *beneficiary* of the deed of trust at the time of the HOA sale. Rather, it extends to the property  
18 interest that Fannie Mae has as the *owner* of the note and deed of trust while its contractually  
19 authorized servicer appears as record beneficiary of that deed of trust, a property interest that Nevada  
20 law recognizes. *See Montierth*, 131 Nev. 543, 354 P.3d 648 (holding that a loan owner has a secured  
21 property interest when a contractually authorized servicer is the record beneficiary of a deed of  
22 trust); *see also Guberland*, 2018 WL 3025919, at \*2-3 (applying the Federal Foreclosure Bar where  
23 an enterprise "was not the beneficiary of the deed of trust" and its servicer appeared as record  
24 beneficiary); *CitiMortgage v. SFR*, 2019 WL 289690 at \*2 (relying on *Montierth* and holding the  
25 loan servicer's status as record beneficiary of the deed of trust "does not create a question of material  
26 fact regarding whether Fannie Mae owns the subject loan"); *CitiMortgage v. TRP*, 2019 WL  
27 1245886, at \*1 (reversing the district court's finding that the Federal Foreclosure Bar did not prevent  
28 the extinguishment of Fannie Mae's deed of trust because it was not publicly recorded in Fannie

1 Mae's name and confirming, under *Montierth*, that "the record beneficiary need not be the actual  
2 owner of the loan").

3 47. LN Management bears the burden of proof to establish that FHFA expressly  
4 consented to extinguish Fannie Mae's ownership interest in the deed of trust. FHFA's April 21, 2015  
5 statement confirms that FHFA did not provide express consent here. In the absence of express  
6 consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the  
7 Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent can only be  
8 manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-  
9 CWH, 2017 WL 773827, at \*3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which  
10 FHFA's statement was sufficient to show FHFA's lack of consent). Although the federal law  
11 controls, it is consistent with Nevada's policy against requiring a party to prove a negative, such as  
12 proving a lack of consent. *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092,  
13 1096-97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it  
14 is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered.");  
15 *see also State v. Haskell*, 14 Nev. 209, 209-210 (1879) (in a forfeiture case, once the defendant  
16 establishes good title to the property the burden shifts to the state – "not upon the defendants to  
17 prove a negative", *i.e.* that the property was not abandoned or forfeited).

18 48. LN Management has not shown it obtained such consent. To the contrary, FHFA has  
19 publicly announced that it "has not consented, and will not consent in the future, to the foreclosure or  
20 other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection  
21 with HOA foreclosures of super-priority liens." Therefore, the Federal Foreclosure Bar applies.

22 49. Having found that the Federal Foreclosure Bar applies, the next step is to determine if  
23 defendants have standing, as the servicer and beneficiary of record at the time of the HOA  
24 foreclosure sale and during the applicable periods of this action, to represent Fannie Mae's Mac  
25 interest in the loan. The Court finds that defendants were Fannie Mae's contractually authorized  
26 servicers of the loan, with standing to represent and defend Fannie Mae's interests in this action. *See*  
27 *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017); *Flagstar*,  
28 699 F. App'x at 658.

1           50.     The Nevada Supreme Court confirmed that "the servicer of a loan owned by [Fannie  
2 Mae] may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [Freddie  
3 Mac] nor the FHFA need be joined as a party." *Nationstar*, 396 P.3d at 758.

4           51.     Furthermore, there is no bar against private parties like defendants raising a federal  
5 preemption argument. *Id.* at 757. To the contrary, in cases state and federal law clash, "*judges are*  
6 *bound by federal law.*" *Id.* (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378,  
7 1384 (2015)) (emphasis in original); *See Saticoy Bay LLC Series Christine View v. Federal National*  
8 *Mortgage Association*, 134 Nev. Adv. Op. 36 (2018).

9           52.     LN Management offers no evidence conflicting with Fannie Mae's ownership of the  
10 loan or defendants' right to represent Fannie Mae's interest in the loan.

11           53.     Since no party has refuted evidence of Fannie Mae's ownership, the Federal  
12 Foreclosure Bar defeats LN Management's contention it took title to the property free and clear of  
13 the deed of trust.

14     ***D.     Tender Was Excused as Futile.***

15           54.     Even if the Federal Foreclosure Bar did not apply, Fannie Mae's deed of trust would  
16 still have survived because Bank of America's tender was excused under the Nevada supreme court's  
17 decision in *Perla del Mar. 7510 Perla Del Mar Ave Trust v. Bank of Am. N.A.*, 458 P.3d 348, 349  
18 (Nev. 2020). That case held the obligation to tender is excused for futility where the evidence shows  
19 that the HOA or its foreclosure agent "had a known policy of rejecting such payments." *Id.* at 351  
20 (citing cases from other jurisdictions endorsing the general proposition that a tender is excused when  
21 the party entitled to payment demonstrates by words or conduct it will not accept the tender).

22           55.     Just as in *Perla Del Mar*, Bank of America and Miles Bauer offered to pay the HOA,  
23 through Collections of America, the superpriority amount "actually due" with no impermissible  
24 conditions attached. *See 7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 458 P.3d 348,  
25 349 (Nev. 2020) (noting "[a]n actual tender is unnecessary where it is apparent the other party will  
26 not accept it."). The HOA, through its agent, stated no superpriority lien existed until Bank of  
27 America completed its own foreclosure.

28     ...

1           56. In analyzing materially similar representations from an HOA trustee, the Nevada  
2 supreme court confirmed "[t]he necessary implication of these statements is that [the HOA trustee]  
3 would not have accepted a superpriority tender before the first deed of trust was foreclosed." *See*  
4 *U.S. Bank N.A. v. SFR Invs. Pool 1 LLC*, No. 78003, 2020 WL 3003017, at \*1 (Nev. June 4, 2020)  
5 (unpublished) (directing judgment in the bank's favor based on futility).

6           57. Bank of America stood ready, willing, and able to tender the full statutory super-  
7 priority amount to protect the deed of trust, but the HOA obstructed Bank of America's ability to  
8 tender the superpriority portion of the HOA's lien through its false representations and assurances.  
9 *Id.* The HOA sale thus did not extinguish the deed of trust because Bank of America was excused  
10 from formal tender.

11 ***E. The HOA Conducted a Sub-Priority Sale.***

12           58. Irrespective of Bank of America's superpriority offer, the HOA foreclosed on only the  
13 subpriority portion of its lien because that is what the HOA and its agent chose to do.

14           59. The Nevada Supreme Court in *SFR Investments*, applying the plain language of the  
15 statute, explained that "[a]s to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two  
16 pieces, a superpriority piece and a subpriority piece." *SFR Investments Pool 1 v. U.S. Bank*, 334  
17 P.3d 408, 411 (Nev. 2014). Only "[t]he superpriority piece" is "prior to a first deed of trust." *Id.*  
18 "The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed  
19 of trust." *Id.* An association can choose to foreclose on either the sub-priority or super-priority  
20 portion of its lien. *See Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132  
21 Nev. Adv. Op. 5, 366 P.3d 1105, 1116 (2016) ("And if the association forecloses on its superpriority  
22 lien portion, the sale also would extinguish other subordinate interests in the property."). *See also*  
23 *River Glider Ave. Tr. v. The Bank of N.Y. Mellon*, No. 79808 (Nev. Sup. Ct. Sept. 18, 2020)  
24 (unpublished disposition) (finding representations of purchaser in judicial proceeding determinative  
25 for whether a sale was a subpriority or super-priority sale).

26           60. This comports with long-standing Nevada law that the foreclosing party's intent  
27 determines what is transferred at auction. *See, e.g., Dayton Valley Investors, LLC v. Union Pac. R.*  
28 *Co.*, 664 F.Supp. 2d 1174, 1185 (D. Nev. 2009) ("[I]t is the intent of the parties to the deed which ...

1 must determine the nature and extent of the interest conveyed.") (quoting *City Motel, Inc. v. Nevada*  
2 *ex. rel. State Dep't of Highways*, 75 Nev. 137, 140, 336 P.2d 375, 377 (1959)). The foreclosing  
3 party's intent "is determined from 'all the circumstances surrounding the transaction[.]'" *See Dayton*  
4 *Valley*, 664 F.Supp. 2d at 1185 (quoting *Kartheiser v. Hawkins*, 98 Nev. 237, 239, 645 P.2d 967, 968  
5 (1982)).

6 61. Here, the undisputed evidence shows the HOA's agent, Collections of America,  
7 explicitly informed Bank of America it was not "foreclosing on a super-priority lien pursuant to NRS  
8 116.3116" and that the HOA did not claim "to have a super-priority lien since the first mortgage  
9 [had] not [been] foreclosed."

10 62. "Because the HOA foreclosed on only its sub-priority lien, [LN Management] cannot  
11 meet its burden of showing it has title superior to [the Deed of Trust]." *7912 Limbwood Court Trust*  
12 *v. Wells Fargo Bank, N.A.*, 2015 WL 5123317 at \*4 (D. Nev. Aug. 31, 2015); *see also MacDonald v.*  
13 *Krause*, 77 Nev. 312, 315, 362 P.2d 724, 727 (1961) ("In a quiet title action, the only issue is  
14 whether plaintiff has an interest or estate in the property superior to the adverse claim.").  
15 Accordingly, defendants are entitled to summary judgment on this alternative basis.

16 ***F. Alternatively, The Court Finds the Deed of Trust Survived as a Matter of Equity***

17 63. The court need not reach the equities in this matter because Fannie Mae's deed of  
18 trust survived as a matter of law. *Bank of America, N.A. v. SFR Invs. Pool I, LLC*, 427 P.3d 113  
19 (Nev. 2018). But even if the court balanced the equities in this case, they tip strongly in defendants'  
20 favor.

21 64. If an association sells a property for a price that is "palpabl[y] and great[ly]  
22 inadequate," all that is needed to show the deed of trust survived as a matter of equity is "very slight  
23 additional evidence of unfairness." *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227*  
24 *Shadow Canyon*, 405 P.3d 641, 642 (Nev. 2017). To determine if an association's foreclosure-sale  
25 price is inadequate, courts must compare that price to the foreclosed property's fair market value at  
26 the time of the sale. *See id.*, at 649 (comparing the \$35,000.00 association-foreclosure-sale price to  
27 an appraisal showing the fair-market value of free and clear title was \$335,000.00 to determine the  
28 association sold the property "for roughly 11 percent of [its] fair market value"). A foreclosure-sale



1 price below 20% of fair market value is "obviously inadequate." *See Shadow Wood*, 366 P.3d at  
2 1116.

3 65. The Nevada supreme court has provided a non-exhaustive list of "irregularities that  
4 may rise to the level of fraud, unfairness, or oppression" required to set aside an association sale or  
5 hold that it did not extinguish a senior deed of trust, including: (1) "failure to mail a deed of trust  
6 beneficiary the statutorily required notices"; (2) "***an HOA's representation that the foreclosure sale***  
7 ***will not extinguish the first deed of trust***"; (3) "collusion between the winning bidder and the entity  
8 selling the property"; (4) "a foreclosure trustee's refusal to accept a higher bid"; and (5) "a  
9 foreclosure trustee's misrepresentation of the sale date." *Id.* at n.11 (emphasis added).

10 66. Here, the HOA sold the Property for less than 2% of its fair market value. In light of  
11 this "palpabl[y] and great[ly]" inadequate sales price, only slight evidence of unfairness is needed to  
12 set aside the foreclosure sale. *See Nationstar*, 405 P.3d at 648. Prior to the HOA Sale, Bank of  
13 America contacted Collections to offer to pay the full statutory super-priority amount, as it has done  
14 in hundreds – if not thousands – of other cases. Collections subsequently assured Bank of America  
15 that it was not foreclosing on a "super-priority lien pursuant to NRS 116.3116" and that the HOA did  
16 not claim to "have a super-priority lien." Miles Bauer, on behalf of Bank of America, asked  
17 Collections to let them know if the circumstances of the HOA Sale changed, as "Bank of America  
18 would like to payoff any potential senior lien, should one exist, to protect [the Deed of Trust]." *Id.*  
19 Again, in response to Bank of America's willingness to tender the full statutory super-priority  
20 amount, Collections advised that no such lien existed, and it would notify Bank of America if  
21 anything changed. *Id.*

22 67. Bank of America attempted to pay the superpriority amount of the HOA's lien here to  
23 ensure Fannie Mae's deed of trust was protected, and the HOA prevented it from doing so. This is  
24 another example of unfairness the supreme court explicitly identified in *Shadow Canyon*. *See* 405  
25 P.3d at 650 (explaining that whether a senior lender "tried to tender payment" to an association  
26 before the sale is "significant[]" to determine whether the lender's deed of trust survived as an  
27 equitable matter).

28 . . .

1           68. In light of the HOA and its agents' representations to Bank of America and Miles  
2 Bauer, coupled with the HOA's efforts to thwart Bank of America's superpriority payment, holding  
3 that the deed of trust was extinguished would be much more than "very slight[ly] unfair," and  
4 "[v]ery slight additional evidence of unfairness or oppression" is all that is needed in light of the  
5 "palpabl[y] and great[ly]" inadequate sale price to hold the deed of trust was not extinguished on  
6 equitable grounds. *See Shadow Canyon*, 405 P.3d at 648.

7           69. Even if LN Management was a bona fide purchaser, it is but one factor of many when  
8 balancing the equities between it and defendants and does not change the above result. Further, the  
9 court finds LN Management was not a bona fide purchaser.

10          70. To be a bona fide purchaser, one must take property "for a valuable consideration and  
11 without notice of the prior equity, and without notice of facts which upon diligent inquiry would be  
12 indicated and from which notice would be imputed to him, if he failed to make such inquiry."  
13 *Shadow Wood*, 366 P.3d at 1115 (citing *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)).

14          71. A putative bona fide purchaser has the burden to prove it is a bona fide purchaser.  
15 *See, e.g., Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the  
16 putative bona fide purchaser "was required to show that legal title had been transferred to her before  
17 she had notice of the prior conveyance to appellant"). Here, LN Management cannot satisfy its  
18 burden to show that it was a bona fide purchaser.

19          72. First, and most obvious, LN Management put forth no evidence that it was a bona  
20 fide purchaser.

21          73. Second, LN Management cannot be a bona fide purchaser because it had inquiry  
22 notice of Miles Bauer's superpriority offer. A party cannot qualify as a bona fide purchaser if it was  
23 under a duty of inquiry that it failed to discharge before purchasing the property at issue. *Berge*, 95  
24 Nev. at 189. The *Berge* Court explained that this duty arises:

25               when the circumstances are such that a purchaser is in possession of  
26 facts which would lead a reasonable man in his position to make an  
27 investigation that would advise him of the existence of prior  
28 unrecorded rights. He is said to have constructive notice of their  
existence whether he does or does not make the investigation. The  
authorities are unanimous in holding that he has notice of whatever the  
search would disclose.

1 *Id.*

2 74. A purchaser "put upon inquiry may rebut the presumption of notice by showing that  
3 he made due investigation without discovering the prior right or title he was bound to investigate."  
4 *Id.*, at 185. LN Management has produced no evidence it conducted such an investigation.

5 75. The bona fide purchaser doctrine does not protect against willful ignorance—  
6 plaintiff's decision to purchase a lawsuit cannot transform the encumbered interest it purchased into  
7 free and clear title. *See Allison Steel*, 86 Nev. at 497.

8 76. As such, the deed of trust survived the HOA's foreclosure sale as a matter of equity  
9 and continues to encumber plaintiff's title to the property.

10 **G. The Court Reforms the Deed of Trust and Subsequent Assignment.**

11 77. Deeds and other instruments, like an assignment, can be "reformed in accordance  
12 with the intention of parties when that intention is frustrated by a mutual mistake." *Grappo v.*  
13 *Mauch*, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994). Reformation should be utilized "when a  
14 written instrument fails to conform to the parties' previous understanding or agreement." *Id.*

15 78. Borrower purchased two units in the same condominium development. First,  
16 Borrower obtained a loan in the amount of \$322,100.00 to purchase the Property (3111 Bel Air Dr.,  
17 Unit 24G), repayment of which was secured by a Deed of Trust recorded on October 20, 2004. The  
18 Property was conveyed to Borrower by the previous owner through a Grant Deed recorded on  
19 October 16, 2003 as instrument number 20031016-01640. The Deed of Trust lists the APN as 162-  
20 10-812-185.

21 79. Borrower subsequently obtained a second loan to purchase another unit in the same  
22 condominium complex. Specifically, Borrower obtained a loan in the amount of \$149,000 to  
23 purchase real property commonly known as 3111 Bel Air Dr. #216, Las Vegas, NV 89109 (**216**  
24 **Property**), repayment of which was secured by a Deed of Trust recorded on December 31, 2007  
25 (**216 Deed of Trust**). The 216 Deed of Trust, like the Deed of Trust, lists Bank of America as the  
26 Lender. The 216 Property's APN number as 162-10-812-003.

27 80. While the property address and the APN on the Deed of Trust are correct, the Court  
28 finds the legal description is incorrect. The Grant Deed conveying the Property to Borrower

1 specifies that Unit 24G is designated Unit 185 in the original Regency Towers plat. Due to a mutual  
2 mistake, however, the legal description in the Deed of Trust states that Unit 24G is designated as  
3 Unit 3 in the Regency Towers plat. In reality, Unit 3 is the correct legal description for the 216  
4 Property. The property records, the Regency Towers plat, and defendants' expert report make clear  
5 that the Property's legal description should list Unit 185, as opposed to Unit 3.

6 81. Based on the uncontroverted evidence, the Court reforms the legal description in the  
7 Deed of Trust to list Unit 185, as opposed to Unit 3.

8 82. The second instrument requiring reformation is an Assignment of the Deed of Trust  
9 recorded on July 30, 2013. Due to a mutual mistake and confusion, the Assignment was  
10 inadvertently recorded against APN #162-10-812-003, which is the 216 Property. The Assignment  
11 correctly states that it is assigning the Deed of Trust (not the 216 Deed of Trust) but does not appear  
12 in the property records for the Property when conducting an assessor's parcel no. search on account  
13 of the incorrect APN. The language in the Assignment makes it clear that the Assignment should  
14 have been recorded against APN 162-10-812-185.

15 83. Based on the uncontroverted evidence, the Court reforms the Assignment to reflect  
16 the correct APN (162-10-812-185) and orders that the Assignment's effective date as to the subject  
17 property was the date it was recorded against the incorrect parcel number (July 30, 2013).

### 18 **ORDER AND JUDGMENT**

19 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,  
20 instrument number 20041020-0001569 with the Clark County Recorder, was not extinguished by the  
21 HOA's foreclosure sale that is reflected in the trustee's deed upon sale, instrument number  
22 201212170000834 with the Clark County Recorder.

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,  
24 instrument number 20041020-0001569 with the Clark County Recorder, remains a valid, first-  
25 position lien encumbering the property located at as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada  
26 89109, assessor's parcel no. 162-10-812-185.

27 . . .

28 . . .

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the legal description of the property in the deed of trust, instrument number 20041020-0001569 with the Clark County Recorder, is reformed to list Unit 185, as opposed to Unit 3.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Assignment of the deed of trust, recorded on July 30, 2013 as instrument number 201307300000199 with the Clark County Recorder, is reformed to reflect the assessor's parcel no. 162-10-812-185. The assignment's effective date remains the date it was recorded against the incorrect parcel number, or July 30, 2013. The court intends this judgment to correct any alleged deficiencies in the at-issue deed of trust and subsequent assignment.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that defendants' motion for summary judgment is **GRANTED in its entirety**. Judgment is entered in favor of defendants and against LN Management. This is a final judgment.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** the court lifts the stay and reopens this case for the purpose of granting defendants' summary judgment motion and entering the court's judgment.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that all remaining claims are **DISMISSED** as moot.

DATED this 20th day of January, 2021.

  
 DISTRICT JUDGE

*Submitted by:*

**AKERMAN LLP**

/s/ Nicholas E. Belay

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**Approved as to form and content by:**

/s/ Kerry P. Faughnan

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## Llarena, Carla (LAA-Las)

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**From:** Belay, Nicholas (Assoc-Las)  
**Sent:** Wednesday, January 6, 2021 2:00 PM  
**To:** Belay, Nicholas (Assoc-Las)  
**Subject:** FW: A-12-669570-C (Elliott, Michael) - proposed order

**From:** Kerry Faughnan  
**Sent:** Wednesday, January 6, 2021 8:45 AM  
**To:** Belay, Nicholas (Assoc-Las)  
**Subject:** Re: A-12-669570-C (Elliott, Michael) - proposed order

You may add my electronic signature.

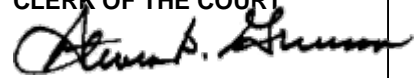
On Tue, Jan 5, 2021 at 4:16 PM <[nicholas.belay@akerman.com](mailto:nicholas.belay@akerman.com)> wrote:

Hi Kerry,

Just following up. Think you could let me know by tomorrow?

**Nicholas Belay**

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5029  
[nicholas.belay@akerman.com](mailto:nicholas.belay@akerman.com)



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Financial LLC f/k/a Green Tree Servicing LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LN MANAGEMENT LLC SERIES 3111 BEL  
AIR 24G,

Plaintiff,

v.

MICHAEL T. ELLIOTT, an individual; BANK  
OF AMERICA, N.A.; and DOES 1 through 10,  
inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No. : A-12-669570-C  
Consolidated with: A-13-682055-C

Dept. No.: XIII

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
JUDGMENT**

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1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that a **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**  
3 **JUDGMENT** has been entered by this Court on the 20<sup>th</sup> day of January, 2021, in the above-  
4 captioned matter. A copy of said Order is attached hereto as **Exhibit A**.

5 Dated this 21<sup>st</sup> day of January, 2021.

6 **AKERMAN LLP**

7 /s/ Nicholas E. Belay

8 ARIEL E. STERN, ESQ.

9 Nevada Bar No. 8276

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14 1635 Village Center Circle, Suite 200

15 Las Vegas, Nevada 89134

16 *Attorneys for Bank of America, N.A. and Ditech*  
17 *Financial LLC f/k/a Green Tree Servicing LLC*  
18  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 21<sup>st</sup> day of January, 2021, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**, in the following manner:

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

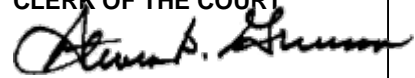
Kerry P. Faughnan, Esq.	kerry.faughnan@gmail.com
DocPrep	filings@docprep.info
Jory Garabedian	jgarabedian@mileslegal.com

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

/s/ Carla Llarena  
An employee of AKERMAN LLP

**EXHIBIT A**

**EXHIBIT A**



**FFCL**

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*Attorneys for Bank of America, N.A. and Ditech  
Financial LLC f/k/a Green Tree Servicing LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LN MANAGEMENT LLC SERIES 3111 BEL  
AIR 24G,

Plaintiff,

v.

MICHAEL T. ELLIOTT, an individual; BANK  
OF AMERICA, N.A.; and DOES 1 through 10,  
inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No. : A-12-669570-C  
Consolidated with: A-13-682055-C

Dept. No.: XIII

**~~PROPOSED~~ FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
JUDGMENT**

Ditech Financial LLC f/k/a Green Tree Servicing LLC (**Ditech**) and Bank of America, N.A. (collectively, **defendants**) filed a summary judgment motion on September 29, 2020. LN Management LLC Series 3111 Bel Air 24G filed an opposition on November 11, 2020, and defendants filed reply on November 20, 2020. The court held a hearing on the motion on December 3, 2020. Following the hearing, the court took the matter under advisement.

1 On December 14, 2020, the court entered a minute order granting defendants' summary  
2 judgment motion. The court now enters the following findings of fact and conclusions of law.

3 **FINDINGS OF FACT**

4 ***The Subject Property, Note, and Deed of Trust***

5 1. A deed of trust listing Michael T. Elliott as the borrower (**Borrower**) and Bank of  
6 America as the lender and beneficiary was executed on October 6, 2004 and recorded on October 20,  
7 2004 (**Deed of Trust**). The Deed of Trust granted Lender a security interest in real property known  
8 as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada 89109 (the **Property**) to secure the repayment of  
9 a promissory note (the **Note**) in the original amount of \$322,100.00 to the Borrower (the Note and  
10 Deed of Trust together are the **Loan**). The Deed of Trust listed the APN number as 162-10-812-185.

11 2. In November 2004, Fannie Mae purchased the Loan, thereby acquiring ownership of  
12 the Deed of Trust. Fannie Mae maintained that ownership at the time of the HOA Sale on December  
13 12, 2012.

14 3. In September 2008, Federal Housing Finance Agency (**FHFA**) placed Fannie Mae  
15 into conservatorship "for the purpose of reorganizing, rehabilitating, or winding up [its] affairs." 12  
16 U.S.C. § 4617(a)(2). Fannie Mae remains in conservatorship today.

17 4. At the time of the HOA Sale, Bank of America was the servicer of the Loan for  
18 Fannie Mae.

19 5. Bank of America serviced the Loan for Fannie Mae up until on or about April 30,  
20 2013, when the servicing rights were transferred to Ditech.

21 6. On July 30, 2013, Bank of America recorded an assignment of the Deed of Trust to  
22 Ditech.

23 7. On December 20, 2019, Ditech recorded an assignment of the Deed of Trust to New  
24 Residential Mortgage, LLC.

25 8. On March 17, 2020, New Residential Mortgage, LLC recorded an assignment of the  
26 Deed of Trust to NewRez LLC d/b/a Shellpoint Mortgage Servicing (**NewRez**).

27 . . .

28 . . .

1 ***Fannie Mae's Contract with Its Servicers, Including Bank of America, Ditech, and NewRez***

2 9. The relationship between Bank of America, Ditech, and NewRez, as the servicers of  
3 the Loan, and Fannie Mae, as owner of the Loan, is governed by the Fannie Mae's Single-Family  
4 Selling Guide at A2-1-01 and Fannie Mae's Single-Family Servicing Guide (**Guide**), a central  
5 governing document for Fannie Mae's relationship with servicers nationwide. Among other things,  
6 the Guide provides that Fannie Mae's servicers may act as record beneficiaries for the deeds of trust  
7 owned by Fannie Mae and requires that servicers assign these deeds of trust to Fannie Mae upon  
8 Fannie Mae's demand. Selling Guide at A2-1-01, Servicing Guide F-1-11.

9 10. The Guide provides that:

10 The servicer ordinarily appears in the land records as the mortgagee to  
11 facilitate performance of the servicer's contractual responsibilities, including  
12 (but not limited to) the receipt of legal notices that may impact Fannie Mae's  
13 lien, such as notices of foreclosure, tax, and other liens. However, *Fannie*  
14 *Mae may take any and all action with respect to the mortgage loan it deems*  
15 *necessary to protect its ... ownership of the mortgage loan, including*  
16 *recordation of a mortgage assignment, or its legal equivalent, from the*  
17 *servicer to Fannie Mae or its designee.* In the event that Fannie Mae  
18 determines it necessary to record such an instrument, the servicer must assist  
19 Fannie Mae by

- 16 • preparing and recording any required documentation, such as  
17 mortgage assignments, powers of attorney, or affidavits; and
- 18 • providing recordation information for the affected mortgage loans.

19 Selling Guide at A2-1-03 (emphasis added).

20 11. The Guide also provides for a temporary transfer of possession of the note when  
21 necessary for servicing, such as managing litigation on behalf of Fannie Mae:

22 In order to ensure that a servicer is able to perform the services and duties  
23 incident to the servicing of the mortgage loan, Fannie Mae temporarily  
24 gives the servicer possession of the mortgage note whenever the servicer,  
25 acting in its own name, represents the interests of Fannie Mae in  
26 foreclosure actions, bankruptcy cases, probate proceedings, or other legal  
27 proceedings.

28 This temporary transfer of possession occurs automatically and  
immediately upon the commencement of the servicer's representation, in

its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding.

Selling Guide at A2-1-04.

11. The Guide includes a chapter describing how and when servicers should pursue foreclosure. *See generally* Guide at E-3 (Managing Foreclosure Proceedings). The chapter includes detailed provisions for how servicers may foreclose on properties when either Fannie Mae, MERS, or the servicer itself is the beneficiary of record of the relevant deed of trust. Guide at E-3.2-09.

12. The Guide also includes a chapter that explains how servicers should manage litigation on behalf of Fannie Mae. *See generally* Guide at E-1 (Referring Default-Related Legal Matters and Non-Routine Litigation to Law Firms).

13. The Guide states that "Fannie Mae is at all times the owner of the mortgage note," and "[a]t the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure . . . possession automatically reverts to Fannie Mae." Guide at A2-1-04.

14. Pursuant to the Guide, a servicer is required to "maintain in the individual mortgage loan file all documents and system records that preserve Fannie Mae's ownership interest in the individual mortgage loan." Guide at A2-4-01.

15. Any servicer retaining documents related to a particular loan, such as a deed of trust, has "no right to possess these documents and records except under the conditions specified by Fannie Mae." Guide at A2-5.1-02.

***The HOA Foreclosure Sale and LN Management's Purported Acquisition of the Property***

16. On June 21, 2012, Collections, as agent for the HOA, recorded a Notice of Claim – Delinquent Assessment Notice.

17. On July 25, 2012, Collections, as agent for the HOA, recorded a Notice of Default and Election to Sell.

18. After the Notice of Default was recorded, on or about August 16, 2012, Bank of America, through counsel at Miles, Bauer, Bergstrom, & Winters, LLP (**Miles Bauer**), contacted the HOA through Collections and requested the super-priority amount.

...

1           19.     Collections responded on or about November 27, 2012, and provided a Statement of  
2     Account.

3           20.     Following receipt of the Statement of Account, Miles Bauer and Collections  
4     discussed the HOA Sale via telephone. In email correspondence recounting the details of the  
5     telephone conversation, Collections confirmed that neither it nor the HOA was "foreclosing on a  
6     super-priority lien pursuant to NRS 116.3116."

7           21.     Collections further confirmed that it and the HOA were "not claiming to have a  
8     super-priority lien since the first mortgage [had] not been foreclosed on the property."

9           22.     Miles Bauer advised Collections that if the HOA and Collections were to conduct a  
10    super-priority sale, "Bank of America would like to payoff any potential senior lien, should one  
11    exist, to protect its first mortgage security interest."

12          23.     Collections, on behalf of the HOA, then recorded a Notice of Trustee Sale on  
13    November 15, 2012.

14          24.     On December 17, 2012, a foreclosure deed was recorded against the Property. The  
15    foreclosure deed states that the Property was sold at an HOA foreclosure sale on December 12, 2012,  
16    to 3111 Bel Air Drive 24G Trust for \$7,001.00.

17          25.     3111 Bel Air Drive 24G Trust subsequently conveyed the Property to LN  
18    Management via a Quitclaim Deed recorded on April 26, 2013.

19          26.     At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing  
20    Fannie Mae's interest in the Property. (FHFA's Statement on HOA Super-Priority Lien Foreclosures  
21    (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)  
22    Foreclosures.aspx).

23          27.     The fair market value of the Property at the time of the HOA Sale was \$360,000. The  
24    purchase price at the HOA Sale was less than 2% of the fair market value.

25    ***Procedural History***

26          28.     LN Management initiated an action for quiet title/declaratory relief on May 17, 2013.  
27    See Case No. A-13-682055-C. The court consolidated the case with the above-captioned action on  
28    October 29, 2013.





1           3.       NRS 30.010 *et seq.* gives courts "power to declare rights, status and other legal  
2 relations." LN Management and defendants both seek declaratory relief under that statute.

3           4.       Here, defendants request declaratory relief and quiet title. LN Management contends  
4 that it bought the property and the first deed of trust was extinguished. Defendants assert the sale  
5 did not extinguish the deed of trust because: (1) Fannie Mae owned the loan, and Bank of America  
6 was the beneficiary of record of the deed of trust in its capacity as the servicer of the loan for Fannie  
7 Mae at the time of the HOA foreclosure sale in December 2012, and thus, the Federal Foreclosure  
8 Bar applies; (2) the HOA foreclosed on only the sub-priority portion of its statutory lien; (3) the deed  
9 of trust survived as a matter of equity.

10          5.       In an action such as the present one, the parties must prove their claims and  
11 affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law,  
12 "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that  
13 opposed to it, has more convincing force, and from which it appears that the greater probability of  
14 truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding  
15 entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that  
16 opposed to it, has more convincing force and the greater probability of truth.").

17          6.       Nevada law draws no distinction between circumstantial and direct evidence.  
18 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction  
19 between the weight to be given either direct or circumstantial evidence. Therefore, all of the  
20 evidence in the case, including circumstantial evidence, should be considered...").

21 ***B. The Five-Year Rule under NRCP 41(e) Has Not Run***

22          7.       LN Management contends the court should dismiss this case under NRCP 41(e)  
23 because the five-year rule has expired. The court rejects this argument.

24 **The Action was Brought to Trial**

25          8.       NRCP 41(e) only applies if an action is not brought to trial within 5 years after the  
26 action was filed. *See* NRCP 41(e)(2)(B). The Nevada supreme court defines "trial" as "the  
27 examination before a competent tribunal, according to the law of the land, of questions of fact or of  
28 law put in issue by pleadings, for the purpose of determining the rights of the parties." *United Ass'n*

1 of *Journeyman & Apprentices of Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 819–20,  
2 783 P.2d 955, 957 (1989). Under this definition, "proceedings leading to a complete grant of  
3 summary judgment constitute a trial" for purposes of the five-year rule. *Monroe v. Columbia Sunrise*  
4 *Hosp. & Med. Ctr.*, 123 Nev. 96, 100, 158 P.3d 1008, 1010 (2007). This holds true even when third-  
5 party claims remain outstanding. *Id.* at 1011.

6 9. The court granted summary judgment in favor of Ditech on August 13, 2014. The  
7 order granted Ditech's motion "in its entirety" and constituted the "final order/judgment in this  
8 matter." While the court ultimately granted LN Management's motion to set aside the judgment in  
9 September 2014, nothing in either NRCP 41(e) or Nevada case law negates the fact Ditech brought  
10 the action "to trial" within the meaning of Rule 41(e).

11 10. Rule 41(e)'s plain language does not contemplate the five-year rule being reinstated  
12 after it has already been satisfied on summary judgment. *See Vanguard Piping v. Eighth Jud. Dist.*  
13 *Ct.*, 129 Nev. 602, 608, 309 P.3d 1017, 1020 (2013) (stating the rules of statutory interpretation  
14 apply to procedural rules and noting the court should look to the plain language of the rule); *Thran v.*  
15 *District Ct.*, 79 Nev. 176, 180-81 (1963) (Rule 41(e) is "clear, unambiguous and requires no  
16 construction other than its own language.").

17 11. Because Ditech already satisfied the five-year rule, it is no longer applicable to this  
18 action.

### 19 LN Management Stipulated to Forego the Five-Year Rule

20 12. Even if the five-year rule had not already been satisfied, the court finds the parties  
21 have stipulated to waive it.

22 13. NRCP 41(e)(5) provides a party may stipulate in writing to extend the time in which  
23 to prosecute an action.

24 14. The court finds this is precisely what LN Management did when it moved for  
25 reconsideration of the court's May 2018 order dismissing the action under Rule 41(e).

26 15. In the motion, LN Management argued the court should set aside the court's five-year  
27 rule dismissal and reopen the case so that the parties could obtain "final orders that would determine  
28

1 each of the parties rights as to the property." No other party filed an opposition to LN Management's  
2 motion.

3 16. By filing an unopposed motion to disregard the five-year rule dismissal and litigate  
4 the matter on the merits, the court finds LN Management and the remaining parties stipulated to  
5 forego application of the five-year rule to this matter.

6 **LN Management is judicially estopped from obtaining dismissal under the Five-Year**  
7 **Rule.**

8 17. Even assuming the five-year rule continues to apply, the court finds LN Management  
9 is judicially estopped from obtaining dismissal.

10 18. Judicial estoppel has five elements: "(1) the same party has taken two positions; (2)  
11 the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was  
12 successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true);  
13 (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of  
14 ignorance, fraud, or mistake." *Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 50, 56,  
15 390 P.3d 646, 652 (2017) (citation omitted). All elements are satisfied to prevent LN Management  
16 from now asserting the five-year rule.

17 19. *First*, LN Management has taken two positions. In its opposition, LN Management  
18 contends the five-year rule expired on October 3, 2017, necessitating dismissal of this action. But  
19 LN Management previously moved for reconsideration on June 21, 2018, of the court's order  
20 dismissing the action for want of prosecution under the very same rule LN Management now seeks  
21 to enforce.

22 20. *Second*, LN Management's positions were taken in this case, a judicial proceeding.

23 21. *Third*, LN Management successfully obtained reconsideration of the court's order  
24 dismissing the action under Rule 41(e). The court granted LN Management's motion and reopened  
25 the case on July 27, 2018.

26 22. *Fourth*, the positions are inconsistent. LN Management moved for (and obtained)  
27 reconsideration of the court's Rule 41(e) dismissal, explicitly arguing such relief was appropriate due  
28 to its own wrongful conduct. LN Management now seeks to undo its own motion by arguing the

1 five-year rule somehow expired in October 2017. These positions are entirely irreconcilable. LN  
2 Management cannot now argue for dismissal under Rule 41(e) when it previously moved to reopen  
3 the case (for the second time) notwithstanding this very rule.

4 23. *Finally*, LN Management's conduct cannot be found to result from ignorance, fraud or  
5 mistake. LN Management moved on its own volition for reconsideration of the court's dismissal  
6 order and directly argued the order should be set aside based on excusable neglect. In LN  
7 Management's own words, such reconsideration was justified because the parties "need" the court to  
8 determine the parties' respective rights in the property.

9 **LN Management's Five-Year Rule argument is barred by Waiver and Equitable**  
10 **Estoppel.**

11 24. In addition to being judicially estopped from arguing for five-year rule dismissal, LN  
12 Management also waived or else should be equitably estopped from raising the issue.

13 25. Waiver is the intentional relinquishment of a known right. *Nev. Yellow Cab Corp. v.*  
14 *Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 152 P.3d 737, 740 (Nev. 2007). Waiver of a right  
15 may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right  
16 as to induce a reasonable belief that the right has been relinquished. *Id.* Further, a party seeking  
17 equity is required to do equity. *Overhead Door Co. of Reno, Inc. v. Overhead Door Corp.*, 734 P.2d  
18 1233, 1235 (Nev. 1987). Equitable estoppel operates to prevent a party from asserting legal rights  
19 that, in equity and good conscience, they should not be allowed to assert because of their own  
20 conduct. *NGA #2 Liab. Co. v. Rains*, 946 P.2d 163, 168 (Nev. 1997).

21 26. Here, the court finds LN Management *twice* moved to reopen this case: First, after  
22 Ditech brought the action to trial; and second, after LN Management obtained reconsideration of the  
23 court's rule 41(e) dismissal order.

24 27. To the extent LN Management believed the five-year rule expired in October 2017,  
25 LN Management has intentionally relinquished any such argument.

26 28. Had LN Management indicated any intent to argue for five-year rule dismissal prior  
27 to its opposition to the instant motion, defendants could have acted accordingly to either obtain  
28

1 affirmative relief or request an expediated resolution of the matter. Instead, LN Management did the  
2 exact opposite, arguing the court should maintain the case notwithstanding any such rule.

3 29. Defendants reasonably relied on this relinquishment and would be severely  
4 prejudiced if the court dismissed the action without resolving the parties' respective interests in the  
5 property.

6 **Alternatively, the Five-Year Rule has not run due to tolling.**

7 30. To the extent the five-year rule was reinstituted based on its September 24, 2014  
8 order granting LN Management's post-trial motion to reopen the case, the court finds the deadline  
9 still would not have run due to tolling.

10 31. Under this scenario, the earliest the five-year rule could have expired is September  
11 24, 2019, or five-years after the court reinstituted the action.

12 32. But the Nevada supreme court has explicitly recognized the deadline can be tolled  
13 under certain circumstances, such as when the court stays proceedings. *Baker v. Noback*, 112 Nev.  
14 1106, 1110 (1996) (noting it would be "patently unfair" to dismiss an action for failure to bring to  
15 trial when a stay prevented the parties from going to trial within the period); *see also Boren v. City of*  
16 *N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982) ("**Any** period during which the parties are  
17 prevented from bringing an action to trial by reason of a stay order shall not be computed in  
18 determining the five-year period of [NRCPP] 41(e).") (emphasis added).

19 33. Here, this matter was closed between May 23, 2018 and July 27, 2018 before the  
20 court granted LN Management's motion to reopen. The matter was then stayed due to Ditech's  
21 bankruptcy on March 27, 2019, and it remains stayed to date.

22 34. Accounting for these tolling periods, the five-year deadline would be at least **246**  
23 **days** from when the stay is lifted and/or the case is reopened. Accordingly, the court finds there is  
24 no merit to LN Management's contention the five-year rule deadline has expired.

25 **C. Federal Foreclosure Bar – 12 U.S.C. § 4617(j)(3)**

26 Pursuant to the Housing and Economic Recovery Act of 2008 ("HERA"), Congress granted  
27 FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable  
28 FHFA to carry out its statutory functions when acting as Conservator of Fannie Mae and Freddie

1 Mac (together, the "enterprises"). Among these is a broad statutory "exemption" captioned  
2 "property protection" that provides when the enterprises are under the conservatorship of the FHFA,  
3 none of their property "shall be subject to ... foreclosure ... without the consent of [FHFA]." 12  
4 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").

5 35. The Federal Foreclosure Bar contains no conditions precedent to effectiveness of its  
6 statutory protections. Unless and until FHFA gives its consent, the federal protection "shall" be  
7 given full effect, which includes preemption of state law. *SFR Invs. Pool 1, LLC v. Green Tree*  
8 *Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016) (citing 12 U.S.C. § 4617(j)(3)). A  
9 contrary interpretation would invert the default rule provided in the statutory text on its head, as if  
10 Congress decreed that FHFA's property interests are subject to extinguishment by foreclosure unless  
11 FHFA affirmatively declares that it will not grant consent to the extinguishment of a specific  
12 property interest. This is not what the statute says, and courts should not rewrite a statute's text. *See*  
13 *Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004) (rejecting argument that "would result not  
14 [in] a construction of [the] statute, but, in effect, an enlargement of it by the court" (quoting *Iselin v.*  
15 *United States*, 270 U. S. 245, 251 (1926))); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54  
16 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all  
17 others . . . that a legislature says in a statute what it means and means in a statute what it says.").  
18 Here, there is no evidence FHFA consented to extinguishment of the deed of trust.

19 36. The Nevada supreme court and the Ninth Circuit have both held unequivocally that  
20 the Federal Foreclosure Bar, 12 U.S.C. § 4617(j)(3), protects Fannie Mae's property interests while it  
21 under the conservatorship of the FHFA by preempting the NRS 116.3116 (the **State Foreclosure**  
22 **Statute**), which would otherwise permit an HOA's foreclosure of its superpriority lien to extinguish  
23 Fannie Mae's deed of trust. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417  
24 P.3d 363 (Nev. 2018); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *FHFA v. SFR Invs. Pool*  
25 *1, LLC*, 893 F.3d 1136 (9th Cir. 2018); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir.  
26 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir. 2017).

27 37. In *Christine View*, the Nevada supreme court held that "according to the plain  
28 language of the statute, Fannie Mae's property interest effectively becomes the FHFA's while the

1 conservatorship exists. Thus, the Federal Foreclosure Bar protects Fannie Mae's deed of trust while  
2 Fannie Mae is under the conservatorship." *Christine View*, 417 P.3d at 367. *Christine View* is  
3 published precedent that forecloses any argument suggesting that the Federal Foreclosure Bar does  
4 not preempt the State Foreclosure Statute or does not protect Fannie Mae's property interest from  
5 extinguishment. *See id.* at 365 (holding that "the Federal Foreclosure Bar invalidates any purported  
6 extinguishment of a regulated entity's property interest while under the FHFA's conservatorship  
7 unless the FHFA affirmatively consents.").

8 38. Three other recent decisions from the Nevada supreme court, four Ninth Circuit  
9 decisions, and dozens of decisions from federal and state district courts in Nevada agree with the  
10 Nevada Supreme Court's decision in *Christine View*—an HOA foreclosure sale cannot extinguish  
11 property interests of the Enterprises while they are in conservatorship. *See, e.g., Guberland*, 2018  
12 WL 3025919, at \*2; *A&I Series 3, LLC v. Fannie Mae*, No. 71124, 2018 WL 3387787 (Nev. July 10,  
13 2018) (unpublished disposition); *5312 La Quinta Hills, LLC v. BAC Home Loans Servicing, LP*, No.  
14 71069, 2018 WL 3025927, at \*1 (Nev. June 15, 2018) (unpublished disposition); *Berezovsky*, 869  
15 F.3d 923; *FHFA v. SFR*, 893 F.3d 1136; *Elmer*, 707 F. App'x 426; *Flagstar Bank, FSB*, 699 F. App'x  
16 658; *see also* CMI's Motion for Summary Judgment at (citing dozens of state and federal district  
17 court cases in Nevada).

18 39. The preemption doctrine, which provides that federal law supersedes conflicting state  
19 law, arises from the Supremacy Clause of the U.S. Constitution. Here, the text of the Federal  
20 Foreclosure Bar declares that "[n]o property of the Agency shall be subject to levy, attachment,  
21 garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3).

22 40. The Federal Foreclosure Bar preempts the State Foreclosure Statute under a theory of  
23 conflict preemption because "state law is naturally preempted to the extent of any conflict with a  
24 federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*,  
25 530 U.S. 363, 372 (2000)).

26 41. Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect  
27 FHFA conservatorships from actions, such as the HOA Sale, that otherwise would deprive them of  
28 their property interests. "[T]he [State Foreclosure Statute] is in direct conflict with Congress's clear



1 and manifest goal to protect Fannie Mae's property interest while under the FHFA's conservatorship  
2 from threats arising from state foreclosure law." *Christine View*, 417 P.3d at 367; *Berezovsky*, 869  
3 F.3d at 930 ("[T]he Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the  
4 State Foreclosure Statute]."); *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d at 1146-47 (following  
5 *Berezovsky*); *Elmer*, 707 F. App'x at 427-28 (same); *Flagstar*, 699 F. App'x at 658-59 (same).

6 42. Accordingly, the Federal Foreclosure Bar preempts the State Foreclosure Statute to  
7 the extent a homeowner association's foreclosure of its super-priority lien cannot extinguish a Fannie  
8 Mae property interest while it is under FHFA's conservatorship, without the consent of FHFA.

9 43. At the time of the HOA foreclosure sale, Bank of America was the Deed of Trust  
10 beneficiary of record in its capacity as the servicer for Fannie Mae. The evidence, which includes a  
11 Fannie Mae employee declaration and supporting business records, proves Fannie Mae owned the  
12 note and deed of trust at the time of the HOA sale and was in a contractual relationship with Bank of  
13 America as the loan servicer. Fannie Mae maintained a property interest in the underlying collateral.  
14 *See Daisy Trust*, 135 Nev. at 233-34, 445 P.3d at 849; *In re Montierth*, 131 Nev. 543, 354 P.3d 648  
15 (2015); *CitiMortgage, Inc. v. SFR Invs. Pool 1, LLC*, No. 70237, 2019 WL 289690 (Nev. Jan. 18,  
16 2019) (unpublished disposition); *CitiMortgage, Inc. v. TRP Fund VI, LLC*, No. 71318, 2019 WL  
17 1245886, at \*1 (Nev. Mar. 14, 2019); *Guberland*, 2018 WL 3025919 at \*2-3 (citing *Montierth*);  
18 Restatement (Third) of Property: Mortgages § 5.4 (1997). In citing *Montierth* and the Nevada  
19 Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth Circuit held  
20 that a loan-owner servicer relationship "preserves the note owner's power to enforce its interest  
21 under the security instrument, because the note owner can direct the beneficiary to foreclose on its  
22 behalf." *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a  
23 secured property interest. *Id.* Therefore, an enterprise's "property interest is valid and enforceable  
24 under Nevada law even if the recorded document omits [the Enterprise]'s name, if the recorded  
25 beneficiary of the deed of trust is a party acting on [the Enterprise's] behalf." *Elmer*, 2017 WL  
26 3822061, at \*1.

27 44. The Nevada Supreme Court has held materially identical "business records and  
28 testimony" constitute "ample evidence" to demonstrate an Enterprise's ownership of a loan and the

1 contractual relationship between an Enterprise and its servicer. *See M&T Bank v. Wild Calla St. Tr.*,  
2 No. 74715, 2019 WL 1423107, at \*2 (Nev. Mar. 28, 2019) (unpublished disposition); *see also*  
3 *CitiMortgage v. SFR*, 2019 WL 289690, at \*1 & n.1 ("Although respondent contends that appellant's  
4 evidence[—"deposition testimony of appellant's NRCP 30(b)(6) witness, affidavit, and relied-upon  
5 business records"—] does not establish that Fannie Mae owned the loan at the time of the HOA  
6 foreclosure sale, we disagree."); *CitiMortgage v. TRP*, 2019 WL 1245886, at \*1; *SFR Invs. Pool 1,*  
7 *LLC v. Green Tree Servicing, LLC*, No. 72010, 2018 WL 6721370, at \*1 (Dec. 17, 2018)  
8 (unpublished disposition).

9 45. The Ninth Circuit agrees and has held materially the same evidence was admissible  
10 and sufficient to establish an Enterprise's property interest for the purposes of summary judgment.  
11 *See, e.g., Berezovsky*, 869 F.3d at 933; *Elmer*, 707 F. App'x at 428; *Williston*, 736 F. App'x at 169;  
12 *G&P Investments*, 740 F. App'x at 564.

13 46. Nevada law does not require Fannie Mae's ownership interest to be recorded in its  
14 own name. *Daisy Trust*, 445 P.3d at 849; *JPMorgan Chase Bank, N.A. v. Guberland LLC-Series 2*,  
15 No. 73196, 2019 WL 2339537, at \*1 (Nev. May 31, 2019) ("*Guberland II*"). The protection of the  
16 Federal Foreclosure Bar is not limited to the interest Fannie Mae might have if it were *record*  
17 *beneficiary* of the deed of trust at the time of the HOA sale. Rather, it extends to the property  
18 interest that Fannie Mae has as the *owner* of the note and deed of trust while its contractually  
19 authorized servicer appears as record beneficiary of that deed of trust, a property interest that Nevada  
20 law recognizes. *See Montierth*, 131 Nev. 543, 354 P.3d 648 (holding that a loan owner has a secured  
21 property interest when a contractually authorized servicer is the record beneficiary of a deed of  
22 trust); *see also Guberland*, 2018 WL 3025919, at \*2-3 (applying the Federal Foreclosure Bar where  
23 an enterprise "was not the beneficiary of the deed of trust" and its servicer appeared as record  
24 beneficiary); *CitiMortgage v. SFR*, 2019 WL 289690 at \*2 (relying on *Montierth* and holding the  
25 loan servicer's status as record beneficiary of the deed of trust "does not create a question of material  
26 fact regarding whether Fannie Mae owns the subject loan"); *CitiMortgage v. TRP*, 2019 WL  
27 1245886, at \*1 (reversing the district court's finding that the Federal Foreclosure Bar did not prevent  
28 the extinguishment of Fannie Mae's deed of trust because it was not publicly recorded in Fannie

1 Mae's name and confirming, under *Montierth*, that "the record beneficiary need not be the actual  
2 owner of the loan").

3 47. LN Management bears the burden of proof to establish that FHFA expressly  
4 consented to extinguish Fannie Mae's ownership interest in the deed of trust. FHFA's April 21, 2015  
5 statement confirms that FHFA did not provide express consent here. In the absence of express  
6 consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the  
7 Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent can only be  
8 manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-  
9 CWH, 2017 WL 773827, at \*3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which  
10 FHFA's statement was sufficient to show FHFA's lack of consent). Although the federal law  
11 controls, it is consistent with Nevada's policy against requiring a party to prove a negative, such as  
12 proving a lack of consent. *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092,  
13 1096-97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it  
14 is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered.");  
15 *see also State v. Haskell*, 14 Nev. 209, 209-210 (1879) (in a forfeiture case, once the defendant  
16 establishes good title to the property the burden shifts to the state – "not upon the defendants to  
17 prove a negative", *i.e.* that the property was not abandoned or forfeited).

18 48. LN Management has not shown it obtained such consent. To the contrary, FHFA has  
19 publicly announced that it "has not consented, and will not consent in the future, to the foreclosure or  
20 other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection  
21 with HOA foreclosures of super-priority liens." Therefore, the Federal Foreclosure Bar applies.

22 49. Having found that the Federal Foreclosure Bar applies, the next step is to determine if  
23 defendants have standing, as the servicer and beneficiary of record at the time of the HOA  
24 foreclosure sale and during the applicable periods of this action, to represent Fannie Mae's Mac  
25 interest in the loan. The Court finds that defendants were Fannie Mae's contractually authorized  
26 servicers of the loan, with standing to represent and defend Fannie Mae's interests in this action. *See*  
27 *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017); *Flagstar*,  
28 699 F. App'x at 658.

1           50.     The Nevada Supreme Court confirmed that "the servicer of a loan owned by [Fannie  
2 Mae] may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [Freddie  
3 Mac] nor the FHFA need be joined as a party." *Nationstar*, 396 P.3d at 758.

4           51.     Furthermore, there is no bar against private parties like defendants raising a federal  
5 preemption argument. *Id.* at 757. To the contrary, in cases state and federal law clash, "*judges are*  
6 *bound by federal law.*" *Id.* (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378,  
7 1384 (2015)) (emphasis in original); *See Saticoy Bay LLC Series Christine View v. Federal National*  
8 *Mortgage Association*, 134 Nev. Adv. Op. 36 (2018).

9           52.     LN Management offers no evidence conflicting with Fannie Mae's ownership of the  
10 loan or defendants' right to represent Fannie Mae's interest in the loan.

11           53.     Since no party has refuted evidence of Fannie Mae's ownership, the Federal  
12 Foreclosure Bar defeats LN Management's contention it took title to the property free and clear of  
13 the deed of trust.

14     ***D.     Tender Was Excused as Futile.***

15           54.     Even if the Federal Foreclosure Bar did not apply, Fannie Mae's deed of trust would  
16 still have survived because Bank of America's tender was excused under the Nevada supreme court's  
17 decision in *Perla del Mar. 7510 Perla Del Mar Ave Trust v. Bank of Am. N.A.*, 458 P.3d 348, 349  
18 (Nev. 2020). That case held the obligation to tender is excused for futility where the evidence shows  
19 that the HOA or its foreclosure agent "had a known policy of rejecting such payments." *Id.* at 351  
20 (citing cases from other jurisdictions endorsing the general proposition that a tender is excused when  
21 the party entitled to payment demonstrates by words or conduct it will not accept the tender).

22           55.     Just as in *Perla Del Mar*, Bank of America and Miles Bauer offered to pay the HOA,  
23 through Collections of America, the superpriority amount "actually due" with no impermissible  
24 conditions attached. *See 7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 458 P.3d 348,  
25 349 (Nev. 2020) (noting "[a]n actual tender is unnecessary where it is apparent the other party will  
26 not accept it."). The HOA, through its agent, stated no superpriority lien existed until Bank of  
27 America completed its own foreclosure.

28     ...

1           56. In analyzing materially similar representations from an HOA trustee, the Nevada  
2 supreme court confirmed "[t]he necessary implication of these statements is that [the HOA trustee]  
3 would not have accepted a superpriority tender before the first deed of trust was foreclosed." *See*  
4 *U.S. Bank N.A. v. SFR Invs. Pool 1 LLC*, No. 78003, 2020 WL 3003017, at \*1 (Nev. June 4, 2020)  
5 (unpublished) (directing judgment in the bank's favor based on futility).

6           57. Bank of America stood ready, willing, and able to tender the full statutory super-  
7 priority amount to protect the deed of trust, but the HOA obstructed Bank of America's ability to  
8 tender the superpriority portion of the HOA's lien through its false representations and assurances.  
9 *Id.* The HOA sale thus did not extinguish the deed of trust because Bank of America was excused  
10 from formal tender.

11 ***E. The HOA Conducted a Sub-Priority Sale.***

12           58. Irrespective of Bank of America's superpriority offer, the HOA foreclosed on only the  
13 subpriority portion of its lien because that is what the HOA and its agent chose to do.

14           59. The Nevada Supreme Court in *SFR Investments*, applying the plain language of the  
15 statute, explained that "[a]s to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two  
16 pieces, a superpriority piece and a subpriority piece." *SFR Investments Pool 1 v. U.S. Bank*, 334  
17 P.3d 408, 411 (Nev. 2014). Only "[t]he superpriority piece" is "prior to a first deed of trust." *Id.*  
18 "The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed  
19 of trust." *Id.* An association can choose to foreclose on either the sub-priority or super-priority  
20 portion of its lien. *See Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132  
21 Nev. Adv. Op. 5, 366 P.3d 1105, 1116 (2016) ("And if the association forecloses on its superpriority  
22 lien portion, the sale also would extinguish other subordinate interests in the property."). *See also*  
23 *River Glider Ave. Tr. v. The Bank of N.Y. Mellon*, No. 79808 (Nev. Sup. Ct. Sept. 18, 2020)  
24 (unpublished disposition) (finding representations of purchaser in judicial proceeding determinative  
25 for whether a sale was a subpriority or super-priority sale).

26           60. This comports with long-standing Nevada law that the foreclosing party's intent  
27 determines what is transferred at auction. *See, e.g., Dayton Valley Investors, LLC v. Union Pac. R.*  
28 *Co.*, 664 F.Supp. 2d 1174, 1185 (D. Nev. 2009) ("[I]t is the intent of the parties to the deed which ...

1 must determine the nature and extent of the interest conveyed.") (quoting *City Motel, Inc. v. Nevada*  
2 *ex. rel. State Dep't of Highways*, 75 Nev. 137, 140, 336 P.2d 375, 377 (1959)). The foreclosing  
3 party's intent "is determined from 'all the circumstances surrounding the transaction[.]'" *See Dayton*  
4 *Valley*, 664 F.Supp. 2d at 1185 (quoting *Kartheiser v. Hawkins*, 98 Nev. 237, 239, 645 P.2d 967, 968  
5 (1982)).

6 61. Here, the undisputed evidence shows the HOA's agent, Collections of America,  
7 explicitly informed Bank of America it was not "foreclosing on a super-priority lien pursuant to NRS  
8 116.3116" and that the HOA did not claim "to have a super-priority lien since the first mortgage  
9 [had] not [been] foreclosed."

10 62. "Because the HOA foreclosed on only its sub-priority lien, [LN Management] cannot  
11 meet its burden of showing it has title superior to [the Deed of Trust]." *7912 Limbwood Court Trust*  
12 *v. Wells Fargo Bank, N.A.*, 2015 WL 5123317 at \*4 (D. Nev. Aug. 31, 2015); *see also MacDonald v.*  
13 *Krause*, 77 Nev. 312, 315, 362 P.2d 724, 727 (1961) ("In a quiet title action, the only issue is  
14 whether plaintiff has an interest or estate in the property superior to the adverse claim.").  
15 Accordingly, defendants are entitled to summary judgment on this alternative basis.

16 ***F. Alternatively, The Court Finds the Deed of Trust Survived as a Matter of Equity***

17 63. The court need not reach the equities in this matter because Fannie Mae's deed of  
18 trust survived as a matter of law. *Bank of America, N.A. v. SFR Invs. Pool I, LLC*, 427 P.3d 113  
19 (Nev. 2018). But even if the court balanced the equities in this case, they tip strongly in defendants'  
20 favor.

21 64. If an association sells a property for a price that is "palpabl[y] and great[ly]  
22 inadequate," all that is needed to show the deed of trust survived as a matter of equity is "very slight  
23 additional evidence of unfairness." *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227*  
24 *Shadow Canyon*, 405 P.3d 641, 642 (Nev. 2017). To determine if an association's foreclosure-sale  
25 price is inadequate, courts must compare that price to the foreclosed property's fair market value at  
26 the time of the sale. *See id.*, at 649 (comparing the \$35,000.00 association-foreclosure-sale price to  
27 an appraisal showing the fair-market value of free and clear title was \$335,000.00 to determine the  
28 association sold the property "for roughly 11 percent of [its] fair market value"). A foreclosure-sale

1 price below 20% of fair market value is "obviously inadequate." *See Shadow Wood*, 366 P.3d at  
2 1116.

3 65. The Nevada supreme court has provided a non-exhaustive list of "irregularities that  
4 may rise to the level of fraud, unfairness, or oppression" required to set aside an association sale or  
5 hold that it did not extinguish a senior deed of trust, including: (1) "failure to mail a deed of trust  
6 beneficiary the statutorily required notices"; (2) "***an HOA's representation that the foreclosure sale***  
7 ***will not extinguish the first deed of trust***"; (3) "collusion between the winning bidder and the entity  
8 selling the property"; (4) "a foreclosure trustee's refusal to accept a higher bid"; and (5) "a  
9 foreclosure trustee's misrepresentation of the sale date." *Id.* at n.11 (emphasis added).

10 66. Here, the HOA sold the Property for less than 2% of its fair market value. In light of  
11 this "palpabl[y] and great[ly]" inadequate sales price, only slight evidence of unfairness is needed to  
12 set aside the foreclosure sale. *See Nationstar*, 405 P.3d at 648. Prior to the HOA Sale, Bank of  
13 America contacted Collections to offer to pay the full statutory super-priority amount, as it has done  
14 in hundreds – if not thousands – of other cases. Collections subsequently assured Bank of America  
15 that it was not foreclosing on a "super-priority lien pursuant to NRS 116.3116" and that the HOA did  
16 not claim to "have a super-priority lien." Miles Bauer, on behalf of Bank of America, asked  
17 Collections to let them know if the circumstances of the HOA Sale changed, as "Bank of America  
18 would like to payoff any potential senior lien, should one exist, to protect [the Deed of Trust]." *Id.*  
19 Again, in response to Bank of America's willingness to tender the full statutory super-priority  
20 amount, Collections advised that no such lien existed, and it would notify Bank of America if  
21 anything changed. *Id.*

22 67. Bank of America attempted to pay the superpriority amount of the HOA's lien here to  
23 ensure Fannie Mae's deed of trust was protected, and the HOA prevented it from doing so. This is  
24 another example of unfairness the supreme court explicitly identified in *Shadow Canyon*. *See* 405  
25 P.3d at 650 (explaining that whether a senior lender "tried to tender payment" to an association  
26 before the sale is "significant[]" to determine whether the lender's deed of trust survived as an  
27 equitable matter).

28 . . .

1           68. In light of the HOA and its agents' representations to Bank of America and Miles  
2 Bauer, coupled with the HOA's efforts to thwart Bank of America's superpriority payment, holding  
3 that the deed of trust was extinguished would be much more than "very slight[ly] unfair," and  
4 "[v]ery slight additional evidence of unfairness or oppression" is all that is needed in light of the  
5 "palpabl[y] and great[ly]" inadequate sale price to hold the deed of trust was not extinguished on  
6 equitable grounds. *See Shadow Canyon*, 405 P.3d at 648.

7           69. Even if LN Management was a bona fide purchaser, it is but one factor of many when  
8 balancing the equities between it and defendants and does not change the above result. Further, the  
9 court finds LN Management was not a bona fide purchaser.

10          70. To be a bona fide purchaser, one must take property "for a valuable consideration and  
11 without notice of the prior equity, and without notice of facts which upon diligent inquiry would be  
12 indicated and from which notice would be imputed to him, if he failed to make such inquiry."  
13 *Shadow Wood*, 366 P.3d at 1115 (citing *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)).

14          71. A putative bona fide purchaser has the burden to prove it is a bona fide purchaser.  
15 *See, e.g., Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the  
16 putative bona fide purchaser "was required to show that legal title had been transferred to her before  
17 she had notice of the prior conveyance to appellant"). Here, LN Management cannot satisfy its  
18 burden to show that it was a bona fide purchaser.

19          72. First, and most obvious, LN Management put forth no evidence that it was a bona  
20 fide purchaser.

21          73. Second, LN Management cannot be a bona fide purchaser because it had inquiry  
22 notice of Miles Bauer's superpriority offer. A party cannot qualify as a bona fide purchaser if it was  
23 under a duty of inquiry that it failed to discharge before purchasing the property at issue. *Berge*, 95  
24 Nev. at 189. The *Berge* Court explained that this duty arises:

25               when the circumstances are such that a purchaser is in possession of  
26 facts which would lead a reasonable man in his position to make an  
27 investigation that would advise him of the existence of prior  
28 unrecorded rights. He is said to have constructive notice of their  
existence whether he does or does not make the investigation. The  
authorities are unanimous in holding that he has notice of whatever the  
search would disclose.



1 *Id.*

2 74. A purchaser "put upon inquiry may rebut the presumption of notice by showing that  
3 he made due investigation without discovering the prior right or title he was bound to investigate."  
4 *Id.*, at 185. LN Management has produced no evidence it conducted such an investigation.

5 75. The bona fide purchaser doctrine does not protect against willful ignorance—  
6 plaintiff's decision to purchase a lawsuit cannot transform the encumbered interest it purchased into  
7 free and clear title. *See Allison Steel*, 86 Nev. at 497.

8 76. As such, the deed of trust survived the HOA's foreclosure sale as a matter of equity  
9 and continues to encumber plaintiff's title to the property.

10 **G. The Court Reforms the Deed of Trust and Subsequent Assignment.**

11 77. Deeds and other instruments, like an assignment, can be "reformed in accordance  
12 with the intention of parties when that intention is frustrated by a mutual mistake." *Grappo v.*  
13 *Mauch*, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994). Reformation should be utilized "when a  
14 written instrument fails to conform to the parties' previous understanding or agreement." *Id.*

15 78. Borrower purchased two units in the same condominium development. First,  
16 Borrower obtained a loan in the amount of \$322,100.00 to purchase the Property (3111 Bel Air Dr.,  
17 Unit 24G), repayment of which was secured by a Deed of Trust recorded on October 20, 2004. The  
18 Property was conveyed to Borrower by the previous owner through a Grant Deed recorded on  
19 October 16, 2003 as instrument number 20031016-01640. The Deed of Trust lists the APN as 162-  
20 10-812-185.

21 79. Borrower subsequently obtained a second loan to purchase another unit in the same  
22 condominium complex. Specifically, Borrower obtained a loan in the amount of \$149,000 to  
23 purchase real property commonly known as 3111 Bel Air Dr. #216, Las Vegas, NV 89109 (**216**  
24 **Property**), repayment of which was secured by a Deed of Trust recorded on December 31, 2007  
25 (**216 Deed of Trust**). The 216 Deed of Trust, like the Deed of Trust, lists Bank of America as the  
26 Lender. The 216 Property's APN number as 162-10-812-003.

27 80. While the property address and the APN on the Deed of Trust are correct, the Court  
28 finds the legal description is incorrect. The Grant Deed conveying the Property to Borrower

1 specifies that Unit 24G is designated Unit 185 in the original Regency Towers plat. Due to a mutual  
2 mistake, however, the legal description in the Deed of Trust states that Unit 24G is designated as  
3 Unit 3 in the Regency Towers plat. In reality, Unit 3 is the correct legal description for the 216  
4 Property. The property records, the Regency Towers plat, and defendants' expert report make clear  
5 that the Property's legal description should list Unit 185, as opposed to Unit 3.

6 81. Based on the uncontroverted evidence, the Court reforms the legal description in the  
7 Deed of Trust to list Unit 185, as opposed to Unit 3.

8 82. The second instrument requiring reformation is an Assignment of the Deed of Trust  
9 recorded on July 30, 2013. Due to a mutual mistake and confusion, the Assignment was  
10 inadvertently recorded against APN #162-10-812-003, which is the 216 Property. The Assignment  
11 correctly states that it is assigning the Deed of Trust (not the 216 Deed of Trust) but does not appear  
12 in the property records for the Property when conducting an assessor's parcel no. search on account  
13 of the incorrect APN. The language in the Assignment makes it clear that the Assignment should  
14 have been recorded against APN 162-10-812-185.

15 83. Based on the uncontroverted evidence, the Court reforms the Assignment to reflect  
16 the correct APN (162-10-812-185) and orders that the Assignment's effective date as to the subject  
17 property was the date it was recorded against the incorrect parcel number (July 30, 2013).

### 18 **ORDER AND JUDGMENT**

19 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,  
20 instrument number 20041020-0001569 with the Clark County Recorder, was not extinguished by the  
21 HOA's foreclosure sale that is reflected in the trustee's deed upon sale, instrument number  
22 201212170000834 with the Clark County Recorder.

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,  
24 instrument number 20041020-0001569 with the Clark County Recorder, remains a valid, first-  
25 position lien encumbering the property located at as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada  
26 89109, assessor's parcel no. 162-10-812-185.

27 . . .

28 . . .

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the legal description of the property in the deed of trust, instrument number 20041020-0001569 with the Clark County Recorder, is reformed to list Unit 185, as opposed to Unit 3.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Assignment of the deed of trust, recorded on July 30, 2013 as instrument number 201307300000199 with the Clark County Recorder, is reformed to reflect the assessor's parcel no. 162-10-812-185. The assignment's effective date remains the date it was recorded against the incorrect parcel number, or July 30, 2013. The court intends this judgment to correct any alleged deficiencies in the at-issue deed of trust and subsequent assignment.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that defendants' motion for summary judgment is **GRANTED in its entirety**. Judgment is entered in favor of defendants and against LN Management. This is a final judgment.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** the court lifts the stay and reopens this case for the purpose of granting defendants' summary judgment motion and entering the court's judgment.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that all remaining claims are **DISMISSED** as moot.

DATED this 20th day of January, 2021.



DISTRICT JUDGE

*Submitted by:*

**AKERMAN LLP**

*/s/ Nicholas E. Belay*

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Bel Air 24G*

## Llarena, Carla (LAA-Las)

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**From:** Belay, Nicholas (Assoc-Las)  
**Sent:** Wednesday, January 6, 2021 2:00 PM  
**To:** Belay, Nicholas (Assoc-Las)  
**Subject:** FW: A-12-669570-C (Elliott, Michael) - proposed order

**From:** Kerry Faughnan  
**Sent:** Wednesday, January 6, 2021 8:45 AM  
**To:** Belay, Nicholas (Assoc-Las)  
**Subject:** Re: A-12-669570-C (Elliott, Michael) - proposed order

You may add my electronic signature.

On Tue, Jan 5, 2021 at 4:16 PM <[nicholas.belay@akerman.com](mailto:nicholas.belay@akerman.com)> wrote:

Hi Kerry,

Just following up. Think you could let me know by tomorrow?

**Nicholas Belay**

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