IN THE SUPREME COURT OF THE STATE OF NEVADA

*****

Electronically Filed
Sep 16 2021 07:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G, Appellant, v. BANK OFAMERICA, N.A.; DITECH FINANCIAL LLC, Respondent.	)	Supreme Court Case No. 82534

Appeal
From the Eighth Judicial District Court, Clark County, Nevada
The Honorable Mark R. Denton
District Court Case A-12-669570-C

APPENDIX TO BRIEFS
VOLUME 1

Kerry Faughnan, Esq., NSB# 12204
PO Box 335361
North Las Vegas, NV 89086
(702) 301-3096
(702)331-4222-Fax
Kerry.faughnan@gmail.com

Attorney for Appellant

INDEX OF DOCUMENTS

File Date	Title	Page(s)
10/03/2012	Bank of America Complaint	1PA1-1PA92
05/17/2013	LN Management Complaint	1PA93-1PA104
10/29/2013	Order Granting Motion to Consolidate	1PA105-1PA106
10/30/2013	Notice of Entry of Order Granting Motion to Consolidate	1PA107-1PA111
06/19/2014	Green Tree Servicing's Motion for Summary Judgment	1PA112-2PA263
08/12/2014	Order Granting Green Tree Servicing's Motion for Summary Judgment	2PA264-2PA270
09/03/2014	LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment Entered August 12, 2014	2PA271-2PA276
09/24/2014	Order Granting LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment	2PA277-2PA278
09/25/2014	Notice of Entry of Order Granting LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment	2PA279-2PA282
07/27/2018	LN Management LLC Series 3111 Bel Air 24G's Motion for Summary Against Green Tree Servicing LLC	2PA283-2PA363
08/28/2018	Bank of America's Opposition to Plaintiff's Motion	2PA364-2PA376

	for Summary Judgment	
09/17/2018	Reply to Green Tree's Opposition to LN Management LLC Series 3111 Bel Air 24G's Motion for Summary Judgment; Errata to LN Management's Motion for Summary Judgment	2PA377-2PA381
03/26/2018	Errata to Bank of America's Opposition to Plaintiff's Motion for Summary Judgment	2PA382-2PA495
03/27/2019	Notice of Bankruptcy Filing and Imposition of Automatic Stay	2PA496-3PA583
09/29/2020	Bank of America N.A. and Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	3PA584-4PA867
11/11/2020	Opposition to Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	4PA868-4PA879
11/30/2020	Bank of America N.A. and Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Reply Supporting Motion for Summary Judgment	4PA880-4PA935
12/14/2020	Court Minutes from Hearing on Bank of America N.A. and Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	4PA936
01/20/2021	Findings of Fact, Conclusions of Law and Judgment	4PA937-4PA962
01/21/2021	Notice of Entry of Findings of Fact, Conclusions of Law and Judgment	4PA963-4PA991
02/22/2021	Notice of Appeal	4PA992-4PA993

CERTIFICATE OF SERVICE

I certify that on September 16, 2021, I served a copy of the foregoing pleading upon all counsel of record by allowing the Court's ECF system to serve same upon:

Ariel Stern, Esq.
AKERMAN LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134
(702) 634-5000
(702) 380-8572- Fax
Attorneys for Respondent

DATED September 16, 2021

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

Attorney for Appellant

Electronically Filed
10/03/2012 04:29:57 PM

CLERK OF THE COURT

COMP
Jeremy Bergstrom, Esq.
Nevada Bar No. 6904
jbergstrom@mileslegal.com
Jory C. Garabedian, Esq.
jgarabedian@mileslegal.com
Nevada Bar No. 10352
MILES, BAUER, BERGSTROM & WINTERS, LLP
2200 Paseo Verde Pkwy., Ste. 250
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-12-669570-C Dept. No.: XIII **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:

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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.

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

SECOND CLAIM FOR RELIEF
(Equitable Lien – as to all Defendants)

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

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

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

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

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

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

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

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

42. When Plaintiff funded the loan associated with its Deed of Trust to ELLIOTT, the 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.

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

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

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

FOURTH CLAIM FOR RELIEF
(Declaratory Relief – as to all Defendants)

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

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

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

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

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

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PRAYER

Plaintiff prays for judgment against all Defendants as follows:

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.

DATED this 3rd day of October, 2012.

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) 162-10-812-185

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

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_____

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: ELIZABETH SEIBOLD	Print Name:
Address: 8770 DEL CASTRO	Address:
City/State/Zip: LAS VEGAS, NV 89113	City/State/Zip:

COMPANY REQUESTING RECORDING

Co. Name: Pioneer National Title of Nevada, Inc.
7670 W. Lake Mead Blvd., #105,
Las Vegas, NV 89128

Esc #.: 2020245-JF

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

Code OVI 1112

20021017
.01312

STATE OF NEVADA
DECLARATION OF VALUE

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

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

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_____

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 _____ Capacity _____
Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (Required)		BUYER (GRANTEE) INFORMATION (Required)	
Print Name:		Print Name:	Michael T. Elliott
Address:		Address:	2390 Fifth Ave, Suite 210
City/State/Zip:		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-JF

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

DWI

1112

3

20021017
.01112

Escrow No. 2020245-JF
APN No.: 162-10-812-185
R.P.T.T: $ 1,125.00

(2)

Grant, Bargain, Sale Deed

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

Elizabeth Seibold

STATE OF NEVADA
COUNTY OF CLARK } ss:

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

NOTARY PUBLIC J. FITZWATER

NOTARY PUBLIC
County of Clark-State of Nevada
J. FITZWATER
No. 00-62591-1
My Appointment Expires Jun 1, 2004

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

20221017
.01112

Escrow No. 2020245-JF

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
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF: PIONEER NATIONAL TITLE
10-17-2022 10:30 MSH PAGE COUNT: 2
OFFICIAL RECORDS
BOOK/INSTR:20221017-01112 FEE: 15.00
RPTT: 1,165.00

Exhibit 2

20031016
01640

STATE OF NEVADA
DECLARATION OF VALUE

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

38

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

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_____

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. If Exemption Claimed
   a. Transfer Tax Exemption, per NRS 375.090, Section 5
   b. Explain Reason for Exemption: Release of Equitable 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 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Signature Regan Dawn Elliott

Capacity Grantee Capacity Grantor

SELLER (GRANTOR) INFORMATION (Required)	BUYER (GRANTEE) INFORMATION (Required)
Print Name: Regan Dawn Elliott	Print Name: Michael T. Elliott
Address: 3110 Bel Air Dr	Address: 3111 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 #.: 3510574-YT

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

1640

DV1

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

FEE: 15.00
RPTT: EX#005

RECORDING REQUESTED BY:
United Title Company - Orange County 38

AND WHEN RECORDED MAIL TO:
Michael T. Elliott Tax Statements
P.O. Box 24 TO:
Rancho Santa Fe, CA 92067

Title Order No. 13828
Escrow No. 53005499-LW

035/0674 YT

Space

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

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
City Transfer Tax is $.00
County Transfer Tax is $.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

Regan Dawn Elliott
Regan Dawn Elliott

STATE OF CALIFORNIA)
COUNTY OF San Diego) ss

On Oct. 9, 2003 before me

Scott William Deckard

Personally appeared Regan Dawn Elliott

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

SCOTT WILLIAM DECKARD
Commission # 1308186
Notary Public - California
Orange County
My Comm. Expires May 27, 2006

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.

Exhibit 3

20031016
.01641

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:20031016-01641

PAGE COUNT: 28

FEE: 66.00
RPTT: .00

NON-COMPLIANCE CHARGE INC: 25.00

AFTER RECORDING RETURN TO:

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

39

~~SECURITY INSTRUMENT~~

Loan Number: 0081699902

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

1. Deed of Trust

28

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

2638 (12-00)

DocMagic eForms 800-649-1362
www.docmagic.com

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 1 of 28
Order: nv Comment:

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

AFTER RECORDING RETURN TO:
Washington Mutual Bank, FA
C/O ACS Image Solutions
12691 Pala Drive MS156DPCA
Garden Grove, California 92841

[Space Above This Line For Recording Data]

035 10674 YT

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]:

☒ Adjustable Rate Rider	☒ Condominium Rider	☒ 1-4 Family Rider
☐ Graduated Payment Rider	☐ Planned Unit Development Rider	☐ Biweekly Payment Rider
☐ Balloon Rider	☐ Rate Improvement Rider	☐ Second Home Rider
☐ 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 loan and charges arising out of the loan whether or not herein set forth. For this purpose, Borrower

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 3 of 28
Order: nv Comment:

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

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

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

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

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

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

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance 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)

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 5 of 28
Order: nv Comment:

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 whosoever, 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.

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

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 9 of 28
Order: nv Comment:

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.

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.

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 13 of 28
Order: nv Comment:

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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.01641

0081699902

(Space Below This Line For Acknowledgment)

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

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

MICHAEL T. ELLIOTT
(name(s) of person(s))

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

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

[NOTARY STAMP]

SCOTT WILLIAM DECKARD
Commission # 1306188
Notary Public - California
Orange County
My Comm. Expires May 27, 2005

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

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 16 of 28
Order: nv Comment:

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.

20031016
.01641

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

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 18 of 28
Order: nv Comment:

(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.

0081699902

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

MICHAEL T. ELLIOTT

20031016
.01641

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:

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 21 of 28
Order: nv Comment:

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

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.

(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.

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

20031016
.01641

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.

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

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

Exhibit 4

Assessor's Parcel Number: 162138121B5

Return To: FL9-7CO-05-22
JACKSONVILLE POST CLOSING
9OCO 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

29

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

20041020-0001569

Fee: $42.00
N/C Fee: $0.00

10/20/2004 12:32:56
T20040116980
Requestor:
BANK OF AMERICA

Frances Deane SUO
Clark County Recorder Pgs 29

[Space Above This Line For Recording Data]

LOAN # 3300690454

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 M CHAEL T. ELLIOTT, AN UNMARRIED PERSON

Borrower is the trustor under this Security Instrument.

(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 901 GEORGE WASHINGTON, WICHITA, KS 67211-3901

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]:

[X] Adjustable Rate Rider	[X] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[X] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] 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.

Initials: _____

(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: 162[illegible]185 which currently has the address of

3111 BEL AIR DR UNIT 240 [Street]

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

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

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

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

Initials: _____

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.

Initials: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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

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

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

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

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

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

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

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

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

Witnesses:

_____ _____

_____ (Seal)
MICHAEL T ELLIOTT -Borrower

_____ _____

_____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

DocMagic eForms 10/05/24 7:53 AM 3370693454

STATE OF NEVADA California
COUNTY OF San Diego

This instrument was acknowledged before me on October 6th 2004
by Jason Woodward

Michael T Elliott

JASON S. WOODWARD
Commission # 1400483
Notary Public - California
San Diego County
My Comm. Expires Feb 13, 2007

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

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 20030131, 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:

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 percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the [ ] Nearest [X] 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.

(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.

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

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
Page 1 of 3
BSBR (0008) VMP MORTGAGE FORMS - (800)521-7291

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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.

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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

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 AMER CA, 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 246, 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."

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.

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 P ELLIOTT (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

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 Statues 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.

MERYL SIBLEY
Notary Public State of Nevada
No. 08-7934-1
My appt. exp. Sept. 4, 2012

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.

_____ Dated: January 21, 2011

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

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.

_____ Meryl Sibley
Notary Public State of Nevada
No.08-7934-1 My Appt Expires Sept. 4, 2012

MERYL SIBLEY
Notary Public State of Nevada
No. 08-7934-1
My appt. exp. Sept. 4, 2012

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

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.

_____ Dated: July 5, 2011
Prepared By Joshua Wood, Red Rock Financial Services, on behalf of Regency Towers Association, Inc.

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.

_____

JULIA THOMPSON
Notary Public State of Nevada
No. 08-7932-1
My appt. exp. Sept. 4, 2012

When Recorded Mail To: Red Rock Financial Services
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

CAROL SALMON
Notary Public, State of Nevada
Appointment No. 08-6095-1
My Appt. Expires April 1, 2012

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

Description: Clark,NV Document-Year.Date.DocID 2011.328.2335 Page: 1 of 1
Order: nv Comment:

Exhibit 8

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

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

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

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)

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5805-1

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

SIGNATURE: Karen Ann Richards
(Notary Pubic)

Exhibit 9

Inst #: 20120621000180 4
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

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5805-1

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

Description: Clark,NV Document-Year.Date.DocID 2012.621.1804 Page: 1 of 1
Order: nv Comment:

Exhibit 10

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

APN#: 162-10-812-185

Collections of America, Inc.
1500 East Tropicana # 108
Las Vegas, NV. 89119
(702) 806-0989 FAX(702)361-0196

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:

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)

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5805-1

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

SIGNATURE Karen Ann Richards
(Notary Pubic)

Electronically Filed
05/17/2013 05:21:55 PM

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-13-682055-C Dept. No. XIV **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.

FIRST CLAIM FOR RELIEF

(Quiet Title)

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

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

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

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

16. In the alternative, Plaintiff is entitled to 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.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

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

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

19. 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.

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

(3)-1

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)

MICHELLE Y. FAUGHNAN
Notary Public-State of Nevada
APPT. NO. 11-5927-1
My App. Expires October 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)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: 3111 Bel Air Drive 24G Trust	Print Name: Series 3111 Bel Air 24G LN Management LLC,
Address: PO Box 36208	Address: PO Box 36208
City: Las Vegas	City: Las Vegas
State: NV Zip: 89133	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

(3)-1

Inst #: 20121217000834
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

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.

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. 0002134in 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

BY: Carol Salmon

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

STATE OF NEVADA) ss
COUNTY OF CLARK)

BONNIE MOE
NOTARY PUBLIC, STATE OF NEVADA
My Commission Expires: 11-21-2015
Certificate No: 11-6381-1

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

On this 14th 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 Loan Capacity Grantor

Signature _____ Capacity Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Collections Of America	Print Name: 3111 Bel Air Drive # 24G Trust
Address: 1500 East Tropicana Ave #108	Address: 900 South Las Vegas Blvd #810
City, St., Zip: Las Vegas, NV 89119	City, St., Zip: Las Vegas, NV 89101

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

Print Name: Escrow #:
Address:
City/State/Zip:

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

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CLERK OF THE COURT

ORDR
Jory C. Garabedian, Esq.
jgarabedian@mileslegal.com
Nevada Bar No. 10352
MILES, BAUER, BERGSTROM & WINTERS, LLP
2200 Paseo Verde Pkwy., Ste. 250
Henderson, NV 89052
(702) 369-5960 / FAX: (702) 382-9452
MBBW File No. 13-L0121

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-12-669570-C Dept. No.: XIII **ORDER GRANTING MOTION TO CONSOLIDATE**

In this action, the Court after review and consideration of BANK OF AMERICA, N.A.'s ("BANA") Motion to Consolidate Clark County District Court Case No. A-13-682055-C into the above-captioned matter, LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G's Opposition thereto, BANA's Reply thereto, and the oral arguments presented at the October 21, 2013 hearing of the Motion, the Court hereby grants BANA's Motion to Consolidate.

RECEIVED
OCT 24 2013
DISTRICT COURT DEPT# 13

NOW WHEREFORE, IT IS HEREBY ORDERED that Clark County District Court Case No. A-13-682055-C is hereby consolidated into the above-captioned matter with Department 13 presiding.

IT IS SO ORDERED.

Dated: Oct 29 2013

DISTRICT COURT JUDGE

Respectfully submitted by:

MILES, BAUER, BERGSTROM & WINTERS, LLP

Jory C. Garabedian, Esq.
Nevada Bar No. 10352
2200 Paseo Verde Parkway, Suite 250
Henderson, Nevada 89052
Attorneys for Bank of America, N.A.

Approved as to Content/Form:

/s/ Kerry P. Faughnan
Kerry P. Faughnan, Esq.
Nevada Bar No. 12204
P.O. Box 335361
North Las Vegas, Nevada 89086
Attorney for LN Management LLC Series 311 Bel Air 24G

WOLF RIFKIN SHAPIRO SCHULMAN RABKIN, LLP

/s/ Gregory P. Kerr
Gregory P. Kerr, Esq.
Nevada Bar No. 10383
3556 East Russell Road, Second Floor
Las Vegas, Nevada 89120
Attorney for Regency Towers Association, Inc.

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CLERK OF THE COURT

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MBBW File No. 13-L0121

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, Defendant(s).	Case No.: A-12-669570-C Dept. No.: XIII **NOTICE OF ENTRY OF ORDER**

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NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **ORDER GRANTING MOTION TO CONSOLIDATE** was entered in the above-referenced matter on the 24th day of October, 2013, a copy of which is attached hereto.

DATED this 30th day of October 2013.

MILES, BAUER, BERGSTROM & WINTERS, LLP

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

CERTIFICATE OF MAILING

IT IS HEREBY CERTIFIED that on the 30TH day of October, 2013, a true and correct copy of the foregoing was mailed by placing in the United States Mail, postage pre-paid, to the parties addressed below:

Kerry Faughnan, Esq.
P.O. Box 335361
North Las Vegas, NV 89086
Attorney for LN Management LLC Series 3111 Bel Air 24G

Michael T. Elliott
1623 Filaree Court
Carlsbad, CA 92011
Defendant, pro se

Michael J. Lemcool, Esq.
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3556 East Russell Road, 2nd Floor
Las Vegas, NV 89120
Attorney for Regency Towers Association, Inc.

Michael R. Mushkin, Esq.
MICHAEL R. MUSHKIN & ASSOCIATES
4475 South Pecos Road
Las Vegas, NV 89121
Attorney for Las Vegas International Country Club Estates Homeowners Assoc., Inc.

an employee of MILES, BAUER, BERGSTROM & WINTERS, LLP

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CLERK OF THE COURT

ORDR
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MBBW File No. 13-L0121

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-12-669570-C Dept. No.: XIII **ORDER GRANTING MOTION TO CONSOLIDATE**

In this action, the Court after review and consideration of BANK OF AMERICA, N.A.'s ("BANA") Motion to Consolidate Clark County District Court Case No. A-13-682055-C into the above-captioned matter, LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G's Opposition thereto, BANA's Reply thereto, and the oral arguments presented at the October 21, 2013 hearing of the Motion, the Court hereby grants BANA's Motion to Consolidate.

RECEIVED
OCT 24 2013
DISTRICT COURT DEPT# 13

NOW WHEREFORE, IT IS HEREBY ORDERED that Clark County District Court Case No. A-13-682055-C is hereby consolidated into the above-captioned matter with Department 13 presiding.

IT IS SO ORDERED.

Dated: October 24, 2023

DISTRICT COURT JUDGE

Respectfully submitted by:

MILES, BAUER, BERGSTROM & WINTERS, LLP

Jory C. Garabedian, Esq.
Nevada Bar No. 10352
2200 Paseo Verde Parkway, Suite 250
Henderson, Nevada 89052
Attorneys for Bank of America, N.A.

Approved as to Content/Form:

/s/ Kerry P. Faughnan
Kerry P. Faughnan, Esq.
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North Las Vegas, Nevada 89086
Attorney for LN Management LLC Series 311 Bel Air 24G

WOLF RIFKIN SHAPIRO SCHULMAN RABKIN, LLP

/s/ Gregory P. Kerr
Gregory P. Kerr, Esq.
Nevada Bar No. 10383
3556 East Russell Road, Second Floor
Las Vegas, Nevada 89120
Attorney for Regency Towers Association, Inc.

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CLERK OF THE COURT

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(702) 369-5960 / FAX: (702) 382-9452
MBBW File No. 13-L0121

Attorneys for Plaintiff
GREEN TREE SERVICING LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

GREEN TREE SERVICING LLC, 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-12-669570-C Dept. No.: XIII **MOTION FOR SUMMARY JUDGMENT**

GREEN TREE SERVICING LLC (hereinafter "GREEN TREE"), by and through its attorneys of record, the law firm Miles, Bauer, Bergstrom & Winters, LLP, hereby moves this Honorable Court to enter summary judgment in favor of GREEN TREE pursuant to NRCP 56. This Motion is made and based upon the Memorandum of Pointes and Authorities attached hereto, the Declaration of Counsel attached hereto as **Exhibit 1**, the Declaration of Laurie P. Estrada attached hereto as **Exhibit 2**, the pleadings and papers on file herein and any oral argument that this Court may deem necessary.

NOTICE OF HEARING

TO: ALL INTERESTED PARTIES; and

TO: THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTION FOR SUMMARY JUDGMENT** on for hearing on the 21 day of JULY, 2014, at the hour of 9:00A a.m./p.m., of said day in Department 13 of the above-entitled Court, or as soon thereafter as counsel may be heard.

DATED this 19th day of June, 2014.

MILES, BAUER, BERGSTROM & WINTERS, LLP

Jory C. Garabedian, Esq.
Nevada Bar No. 10352
2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052
Attorney for Green Tree Servicing LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This matter concerns two consolidated actions – one filed by GREEN TREE to reform its first Deed of Trust to correct a legal description and declare its first Deed of Trust a valid lien on that real property located at 3111 Bel Air Drive, Unit 24-G, Las Vegas, NV 89109 (hereinafter the "Subject Property) – and the other filed by LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G to quiet title and eliminate GREEN TREE's first Deed of Trust as a result of Defendant LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNERS ASSOCIATION, INC.'s (hereinafter "LVIC") foreclosure sale on an HOA assessment lien. Thus, two primary issues are presented in this Motion: (1) whether GREEN TREE is entitled to reform its first Deed of Trust through the doctrine of mutual mistake to include the correct legal description of the Subject Property; and (2) whether the foreclosure of LVIC's assessment lien extinguished GREEN TREE's first Deed of Trust.

The Court must answer the first issue in the affirmative as GREEN TREE's secured loan was clearly intended by the original parties to be a refinance mortgage transaction of a prior first deed of trust affecting the Subject Property. The second issue must be answered in the negative as first deeds of trust have priority over HOA assessment liens, and the so-called super-priority interest that LN MANAGEMENT claims eliminated GREEN TREE's Deed of Trust, cannot eliminate a first mortgage or deed of trust as a matter of law. Even so, LVIC further acknowledged in its Notice of Sale and through Stipulation and Order on file with this Court that it was not foreclosing on an interest with any sort of priority over GREEN TREE's first Deed of

Trust. Based on these reasons, the Court must enter summary judgment in favor of GREEN TREE.

II.

STATEMENT OF FACTS[1]

1. The Subject Property has the following 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. 220126 AND MAY 10, 1973, 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.

(See **Exhibit 2**)

2. On or about October 8, 2002, ELLIOTT and his wife Regan Dawn Elliott, purchased and acquired title to the Subject Property as community property with rights of

survivorship by way of a "Grant, Bargain, Sale Deed." (A copy of the recorded "Grant, Bargain, Sale Deed is attached hereto as **Exhibit 3**).

3. On or about October 9, 2003, Regan Dawn Elliott conveyed her interest in the Subject Property to ELLIOTT by way of a Grant Deed. (A copy of the recorded Grant Deed is attached hereto as **Exhibit 4**).

4. Shortly before, on or around October 2, 2003, ELLIOTT took out a mortgage loan with Washington Mutual Bank, F.A. for $315,000.00. The loan was secured by a deed of trust (hereinafter the "WMB Deed of Trust") and recorded against the Subject Property. (A copy of the recorded WMB Deed of Trust is attached hereto as **Exhibit 5**).

5. The WMB Deed of Trust was intended to be a first security interest in senior position against the Subject Property. (See Id., pg. 5, para. 4).

6. On or about October 6, 2004, ELLIOTT took out a mortgage loan with Bank of America, N.A. ("BANA") for $322,100.00 to refinance the WMB Deed of Trust and associated loan. The loan is secured by a deed of trust (hereinafter the "Deed of Trust") and was recorded against the Subject Property on October 20, 2004. (A copy of the recorded Deed of Trust is attached hereto as **Exhibit 6**).

7. The Deed of Trust contains the Subject Property's common address and the assessor's parcel number ("APN") and was recorded and indexed with the Clark County Recorder under the Subject Property's APN with ELLIOTT as grantor and BANA as grantee. (Judicial notice of the Clark County Recorder's records attached hereto as **Exhibit 7** is requested

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[1] The publicly recorded documents attached hereto and affecting the Subject Property are self-authenticating as they contain acknowledgments from a notary public. See NRS 52.165 & NRS 111.155.

as such records are capable of accurate and ready determination by resort to a source whose accuracy cannot reasonably be questioned [See NRS 47.130(2)]).

8. However, the Deed of Trust does not contain the legal description of the Subject Property. (Compare **Exhibit 2** & **Exhibit 6**).

9. When the mortgage loan associated with the Deed of Trust was funded, a HUD Settlement Statement was executed by ELLIOTT listing the Subject Property address and further directing $313,615.59 of the loaned funds to be distributed to Washington Mutual to satisfy the WMB Deed of Trust. (See **Exhibit 1** & HUD Settlement Statement attached hereto as **Exhibit 8**).

10. The WMB Deed of Trust was paid off and on or around October 23, 2004, and a Substitution of Trustee and Full Reconveyance of the WMB Deed of Trust was executed and arranged to be recorded by Washington Mutual. (A recorded copy of the Substitution of Trustee and Full Reconveyance is attached hereto as **Exhibit 9**).

11. On or around June 21, 2012, LVIC caused to be recorded a Notice of Claim of Lien-Delinquent Homeowners Assessment in the amount of $4,366.00, which purports to encumber the Subject Property. (A recorded copy of the Notice of Claim of Lien-Delinquent Homeowners Assessment is attached hereto as **Exhibit 10**).

12. On or around July 25, 2012, LVIC caused to be recorded a Notice of Default and Election to Sell as to the June 21, 2012 Notice of Claim of Lien-Delinquent Homeowners Assessment. (A recorded copy of the Notice of Default and Election to Sell is attached hereto as **Exhibit 11**).

13. On October 3, 2012, GREEN TREE's predecessor BANA, commenced the instant action seeking among other things to reform the Deed of Trust to include the correct legal

description of the Subject Property, and further to declare the Deed of Trust as a first security interest with priority over defendants REGENCY and LVIC's lien interests on the Subject Property.

14. On October 10, 2012, counsel for BANA and GREEN TREE recorded a Notice of Lis Pendens of the instant action. (A recorded copy of the Notice of Lis Pendens is attached hereto as **Exhibit 12**).

15. On November 15, 2012, LVIC caused to be recorded a Notice of Trustee Sale concerning its Notice of Claim of Lien-Delinquent Homeowners Assessment. (A recorded copy of the Notice of Trustee Sale is attached hereto as **Exhibit 13**).

16. The Notice of Trustee Sale states that the Subject Property is being sold subject to a first security interest on the Subject Property. (See **Exhibit 13**).

17. On December 7, 2012, counsel for BANA contacted LVIC's foreclosure trustee/agent Collections of America, Inc. for any super-priority amounts that might have had priority over the Deed of Trust; however, no such amounts were provided or claimed to be part of the Notice of Claim of Lien-Delinquent Homeowners Assessment. (See **Exhibit 1** and e-mail exchange attached hereto as **Exhibit 14**).

18. On December 17, 2012, a Trustee's Deed Upon Sale Nevada was recorded wherein LVIC through its trustee/agent Collections of America, Inc. purportedly sold and conveyed, without warranty, the Subject Property to 3111 Bel Air Drive 24G Trust (hereinafter the "Bel Air Trust") for $7,001.00 to satisfy the Notice of Claim of Lien-Delinquent Homeowners Assessment. (A recorded copy of the Trustee's Deed Upon Sale Nevada is attached hereto as **Exhibit 15**).

19. On April 26, 2013, a Quitclaim Deed was recorded wherein the Bel Air Trust conveyed the Subject Property for zero consideration to LN MANAGEMENT. (A recorded copy of the Quitclaim Deed is attached hereto as **Exhibit 16**).

20. On May 7, 2013, a Stipulation and Order Regarding the Status of LVIC was filed and entered wherein LVIC expressly acknowledged that it did not have, or foreclose on, a super-priority lien, and that the foreclosure sale did not affect the or extinguish the Deed of Trust. (See Stipulation and Order Regarding the Status of LVIC attached hereto as **Exhibit 17**).

21. On May 17, 2013, LN MANAGEMENT filed a complaint in a separate action which seeks to, among other things, quiet or vest title to the Subject Property in LN MANAGEMENT free and clear of all claims of BANA and its successor GREEN TREE as a result of LVIC's foreclosure sale. (See Complaint for Quiet Title Declaratory Relief filed in Clark County District Court Case No. A-13-682055-C).

22. On October 29, 2013, this Court consolidated the two cases into the prior case initially filed by BANA. (See Order Granting Motion to Consolidate on file herein).

23. On January 23, 2014, a Stipulation and Order was entered in this Court wherein GREEN TREE was substituted in for BANA. (See Stipulation and Order on file herein).

24. GREEN TREE now seeks summary judgment reforming the Deed of Trust to include the correct legal description and further declaring that it has valid first lien interest on the Subject Property[2].

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[2] A Stipulation and Order Regarding Status of REGENCY TOWERS ASSOCIATION, INC. was also entered on December 26, 2012, which also acknowledged BANA's first lien rights. Factual background concerning REGENCY TOWERS ASSOCIATION, INC. is omitted since it did not foreclosure on the Subject Property and agreed to be bound by a final non-monetary order or judgment in this matter. Further, it appears from the public records that it has subsequently released its Delinquent Assessment Lien from record.

III.

STANDARD OF REVIEW

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *See Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 292, 774 P.2d 432, 433 (1989) citing NRCP 56(c). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *See Valley Bank v. Marble,* 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989). Although evidence is construed in the light most favorable to the non-moving party, the non-moving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or summary judgment may be entered against him. *See Posadas v. City of Reno*, 109 Nev. 448, 452; 851 P.2d 438 (1995) (citations omitted). The evidence submitted by the non-moving party must be admissible evidence, and he or she "is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture." *See Id.* (citations omitted).

In the instant case, the objective evidence shows that ELLIOTT and BANA intended to encumber the Subject Property with the Deed of Trust and therefore it should be reformed to include the correct legal description. Further, the law as well as the supporting evidence herein shows that LVIC did not foreclose on a super-priority interest and in fact sold the Subject Property subject to the first security interest Deed of Trust.

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IV.

ARGUMENT

A. GREEN TREE'S DEED OF TRUST SHOULD BE REFORMED UNDER THE DOCTRINE OF MUTUAL MISTAKE TO INCLUDE THE CORRECT LEGAL DESCRIPTION OF THE SUBJECT PROPERTY.

Deeds will be reformed between parties to reflect their true intention when that intention has been frustrated by mutual mistake. *Anderson v. Weise*, 95 Nev. 540, 542, 598 P.2d 1144, 1146 (1979) (holding error in legal description in deed allowed to be reformed to conform with the parties' intent); see also *Seyden v. Frade*, 88 Nev. 174, 178-79, 494 P.2d 1281, 1283-84 (1972) (holding inclusion of a 40 acre parcel as part of a land purchase agreement was a mutual mistake entitled to reformation); *Lattin v. Gray*, 75 Nev. 128, 335 P.2d 778 (1959) (holding grantee entitled to reform deed to include the parcel intended to be conveyed); *Roberts v. Hummel* , 69 Nev. 154, 243 P.2d 248 (1952); *Holman v. Vieira et al.*, 53 Nev. 337, 300 P. 946 (1931); *Ruhling v. Hackett*, 1 Nev. 360 (1865). Further, reformation is an equitable remedy and should be afforded when fairness so demands. *Anderson*, 95 Nev. at 543. Persons in privity with the original parties are entitled to reformation provided circumstances have not intervened to make the relief inequitable. *Id.* at 542-43.

1. Both ELLIOTT and BANA Truly Intended that the Deed of Trust Encumber the Subject Property.

In this case, there was a clear mutual mistake between ELLIOTT and BANA with the legal description in the Deed of Trust. ELLIOTT and BANA entered into a loan agreement to refinance an existing mortgage loan against the Subject Property between ELLIOTT and Washington Mutual. As part of the refinance agreement with BANA, ELLIOTT executed a Deed of Trust which intended to encumber the Subject Property by including the Subject Property's common address and APN. The Deed of Trust was even recorded under the Subject

Property's APN. Even the HUD Settlement Statement concerning the disbursements of the BANA loaned funds, which was executed by ELLIOTT, contains the Subject Property's common address. Thus, there is clear objective evidence showing the parties' intention that the loan or Deed of Trust serve as a lien against the Subject Property and fairness would demand that the Deed of Trust be so reformed to include the correct legal description..

2. GREEN TREE is in Privity with BANA.

GREEN TREE of course is in direct privity with BANA as it has recently been assigned the beneficial interest of the loan and Deed of Trust from BANA. Further, the parties in this action have already stipulated to the substitution of GREEN TREE in the place and stead of BANA.

3. There is No Prejudice or Inequity to the Parties in this Matter if the Deed of Trust is Reformed.

Finally, there is also a lack of inequity to the parties to justify refusal of reformation relief to GREEN TREE. For starters, ELLIOTT took out a refinance mortgage loan to pay off an existing mortgage encumbering the Subject Property and has not appeared in this case and his default has been entered. Also, both LVIC and REGENCY have acknowledged through stipulations and orders on file with the Court that the Deed of Trust is a valid first lien on the Subject Property. Likewise, LN MANAGEMENT cannot complain of any inequity as it had constructive and inquiry notice of the reformation relief and this pending action through the recorded Lis Pendens before it acquired any title to the Subject Property. LN MANAGEMENT simply chose to acquire the Subject Property even with notice of this reformation action. Accordingly, the Court should order the Deed of Trust reformed to include the correct legal description of the Subject Property.

B. GREEN TREE's FIRST DEED OF TRUST REMAINS AN ACTIVE LIEN AGAINST THE SUBJECT PROPERTY AS LVIC's FORECLOSURE DID NOT ELIMINATE THE DEED OF TRUST AS A MATTER OF LAW AND FACT.

1. First Mortgages Have Priority Over HOA Assessment Liens.

In Nevada, an HOA can place a lien on a real property unit for unpaid assessments, which is prior to all other liens and encumbrances on the real property unit except, among others:

> [a] first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent.

NRS 116.3116(2)(b). The statutory scheme thus recognizes the importance that first mortgages recorded after the HOA's CC&Rs, but before the assessment becomes delinquent, have priority over HOA liens.

In this case, GREEN TREE's Deed of Trust was recorded in October 2004, almost eight years prior to the LVIC's Notice of Claim of Lien-Delinquent Homeowners Assessment. Thus, pursuant to NRS 116.3116(2)(b), GREEN TREE's Deed of Trust was senior to the LVIC's lien and the foreclosure sale on said lien did not eliminate or affect the Deed of Trust.

2. The Super-Priority Interest is a Payment Priority and Not a Separate Lien that Operates to Eliminate a First Deed of Trust.

LN MANAGEMENT claims that LVIC had a super-priority lien, buried within in its Notice of Claim of Lien-Delinquent Homeowners Assessment, and that by foreclosing, the HOA wiped out GREEN TREE's first Deed of Trust. The Nevada legislature has indeed carved out a narrow and limited exception to the priority of a first mortgage or security interest over an HOA lien. Specifically, NRS 116.3116(2)(c) provides:

> *The [HOA] lien is also prior to all security interests described in paragraph (b)* to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and *to the extent of the assessments for common expenses* based on the periodic budge adopted by the association pursuant to NRS 116.3115 *which*

> *would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien* [remaining portions omitted].

(*emphasis added*). However, the operation of this super-priority exception is not intended to be an actual lien to extinguish a first mortgage. Rather the exception creates a limited priority in payment over a first mortgage for up to nine months of common assessments after the first mortgage forecloses.

a. The Legislative History Supports A Payment Priority After A First Mortgage Forecloses.

Nevada adopted the Uniform Common Interest Community Act (UCIOA) in 1991, which originally included a super-priority interest of six months of assessments. See 1991 Nev. Stat., Page 535. The super-priority statute of NRS 116.3116(2)(c) was amended in 2009 to increase the super-priority interest from six months to nine months of assessments unless federal regulations adopted by Fannie Mae or Freddie Mac required a shorter period. See 2009 Nev. Stat., Page 1207. The purpose behind the increase to nine months of assessment was because first mortgage foreclosures were taking longer to foreclose due to the housing market crisis. Indeed Assembly Person Ellen Spiegel testified:

> Just as a summary, A.B. 204 extends the existing superpriority from six months to two years. There are no fiscal notes on this. In a nutshell, this bill makes it possible for common-interest communities to collect dues that are in arrears for up to two years at the time of foreclosure. This is necessary now because foreclosures are now taking up to two years. At the time the original law was written, they were taking about six months. So, as the time frames moved on, the need has moved up.

See *Minutes of the Meeting of the Assembly Committee on Judiciary*, 75th Sess. 34 (March 6, 2009) (statement of Assembly Person Ellen Spiegel).[3]

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[3] AB 204 initially proposed a two year period for assessments to be included within the super-priority interest, but it was ultimately reduced to nine months.

In 2011, the Nevada legislature again considered amending the super-priority statute through Senate Bill 174, which among other things sought to add collection costs to the super-priority statute. See *Minutes of the Senate Committee on Judiciary*, 76th Sess. (February 24, 2011) (statement of Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels). Michael Buckley in proposing Senate Bill 174 explained the current meaning of the super-priority statute:

> Section 3, page 6, became law in 2009. *Nevada Revised Statute* 116.310312 addresses the fact homes were abandoned, foreclosed upon and falling into disrepair. This section allows the association to maintain an abandoned or foreclosed property. The costs expended by the association are a superpriority lien against the property. **The Uniform Common Interest Ownership Act was adopted wherein, if a first mortgage holder forecloses on a common-interest community (CIC) unit, the association can be paid six months of the dues owed, which is called superpriority.** This was expanded to nine months, except for condominiums.

(Id. at pg. 4) (**emphasis added**).

Later in May 17, 2011, Mr. Buckley testified regarding the existing meaning of the HOA's super-priority interest:

> **Assemblyman Carrillo:**
> Assessments are the HOA's lifeblood. If we pass this bill and eliminate all the assessments from the previous owner, are we removing the lifeblood of an HOA? How will this affect the HOAs? If the HOA is dependent on the assessments, it will have to make up the differences by increasing the assessments for the rest of the homeowners.
>
> **Michael Buckley:**
> **We are not changing the super priority lien.** It will be six to nine months, which is what the law states now. Once an HOA gets paid the super priority lien, it no longer has a lien against the unit. That is existing law. When an investor buys a unit and resells it, it is great for the association who gets new owners because they start paying the dues on the unit that was foreclosed. If there is a problem with title, if the new owner has some question about having to pay the old owner's assessments, that affects the ability of those units to sell. **We are not changing the law or the super priority lien. What we are trying to do is clear up the title once the association has been paid its super priority lien. The association can only get the super priority lien if there is a foreclosure by the**

> **first mortgage. If there is no foreclosure by the first mortgage, the HOA could foreclose. Super priority lien deals only with the foreclosure by the first mortgage.** When that has been paid, the old lien is gone, and the unit can go on the marketplace with a clean slate.

Minutes of the Meeting of the Assembly Committee on Judiciary Subcommittee, 76th Sess., 12 (May 17, 2011) (statement of Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels) (**emphasis added**).

Senator Allison Copening also testified as to Senate Bill 174 and the existing meaning of the HOA's super-priority interest with particular focus on the impact of Fannie Mae and Freddie Mac financing:

> When a bank forecloses, the super-priority letter from an HOA, asking for up to nine months of the assessments and collection costs for the association, goes to the first security lien holder. The lender complies and then pays the association. The lender then turns to Fannie Mae and Freddie Mac and requests reimbursement for the six months of assessments and collection costs . . .

Hearing on SB 174 Before Senate Comm. on the Finance, 76th Legislature, 21-22 (2011) (statement of Senator Allison Copening).

The recent legislative history and testimony behind the super-priority statute clearly indicates that the HOA's super-priority interest is limited to payment priority after the first mortgage or deed of trust foreclosures. There is nothing in the legislative history that supports Plaintiff's interpretation that the super-priority interest was designed to be used as a weapon or separate lien interest to eliminate a first deed of trust. Indeed, such an interpretation would also swallow the general rule that a first mortgage or deed of trust has priority over an HOA assessment lien and produce absurd and unreasonable results.

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b. <u>The Priority of a First Security Interest Cannot be Read Out of the Statute and Doing so Would Produce Absurd and Unreasonable Results.</u>

Allowing a super-priority interest to act as a lien to wipe out a first security interest would render the general priority of a first security interest absolutely meaningless and produce absurd results. When interpreting statutes, "[n]o part of a statute should be rendered meaningless and its language should not be read to produce absurd or unreasonable results." *Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003). The payment priority approach, accomplishes the objective of maintaining the first mortgage or deed of trust in first position, but at the same time entitling the HOA to at least nine months of payment of common assessments.

As one legal scholar points out:

> The drafters of the Uniform Common Interest Ownership Act ("UCIOA"), recognizing that assessment liens would ordinarily be junior in priority to individual first mortgage liens, crafted an "innovative" solution to the problem of assessment nonpayment during mortgage default: the six-month "limited priority lien."
>
> The six-month capped "super priority" portion of the association lien ***does not have a true priority status under UCIOA*** since this six month assessment lien cannot be foreclosed as senior to a mortgage lien. Rather, it either creates ***a payment priority*** for some portion of unpaid assessments, which would take the first position in the foreclosure repayment "waterfall," or ***grants durability to some portion of unpaid assessments***, allowing the security for such debt to survive foreclosure.

Andrea J. Boyack, Community Collateral Damage: A Question of Priorities, 43 Loy. U. chi. L.J. 53, 98 (Fall 2011) (***emphasis added***).

Under LN MANAGEMENT's interpretation of the super-priority statute, the HOA would be allowed to foreclose and satisfy its entire assessment lien, without differentiating the super-priority portions, and wipe out a first deed of trust. Indeed, the statutory distribution of money after an HOA foreclosure sale is as follows: (1) reasonable expenses of sale; (2) reasonable expenses of among other things maintaining the property/unit including reasonable attorney's

fees and legal expenses; (3) satisfaction of the HOA lien; (4) satisfaction of subordinate liens/claims to the property in order of priority; and (5) remittance of excess proceeds to the prior unit owner. See NRS 116.31164. The Court must note that this distribution does not account for the super-priority interest versus the first deed of trust. Plaintiff's interpretation thus allows the HOA to elevate its entire lien over the first mortgage/deed of trust, which then renders the general priority rule of the first mortgage absolutely meaningless.[4]

Additionally, even if NRS 116 had carved out a distribution of HOA sales proceeds for the super-priority interest versus a first deed of trust, it still results in the HOA wiping out a large portion of its own lien which is illogical and absurd in its own right. In other words, all the HOA could recover is the nine months of assessments, and not the full amount of assessments and costs, especially in the instant case where the sale of the Subject Property was for $7,001.00 and not nearly enough to satisfy the Deed of Trust.

The only logical way to equitably balance the first mortgage/deed of trust holder's interest and the HOA's interest is to give priority to the first mortgage/deed of trust with a payment priority of nine months of assessments to the HOA after a first mortgage forecloses. If the HOA does not wish to wait until the first mortgage forecloses, it can foreclose its assessment lien as in this case and recover the entire amount of the assessment lien. The first mortgage, however, stays in tact.

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[4] If the super-priority interest was truly a prior lien over the first deed of trust, the statutory distribution would be: (1) nine months of assessments (or the super-priority interest); (2) the first mortgage/deed of trust; (3) reasonable expenses of sale; (4) reasonable expenses for maintaining the property; (5) satisfaction of the non super-priority

c. Statutes Must be Construed to Afford Due Process and Permitting the Non-Judicial Foreclosure of a Super-Priority Interest is a Violation of Due Process Given the Lack of Notice and Opportunity to Be Heard Under the Current Statutory Scheme.

The current non-judicial foreclosure scheme under NRS 116.31162 – 31168 simply does not afford adequate due process to first security interests. Both the Fourteenth Amendment of the U.S. Constitution and Article 1, Section 8 of the Nevada Constitution guarantee all persons due process. Procedural due process requires notice and an opportunity to be heard. See *J.D. Construction v. IBEX Int'l Group*, 240 P.3d 1033, 1040 (Nev. 2010). Although procedural due process is flexible, a number of factors are used in determining whether a procedure satisfies the notice and opportunity to be heard requirements, including: (1) the private interest affected; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *J.D. Construction*, 240 P.3d at 1040 citing *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976). Further, "[w]here a statute may be given conflicting interpretations, one rendering it constitutional, and the other unconstitutional, the constitutional interpretation is favored." *Sheriff, Washoe County v. Wu*, 101 Nev. 687, 689-90, 708 P.2d 305, 306 (1985).

(1) *First Mortgages Have a Significant Interest in Protecting Their Lien Interest.*

Applying the due process factors to the case at hand, the private interest at stake is a first mortgage lien interest in real property which Plaintiff is trying to extinguish. There is no doubt that a first mortgage holder like GREEN TREE has a significant property interest. More often

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portions of the HOA lien; (6) satisfaction of subordinate liens; and (7) remittance of excess proceeds to the prior unit

than not, home buyers need financing to purchase home or refinance their existing mortgage as in this case. Often times the sole remedy for the first mortgage holder upon default on a purchase money loan is to foreclose on the property. As such, first mortgage lenders will not fund a purchase money loan unless it receives lien priority on the property. Even if a first mortgage holder somehow is surpassed in priority by a later lien (e.g. property tax lien), it no doubt has a significant interest in paying off the lien to protect its priority interest. *See Mennonite Bd. of Missions v. Adams,* 462 U.S. 791, 798, 103 S.Ct. 2706, 2711 (1983).

(2) There is a Great Risk of Erroneous Deprivation of a First Mortgage's Right to Protect Its First Security Interest Given the Lack of Mandatory Notice of the Super-Priority Interest Under the Non-Judicial Foreclosure Scheme.

There is an utter lack of notice of the HOA foreclosure sale, and specifically the super-priority interest, to the first mortgage holder under the non-judicial foreclosure statutory scheme. An HOA is not required to send a Notice of Delinquent Assessment to the first mortgage holder. *See* NRS 116.31162 (notice to be sent to registered or certified mail to unit owner or his successor and to the property address). This is significant because the Notice of Delinquent Assessment starts the non-judicial foreclosure process, and as LN MANAGEMENT will surely argue, trigger the super-priority interest. Certainly if the super-priority amounts will impact a first mortgage's lien priority, the Nevada legislature would have specifically required the HOA to send the Notice of Delinquent Assessment to the first mortgage holder so that the first mortgage holder could pay off the nominal amounts as quickly as possible to protect the first security interest.

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owner.

Also, an HOA is not absolutely required to send a Notice of Default and Notice of Sale to the first mortgage holder, unless the first mortgage holder notifies the HOA of its security interest 30 days prior to the recordation of the Notice of Default or prior to the mailing of the Notice of Sale. See NRS 116.31163(2) & 116.31165(1)(b). This is at odds with the non-judicial foreclosure requirements under NRS 107.090(3)(b), which imposes an additional requirement for the trustee to mail a notice of default and sale to each person with an interest subordinate to the deed of trust. See NRS 107.090(3). Additionally, the deed of trust non-judicial foreclosure statutes in NRS 107.080(2)(a) – (b), expressly contemplate a junior lien paying off or making good the deficiency in performance or payment prior to exercising a power of sale by first deed of trust holder. No such statutory provision exists under the HOA non-judicial foreclosure statutes of NRS 116.31162 – 31168.

Perhaps even more troubling is that NRS 116 does not provide a mechanism for first mortgage holders to obtain a payoff statement. Under the deed of trust non-judicial foreclosure provisions, a junior or subordinate interest in property is expressly permitted to obtain a payoff statement from the foreclosing beneficiary. See NRS 107.220(1)(b). Whereas under NRS 116, there is no comparable provision and only the homeowner or unit's owner may obtain such a payoff statement in the context of foreclosure. See NRS 116.3116(9). In fact, many HOAs as well as their collection agencies often refuse to provide payoff statements without express consent from the homeowner citing concerns with the Fair Debt Collection Practices Act.

In the context of foreclosure on a tax lien, the Nevada Supreme Court in *Bell v. Anderson* mandated a consultation of recorded land records, as opposed to relying merely on internal records, to satisfy procedural due process. 109 Nev. 363, 849 P.2d 350 (1993). The Court noted that the foreclosing party was required to provide "notice reasonably calculated under all

circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Id. at 366 citing and quoting *Mennonite Bd. of Missions v. Adams,* 462 U.S. 791, 795, 103 S.Ct. 2706, 2709, 77 L.Ed.2d 180 (1983) (holding that prior to a tax sale, the county tax collector must give personal notice to the holder of a recorded interest in land); *Mullane v. Central Hanover Trust Co.,* 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950). Although the facts in *Bell* dealt with a record search for the land owner, the holding and citation to *Mennonite* suggests that notice of foreclosure is required to be sent to those with recorded interests in land to comply with due process.

Further, the requirement that the first mortgage holder notify the HOA before foreclosure does not alleviate the due process notice concerns. Many states have held that the shift in burden of notice from the foreclosing party to the lien holder does not satisfy the notice requirements for due process. See *Island Financial, Inc. v. Ballman*, 92 Md.App. 125, 607 A.2d 76 (1992); *Reeder & Associates v. Locker*, 542 N.E. 2d 1371 (Ind. App. 3 Dist. 1989) (despite not complying with the request notice statute, a mortagee is entitled to actual notice by mail unless the mortgagee's address is not reasonably identifiable); *Jefferson Tp. v. Block 447A, Lot 10*, 228 N.J. Super. 1, 8, 548 A.2d 521,(1988) ("a person's entitlement to the notice required by due process cannot be conditioned on the requirement that he request it"); *Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883 (5th Cir. 1989) (a request notice is a supplement to the constructive notice scheme to afford notice to those whose identities and interests cannot be reasonably ascertained).

Lastly, the non-judicial foreclosure provisions within NRS 116 do not specifically require the HOA to include within the foreclosure notices the amount of the super-priority lien or signal to the first mortgage holder that the super-priority lien is in effect. This again is particularly troubling because NRS 116.3116(2)(b) at least acknowledges that a first mortgage is generally

superior to an HOA assessment lien so there would be no need to act to protect its interest in a general sense. Indeed in this case, the HOA's Notice of Delinquent Assessment, the Notice of Default and the Notice of Trustee's Sale do not mention whether any super-priority interest is at stake and certainly do not state what amount, if any, is necessary to clear the super-priority interest.

(3) The State Interest in Affording HOA's An Efficient Method to Collect at Least Nine Months of Unpaid Assessments is Not Served Under the Non-Judicial Foreclosure Scheme.

With respect to the government or state's interest, it created a statutory lien for HOAs to afford them the ability to effectively collect on the assessments, or at least nine months of assessments, so those assessments are not ultimately allocated to other unit owners within the HOA. This interest is better served by requiring the HOA to review title records to notify a first mortgage holder that a super-priority interest is in effect and the amount necessary to pay off the interest so that the HOA can receive the super-priority interest as timely as possible. Hiding the super-priority interest amounts with the non-super priority amounts in foreclosure notices only results in confusion as again a first security interest is generally prior to HOA assessment liens.

In sum, the current non-judicial foreclosure scheme for HOAs under NRS 116 does not afford adequate notice and opportunity for a first mortgage holder to pay off any super-priority interest claimed by the HOA so that it can truly pay the super-priority amounts and protect its first security interest in the real property. The non-judicial foreclosure scheme also really does not serve the HOA's interest in getting paid at least nine months of assessments because of a lack of mandatory notice of the amounts to the first security interest. Accordingly, the Court should not allow a non-judicial foreclosure on a super-priority interest to eliminate a first mortgage or deed of trust.

d. Nevada District Courts Have Adopted the Payment Priority Interpretation.

With the aforesaid statutory construction and concerns in mind, it is not surprising then that a number of Nevada Courts have ruled that an HOA foreclosure sale does not affect a first mortgage and have summarily dismissed or disposed of similar Complaints to one in this case. Recently, in the U.S. District Court of Nevada, Judge Dawson dismissed an almost identical quiet title complaint as the one in this case by finding:

> NRS 116.3116(2)(c) creates a limited super priority lien for 9 months of HOA assessments leading up to the foreclosure of the first mortgage, ***but it does not eliminate the first security interest.*** Contrary to Plaintiff's assertion, the statutory scheme does not require an HOA to wait until the holder of the deed of trust forecloses. Instead, as in this case, the HOA may initiate a nonjudicial foreclosure to recover delinquent assessments and the purchaser at the sale takes the property subject to the security interest. There is no dispute that the Deed of Trust was recorded on August 30, 2007, and the Assessment Lien was recorded on January 24, 2011. Accordingly, the Deed is prior to the Assessment Lien and ***Plaintiff's claims for quiet title and declaratory relief fail as a matter of law.***

Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., No. 2:12-CV-00949-KJD-RJJ, 2013 WL 531092, at *3 (D. Nev. Feb. 11, 2013) (emphasis added).

Also in the U.S. District Court of Nevada, Judge Jones offered in depth analysis, similar to that presented here, as to why a super-priority interest does not eliminate a first deed of trust. See *Bayview Loan Servicing, LLC v. Alessi & Koenig*, --- F.Supp.2d ----, 2013 WL 2460452 (D. Nev. 2013). Ultimately Judge Jones noted that he did not believe the Nevada legislature intended the extreme result of extinguishment of a first deed of trust where an HOA forecloses its lien, as doing so would result in reading the general priority rule of a first deed of trust completely out of the statute. See *Id.* Judge Mahan has also followed Judge Jones' opinion and held that a super-priority interest does not operate to eliminate a first deed of trust. *See First*

100, LLC v. Wells Fargo Bank, N.A., 2013 WL 3678111 (D. Nev. 2013); *see also Premier One Holdings, Inc. v. BAC Home Loans Servicing, LP*, 2013 WL 4048573 (D. Nev. 2013).

In the Eighth Judicial District Court of Nevada, Judge Weiss has dismissed several similar quiet title complaints, holding that a super-priority interest does not extinguish a first mortgage or security interest. Rather, it establishes payment priority over a first security interest and is not a standalone lien that a homeowners association can foreclose upon constituting a senior position to all prior first security interests. See e.g. Order for Dismissal (March 20, 2013), *Sanucci Ct Trust v. Elevado, et al.* (Clark County District Court Case No. A-12-670423-C). Judge Herndon in the same district has also agreed with Judge Weiss that a super-priority lien interest does not extinguish a first mortgage. See Order for Dismissal With Prejudice (March, 22, 2013), *Mann Street Trust v. Heather Newman, et al* (Clark County District Court Case No. A-12-669301-C). Even this Department has agreed with the payment priority interpretation. See Decision (July 1, 2013) *Oliver Sage Drive Trust v. BAC Home Loan Servicing, LP, et al* (Clark County District Court Case No. A-13-674872-C).

In the Second Judicial District of Nevada, Judge Flanagan recently offered a detailed opinion as to why a first deed of trust is not extinguished after an HOA foreclosure sale. Specifically Judge Flanagan opined that:

> [a]lthough a literal reading of NRS 116.3116(2)(c) gives nine months of an HOAs assessments a super priority position, senior to a first-in-time deed of trust, application of the statute in this manner creates an absurd result by allowing an HOA to expedite foreclosure, eject the homeowners, engage in relaxed notice requirements and extinguish the first deed of trust. This is expressly contrary to Nevada's public policy regarding foreclosures.

See Order in *Thunder Properties, Inc. v. Greater Nevada Mortgage Services, LLC*, attached hereto as **Exhibit 18**. Judge Flanagan further noted that elimination of a first deed of trust is patently inequitable as it: (1) encourages HOAs to foreclose without notice; (2) ejects

homeowners without affording them protections of the Nevada Foreclosure Mediation Program and Homeowner's Bill of Rights; (3) creates a disincentive for lenders to issue loans to NV residents seeking to buy in HOA communities, which further steers homeowners away from buying in HOA communities.

Accordingly, numerous district court judges in Nevada on the federal and state level have adopted the payment priority interpretation of the super-priority statute which does not operate to affect or eliminate a first mortgage or deed of trust after the completion of an HOA sale. This Court should follow suit as the payment priority interpretation is supported by Nevada's legislative history and by practical and equitable statutory interpretation.

3. Even If a Super-Priority Interest Can Eliminate a First Deed of Trust, LVIC Has Expressly Acknowledged that a Super-Priority Interest was Not Foreclosed.

Setting aside statutory interpretation, the facts are clear that no super-priority interest was being foreclosed by LVIC. First, the Notice of Trustee Sale recorded by LVIC states that the Subject Property is being sold subject to "(b) [a] first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent." (See **Exhibit 10**). Again, since GREEN TREE's Deed of Trust was recorded prior to the LVIC's Notice of Claim of Lien-Delinquent Homeowners Assessment, the Deed of Trust takes priority and LN MANAGEMENT's predecessor took title subject to the Deed of Trust.

Second, in an abundance of caution prior to LVIC's foreclosure, counsel for GREEN TREE contacted LVIC's foreclosure agent Collections of America[5] inquiring if any super-priority amounts were being claimed and if they claimed any portion of the lien had priority over the Deed of Trust. LVIC's agent expressly confirmed that no super-priority interest was being

foreclosed or included in LVIC's assessment lien. Thus, in reliance on this representation, BANA or GREEN TREE did not believe its Deed of Trust was in jeopardy and did not take action to stop LVIC's foreclosure sale.

Finally, and most importantly, a Stipulation and Order was entered between GREEN TREE's predecessor BANA and LVIC acknowledging the priority of the Deed of Trust and confirming that there was no foreclosure of a super-priority interest. LN MANAGEMENT can hardly complain about this outcome since it purchased the Subject Property with a Notice of Lis Pendens on record. The Lis Pendens imparted constructive notice on LN MANAGEMENT and all subsequent purchasers of the Subject Property. See NRS 14.010(3). Yet LN MANAGEMENT chose to take title to the Subject Property with knowledge of this action and its title must be subject to the Stipulation and Order entered between BANA and LVIC. See *U.S. Bank, N.A. v. Quadomain Condominium Assoc.*, 103 So.3d 977, 979 (2012) ("[o]ne who purchases property subject to a lis pendens 'is bound by the judgment or decree rendered against the party from whom he makes the purchases as much so as though he had been a party to the judgment or decree himself.'") quoting *Greenwald v. Graham*, 100 Fla. 818, 130 So. 608, 611 (1930). Accordingly, LN MANAGEMENT cannot prevail in quieting title over GREEN TREE's Deed of Trust.

V.

CONCLUSION

Based on the foregoing, GREEN TREE respectfully requests that the Court enter summary judgment in its favor declaring that the Deed of Trust be reformed to include the

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[5] Counsel for BANA and GREEN TREE was given permission from LVIC's counsel to contact Collections of

correct legal description of the Subject Property and further declaring that the Deed of Trust still constitutes a valid and existing lien on the Subject Property despite LVIC's foreclosure.

DATED this 19th day of June, 2014.

MILES, BAUER, BERGSTROM & WINTERS, LLP

Jory C. Garabedian, Esq.
Nevada Bar No. 10352
2200 Paseo Verde Pkwy., Ste. 250
Henderson, NV 89052
Attorney for Green Tree Servicing LLC

America directly to inquire about the foreclosure sale and amounts owing.

CERTIFICATE OF MAILING

IT IS HEREBY CERTIFIED by the undersigned that on the ___ day of June, 2014, I mailed a true and correct copy of the foregoing **MOTION FOR SUMMARY JUDGMENT** in a sealed envelope via First-Class Mail, postage prepaid, to the following party(ies) at the following address(es):

Kerry Faughnan, Esq.
P.O. Box 335361
North Las Vegas, NV 89086
Attorney for LN Management LLC Series 3111 Bel Air 24G

Michael T. Elliott
1623 Filaree Court
Carlsbad, CA 92011
Defendant, pro se

Gregory Kerr, Esq.
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3556 East Russell Road, 2nd Floor
Las Vegas, NV 89120
Attorney for Regency Towers Association, Inc.

Michael R. Mushkin, Esq.
MICHAEL R. MUSHKIN & ASSOCIATES
4475 South Pecos Road
Las Vegas, NV 89121
Attorney for Las Vegas International Country Club Estates Homeowners Assoc., Inc.

an employee of MILES, BAUER, BERGSTROM & WINTERS, LLP

Exhibit 1

DISTRICT COURT

CLARK COUNTY, NEVADA

GREEN TREE SERVICING LLC, 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-12-669570-C Dept. No.: XIII **DECLARATION OF COUNSEL**

I, Jory C. Garabedian declare under penalty of perjury that the following is true and correct based upon my own personal knowledge:

1. I am a duly licensed attorney in Nevada and am an associate attorney with the law firm Miles, Bauer, Bergstrom & Winters, LLP.

2. I am attorney of record for Bank of America, N.A and Green Tree Servicing, LLC in the above-captioned action which seeks to reform a Deed of Trust recorded on October 20, 2004 (document/instrument 20041020-0001569) and declare it a valid lien on the real property located at 3111 Bel Air Drive, Unit 24-G, Las Vegas, NV 89109 (hereinafter the "Subject Property").

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3. I am over the age of 18 and of sound mind.

4. I have reviewed relevant recorded documents concerning the Subject Property on file with the Clark County Recorder's Office and the recorded documents attached as **Exhibits 3-6**, **9-13** and **15-16** are true and correct copies on file with the Clark County Recorder's Office.

5. I have also used the Clark County Recorder's online records research system by researching recorded documents under the Subject Property's assessor parcel number 162-10-812-185 and under grantor/grantee index using "Elliott, Michael." Attached as **Exhibit 7** is a true and correct copy of the results.

6. Attached as **Exhibit 8** is true and correct copy of the HUD Settlement Statement executed by Michael T. Elliott concerning the Subject Property and the Deed of Trust received from Bank of America, N.A.

7. On December 7, 2012, I contacted LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNERS ASSOCIATION, INC.'s ("LVIC") foreclosure trustee/agent Collections of America, Inc. for any super-priority amounts that might have had priority over the Deed of Trust; however, no such amounts were provided or claimed to be part of the Notice of Claim of Lien-Delinquent Homeowners Assessment. Attached as **Exhibit 14** is a true and correct copy of a December 7, 2012 email exchange between myself and Collections of America, Inc. confirming our communication exchange.

8. A Stipulation and Order Regarding the Status of LVIC was filed and entered in this matter wherein LVIC expressly acknowledged that it did not have, or foreclose on, a super-priority lien, and that the foreclosure sale did not affect the or extinguish the Deed of Trust.

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Attached hereto as **Exhibit 17** is a true and correct copy of the filed and entered Stipulation and Order Regarding the Status of LVIC.

Further Your Declarant Sayeth Naught.

DATED: 6/19/14

JORY C. GARABEDIAN

Exhibit 2

DISTRICT COURT

CLARK COUNTY, NEVADA

GREEN TREE SERVICING LLC, 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-12-669570-C Dept. No.: XIII **DECLARATION OF LAURIE P. ESTRADA**

I, Laurie P. Estrada declare under penalty of perjury of the law of the State of Nevada that the following is true and correct based upon my own personal knowledge:

1. I am a Title Assistant with First American Title Insurance and I am over the age of 18 and of sound mind.

2. In my capacity as Title Assistant, I regularly review and research legal descriptions of real property for purposes of offering title insurance policies for such real property.

3. Per counsel for GREEN TREE SERVICING, LLC's request, I have reviewed and researched the legal description for that real property commonly known as 3111 Bel Air Drive, Unit 24G, Las Vegas, Nevada 89109 [APN 162-10-812-185] (hereinafter the "Subject Property").

4. The Subject Property has a legal description as follows:

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. 220126 AND MAY 10, 1973, 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.

5. The aforesaid legal description would be included in any title insurance policy offered by First American Title Insurance Co. as to the Subject Property.

Further Your Declarant Sayeth Naught.

DATED: 6/18/2014

Laurie P. Estrada

LAURIE P. ESTRADA
Title Assistant
First American Title Insurance

Exhibit 3

20021017
.01112

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s) 163-10-812-185

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

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_____

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 [signature] Capacity Seller

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (Required)	BUYER (GRANTEE) INFORMATION (Required)
Print Name: Elizabeth Seibold	Print Name: _____
Address: 5770 Pueblo	Address: _____
City/State/Zip: Las Vegas, NV 89122	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)

Code 1112

200210 17
.01112

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s) 162-30-812-185

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

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_____

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 _____ Capacity _____
Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (Required)	BUYER (GRANTEE) INFORMATION (Required)
Print Name: _____	Print Name: Michael Tuchscher
Address: _____	Address: 3990 Fifth Ave, Suite 210
City/State/Zip: _____	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 #: 2020265-JF

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

1112

3

20021017
01112

Escrow No. 2020245-JF
APN No.: 162-10-812-185
R.P.T.T: $ 1,125.00

Grant, Bargain, Sale Deed

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

Elizabeth Seibold

STATE OF NEVADA
COUNTY OF CLARK
) ss:

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

NOTARY PUBLIC

NOTARY PUBLIC
County of Clark-State of Nevada
J. FITZWATER
No. 00-62591-1
My Appointment Expires Jun 1, 2004

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

SPACE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:
Michael T. Elliot
See above

Initials

20021017
.01112

Escrow No. 2020245-JF

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 10:30 ASH PAGE COUNT: 2
OFFICIAL RECORDS
BOOK/INSTR#20021017-01112 FEE: 13.00
RPTT: 1,125.00

Exhibit 4

20031016
01640

STATE OF NEVADA
DECLARATION OF VALUE

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

38

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

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_____

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. If Exemption Claimed
   a. Transfer Tax Exemption, per NRS 375.090, Section 5
   b. Explain Reason for Exemption: Release of Lien/Interest

5. Partial Interest: Percentage being transferred: 100 %

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

Pursuant to NRS 375.060 the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [signature] Signature Regan Dawn Elliott

Capacity Grantee Capacity Grantor

SELLER (GRANTOR) INFORMATION (Required)	BUYER (GRANTEE) INFORMATION (Required)
Print Name: Regan Dawn Elliott	Print Name: Michael T. Elliott
Address: 2440 Bel Air Dr	Address: 3111 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 #: 3510574-VT

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

1640 DVI

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

FEE: 15.00
RPTT: EXEMPT

38

RECORDING REQUESTED BY
Unified Title Company - Orange County

AND WHEN RECORDED MAIL TO:
Michael T. Elliott
P.O. Box 24
Rancho Santa Fe, CA 92067

Tax Statements TO:

Title Order No. 13828
Escrow No. 53005499-LW
035/0674 YS

Spac

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

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
City Transfer Tax is $.00
County Transfer Tax is $.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

Regan Dawn Elliott
Regan Dawn Elliott

STATE OF CALIFORNIA)ss
COUNTY OF San Diego)

On Oct. 9, 2003 before me
Scott William Deckard

Personally appeared Regan Dawn Elliott

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

SCOTT WILLIAM DECKARD
Commission # 1308185
Notary Public - California
Orange County
My Comm. Expires May 27, 2006

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.

Exhibit 5

20031016
.01641

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:20031016-01641

PAGE COUNT: 28

FEE: 66.00
RPTT: .00

NON-COMPLIANCE CHARGE INC: 25.00

AFTER RECORDING RETURN TO:

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

39

~~SECURITY INSTRUMENT - CLOSED END~~

Loan Number: 0081699902

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

1. Deed of Trust

028

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

2638 (12-00)

DocMagic eForms 800-649-1362
www.docmagic.com

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 1 of 28
Order: nv Comment:

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 MS156DPCA
Garden Grove, California 92841

035 10674 YT [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]:

☒ Adjustable Rate Rider	☒ Condominium Rider	☒ 1-4 Family Rider
☐ Graduated Payment Rider	☐ Planned Unit Development Rider	☐ Biweekly Payment Rider
☐ Balloon Rider	☐ Rate Improvement Rider	☐ Second Home Rider
☐ 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

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 3 of 28
Order: nv Comment:

20031016
.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 seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

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

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 4 of 28
Order: nv Comment:

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)

Description: Clark,NV Document-Year.Date,DocID 2003.1016.1641 Page: 5 of 28
Order: nv Comment:

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 Lende''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 whosoever, 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.

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

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 9 of 28
Order: nv Comment:

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.

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 11 of 28
Order: nv Comment:

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)
) ss.
COUNTY OF SAN DIEGO)

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

MICHAEL T. ELLIOTT
(name(s) of person(s))

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

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

[NOTARY STAMP]

SCOTT WILLIAM DECKARD
Commission # 1308128
Notary Public - California
Orange County
My Comm. Expires May 27, 2005

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

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 16 of 28
Order: nv Comment:

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.

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 19 of 28
Order: nv Comment:

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

MICHAEL T. ELLIOTT

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 20 of 28
Order: nv Comment:

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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:

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 21 of 28
Order: nv Comment:

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

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.

(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.

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.

Description: Clark,NV Document-Year.Date.DocID 2003.1016.1641 Page: 26 of 28
Order: nv Comment:

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

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

Exhibit 6

20041020-0001569

Fee: $42.00
T/C Fee: $0.00

10/20/2004 12:32:56
F20041016980
Requestor:
BANK OF AMERICA

Frances Deane SUD
Clark County Recorder Pgs 29

Assessor's Parcel Number: 162108121B5

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

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

[Space Above This Line For Recording Data]

LOAN # 3300690454

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.

(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 901 GEORGE WASHINGTON, WICHITA, KS 67211-3901

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]:

[X] Adjustable Rate Rider	[X] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[X] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] 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.

Initials: _____

(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: [illegible] which currently has the address of

3111 BEL AIR DR UNIT 246 [Street]

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

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

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

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

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

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

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives 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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levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

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

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

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

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

Initials: _____

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.

Initials: _____

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.

Initials: _____

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

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

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

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

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

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

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

entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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

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

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

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

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

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

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

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ 1% UPB, MIN $400, MAX $800

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

Witnesses:

_____ _____

_____ (Seal)
-Borrower

_____ _____

_____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

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STATE OF NEVADA California
COUNTY OF San Diego

This instrument was acknowledged before me on October 6th 2004
by Jason Woodward
Michael T Elliott

JASON E. WOODWARD
Commission # 1400483
Notary Public - California
San Diego County
My Comm. Expires Feb 13, 2007

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

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 20030131, 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 246, 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:

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 percentage points (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.

(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

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 246
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

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

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

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

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

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

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

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

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

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

MICHAEL T ELLIOTT

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

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 AMER CA, 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 240, 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."

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.

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 P ELLIOTT

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

Exhibit 7

Search Results

You searched under: **Parcel Number**, for: **162-10-812-185**, with the document types of: **ALL DOCUMENTS**, between: **1/1/1900** and **6/12/2014**

Records found: 29

Refresh |

First Party Name	First Cross Party Name	Instrument #	Document Type	Modifier	Record Date	Parcel #	Remarks	Total Value
SEIBOLD, JOHN	ELLIOTT, MICHAEL T	200210170001112	DEED		10/17/2002 10:30:45 AM	162-10-812-185		$450,000.00
ELLIOTT, REGAN DAWN	ELLIOTT, MICHAEL T	200310160001640	DEED		10/16/2003 10:19:56 AM	162-10-812-185		$0.00
ELLIOTT, MICHAEL T	WASHINGTON MUTUAL BANK FA	200310160001641	DEED OF TRUST		10/16/2003 10:19:56 AM	162-10-812-185		
ELLIOTT, MICHAEL T	BANK OF AMERICA NA	200410200001569	DEED OF TRUST		10/20/2004 10:32:56 AM	162-10-812-185		
WASHINGTON MUTUAL BANK FA	ELLIOTT, MICHAEL T	200411010004788	SUBSTITUTION/RECONVEYANCE		11/1/2004 2:43:25 PM	162-10-812-185		
ELLIOTT, HENRY H JR EST		200502090000731	LIS PENDENS		2/9/2005 9:07:20 AM	162-10-812-185		
ELLIOTT, MICHAEL T	BANK OF AMERICA NA	200503290001931	DEED OF TRUST		3/29/2005 10:50:08 AM	162-10-812-185		
ELLIOTT, MICHAEL T	REGENCY TOWERS ASSOCIATION INC	201011120004451	LIEN		11/12/2010 9:46:04 AM	162-10-812-185		$0.00
ELLIOTT, MICHAEL T	REGENCY TOWERS ASSOCIATION INC	201102010002543	DEFAULT		2/1/2011 2:48:26 PM	162-10-812-185		$0.00
ELLIOTT, MICHAEL T	LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES ASSOCIATION	201103280002335	LIEN		3/28/2011 1:26:35 PM	162-10-812-185		$0.00
ELLIOTT, MICHAEL T	REGENCY TOWERS ASSOCIATION INC	201107130000603	DEFAULT		7/13/2011 9:06:50 AM	162-10-812-185		$0.00
NONE SHOWN	LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES	201112010002276	DEFAULT		12/1/2011 2:13:51 PM	162-10-812-185		$0.00
ELLIOTT, MICHAEL T	LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES ASSOCIATION	201206210001804	LIEN		6/21/2012 12:29:12 PM	162-10-812-185		$0.00
ELLIOTT, MICHAEL T	LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES	201207250002134	DEFAULT		7/25/2012 1:09:28 PM	162-10-812-185		$0.00
ELLIOTT, MICHAEL T	BANK OF AMERICA, NA	201210100002912	LIS PENDENS		10/10/2012 3:50:30 PM	162-10-812-185		$0.00
ELLIOTT, MICHAEL T	COLLECTIONS OF AMERICA	201211150002365	NOTICE OF TRUSTEE SALE		11/15/2012 1:20:15 PM	162-10-812-185		$0.00
BANK OF AMERICA, NA	ELLIOTT, MICHAEL T	201211190003659	SUBSTITUTION/RECONVEYANCE		11/19/2012 5:05:17 PM	162-10-812-185		$0.00
COLLECTIONS OF AMERICA INC EE	3111 BEL AIR DRIVE 24G TRUST	201212170000834	TRUSTEE DEED		12/17/2012 10:09:52 AM	162-10-812-185	TEXTS IN LEFT MARGIN	$7,001.00
LAS VEGAS INTERNATIONAL	ELLIOTT, MICHAEL T	201212270000853	DEFAULT	RELEASE	12/27/2012 9:22:24 AM	162-10-812-185		$0.00

Refresh

First Party Name	First Cross Party Name	Instrument #	Document Type	Modifier	Record Date	Parcel #	Remarks	Total Value
COUNTRY CLUB ESTATE ASSOCIATION								
LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATE ASSOCIATION	ELLIOTT, MICHAEL T	201212270000854	DEFAULT	RELEASE	12/27/2012 9:23:29 AM	162-10-812-185		$0.00
LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES	ELLIOTT, MICHAEL T	201212270000859	LIEN	RELEASE	12/27/2012 9:24:58 AM	162-10-812-185		$0.00
LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES	ELLIOTT, MICHAEL T	201212270001591	LIEN	RELEASE	12/27/2012 10:46:11 AM	162-10-812-185		$0.00
BANK OF AMERICA NA	QUALITY LOAN SERVICE CORPORATION	201301090000704	SUBSTITUTION	TRUSTEE	1/9/2013 9:15:22 AM	162-10-812-185		$0.00
3111 BEL AIR DRIVE 24G TRUST	LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G	201304260003246	DEED		4/26/2013 4:36:34 PM	162-10-812-185		$0.00
ELLIOTT, MICHAEL T	LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G	201305230004321	LIS PENDENS		5/23/2013 2:02:00 PM	162-10-812-185		$0.00
LN MANAGEMENT LLC	REGENCY TOWERS ASSOCIATION INC	201307170001078	LIEN		7/17/2013 8:50:58 AM	162-10-812-185		$0.00
REGENCY TOWERS ASSOCIATION INC	ELLIOTT, MICHAEL	201310170001863	LIEN	RELEASE	10/17/2013 2:12:29 PM	162-10-812-185		$0.00
REGENCY TOWERS ASSOCIATION INC	LN MANAGEMENT LLC	201310170001864	LIEN	RELEASE	10/17/2013 2:12:29 PM	162-10-812-185		$0.00
REGENCY TOWERS ASSOCIATION INC	ELLIOTT, MICHAEL T	201310170002310	NOTICE	RESCISSION	10/17/2013 3:21:17 PM	162-10-812-185		$0.00

Search Results

You searched under: **Name search**, for: **elliott michael**, with the document types of: **ALL DOCUMENTS**, between: **10/1/2004** and **6/12/2014**

Records found: 156

Refresh

1 2 Page size: 100 156 items in

Party Type	First Party Name	First Cross Party Name	Instrument #	Document Type	Modifier	Record Date	Parcel #	Remarks	Tot Val
From	ELLIOTT, MICHAEL T	BANK OF AMERICA NA	200410200001569	DEED OF TRUST		10/20/2004 10:32:56 AM	162-10 -812- 185		
From	ELLIOTT, MICHAEL O	BANK OF AMERICA NA	200410270003402	DEED OF TRUST		10/27/2004 1:45:46 PM	179-31 -511- 024		
To	ELLIOTT, MICHAEL T	WASHINGTON MUTUAL BANK FA	200411010004788	SUBSTITUTION/RECONVEYANCE		11/1/2004 2:43:25 PM	162-10 -812- 185		
To	ELLIOTT, MICHAEL O	PRLAP INC	200411170000819	RECONVEYANCE		11/17/2004 9:10:54 AM	179-31 -511- 024		
From	ELLIOTT, MICHAEL A	MARTINEZ, ESEQUIEL	200502030003288	DEED		2/3/2005 3:44:53 PM	140-29 -118- 010		$17
From	ELLIOTT, MICHAEL T	BANK OF AMERICA NA	200503290001931	DEED OF TRUST		3/29/2005 10:50:08 AM	162-10 -812- 185		
From	ELLIOTT, MICHAEL I	BLAKELEY, BRAD SAMUEL	200504130004284	DEED		4/13/2005 6:47:24 PM	095-01 -711- 113		$7
From	ELLIOTT, MICHAEL	ALLIED COLLECTION SERVICES INC	200504210002234	JUDGMENT	DEFAULT	4/21/2005 11:10:09 AM	140-15 -319- 004		
From	ELLIOTT, MICHAEL G	ELLIOTT, MICHAEL G	200504290006511	DEED		4/29/2005 3:55:52 PM	161-21 -813- 048		$14
To	ELLIOTT, MICHAEL G	ELLIOTT, MICHAEL G	200504290006511	DEED		4/29/2005 3:55:52 PM	161-21 -813- 048		$14
From	ELLIOTT, MICHAEL DEWAYNE	WELFARE DIVISION NEVADA	200505190000597	ORDER	MASTER	5/19/2005 9:11:06 AM			
From	ELLIOTT, MICHAEL LAVERN	SCHMIDT, SUZANNE MARTHA PEARL	200505240002905	MARRIAGE CERTIFICATE		5/24/2005 1:36:32 PM			
From	ELLIOTT, MICHAEL G	ELLIOTT, TERRY	200505260004616	AFFIDAVIT TERMINATION		5/26/2005 3:39:58 PM	161-21 -813- 048		
To	ELLIOTT, MICHAEL G	US BANK NA	200506140004588	SUBSTITUTION/RECONVEYANCE		6/14/2005 3:20:55 PM	161-21 -813- 048		
From	ELLIOTT, MICHAEL	ALLIED COLLECTION SERVICES INC	200506300001858	JUDGMENT	DEFAULT	6/30/2005 10:00:28 AM	140-15 -319- 004		
From	ELLIOTT, MICHAEL O	SHANKEL, ERIC T	200506300006511	DEED		6/30/2005 2:37:19 PM	179-31 -511- 024		$48
From	ELLIOTT, MICHAEL	ELLIOTT, TIFFANY	200507130004619	DEED		7/13/2005 2:39:09 PM	139-09 -119- 037		
To	ELLIOTT, MICHAEL O	2605 ENTERPRISE RD STE 300	200507190002021	RECONVEYANCE		7/19/2005 10:46:55 AM	179-31 -511- 024		

1 2 Page size: 100 156 items in

Exhibit 8

Exhibit 9

Settlement Statement
Transactions without Sellers

U.S. Department of Housing and Urban Development

OMB Approval No. 2502-0491

Name of Borrower: MICHAEL T. ELLIOTT	Name & Address of Lender: BANK OF AMERICA N. A. WICHITA LOAN CENTER 901 GEORGE WASHINGTON WICHITA, KS 672113901
Borrower's Address: 2918 5TH AVENUE STE 210 SAN DIEGO, CA 92103	Settlement Agent: BANK OF AMERICA POST CLOSE
Property Location: (if different from above) 3111 BEL AIR DR UNIT 24G LAS VEGAS, NV 89109	Place of Settlement: 9000 SOUTHSIDE BLVD., BLDG 700 JACKSONVILLE, FL
Loan Number: 3300690454	Settlement Date: 10/06/04

L. SETTLEMENT CHARGES		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN		
801. ORIGINATION FEE 1.000		$3,221.00
802. LOAN DISCOUNT (PERMANENT BUYDOWN)		
802. LOAN DISCOUNT (POINTS) 1.098		$3,536.66
803. APPRAISAL/PROPERTY EVALUATION FEE:	310.00 POC L	
804. CREDIT REPORT FEE		
EXPERIAN NATIONAL CONSUMER ASST. CENTER	0.80 POC BY LENDER	
806. LENDER'S INSPECTION FEE		
808. TAX SERVICE FEE: HOMEFOCUS TAX SERVICES, LLC		$75.00
811. APPLICATION FEE	200.00 POC B	
815. FLOOD DETERMINATION FEE: LSI FLOOD SERVICES		$11.00
876. LENDER CLOSING FEE		$500.00
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE		
901. WHOLE LOAN PURCHASE INTEREST ADJUSTMENT		
901. PREPAID INTEREST: FROM 10/07/04 TO 11/01/04 @ 39.71 PER DAY		$992.75
902. MORTGAGE INSURANCE PREMIUM		
902. PRIVATE MORTGAGE INSURANCE PREMIUM		
903. HAZARD INSURANCE PREMIUM		
1000. RESERVES DEPOSITED WITH LENDER		
1001. HAZARD INSURANCE RESERVES		
1002. MORTGAGE INSURANCE RESERVES		
1003. CITY PROPERTY TAXES		
1004. COUNTY PROPERTY TAX RESERVES		
1006. ADDITIONAL ASSESSMENT RESERVES		
1100. TITLE CHARGES		
1101. SETTLEMENT/CLOSING FEE - REFINANCE		
1102. ABSTRACT OR TITLE SEARCH		$105.00
1103. TITLE EXAMINATION		
1107. ATTORNEY'S SETTLEMENT/ABSTRACT/TITLE FEE		
1108. TITLE INSURANCE		
1109. LENDER'S COVERAGE		
1110. OWNER'S COVERAGE		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES		
1201. RECORDING FEE		$43.00
1201. DEED		
1201. MORTGAGE/DEED OF TRUST		
1201. RELEASE		
1202. CITY/COUNTY TAX/STAMP		
1202. DEED		
1202. MORTGAGE/DEED OF TRUST		
1203. STATE TAX/STAMP		
1203. DEED		
1203. MORTGAGE/DEED OF TRUST		
1300. ADDITIONAL SETTLEMENT CHARGES		
1304. CONSTRUCTION SITE INSPECTIONS		
1400. TOTAL SETTLEMENT CHARGES (ENTER ON LINE 1602)		**$8,484.41**

L. SETTLEMENT CHARGES – continued

M. DISBURSEMENT TO OTHERS

1501	WASHINGTON MUTUAL	$313,615.59
1502		
1503		
1504		
1505		
1506		
1507		
1508		
1509		
1510		
1520	TOTAL DISBURSED (Enter on Line 1603)	$313,615.59

N. NET SETTLEMENT

1600	LOAN AMOUNT		$ 322,100.00
1601	PLUS CASH/CHECK FROM BORROWER		$ .00
	1601.1 DEPOSIT WITH LENDER	$ .00	
	1601.2 LENDER PAID CLOSING COST CREDIT	$ .00	
	1601.3 LENDER PREMIUM PRICING CREDIT	$ .00	
	1601.4 FUNDS DUE FROM BORROWER AT CLOSING	$ .00	
1602	MINUS TOTAL SETTLEMENT CHARGES		$ 8,484.41
1603	MINUS TOTAL DISBURSEMENTS TO OTHERS		$ 313,615.59
1604	EQUALS DISBURSEMENT TO BORROWER (after expiration of any applicable rescission period required by law)		$ .00

MICHAEL TALLMOTT

10/05/04
Date

Date

Date

Date

R1A2 10/05/04 7:59 AM 3300690454

20041101-0004788

Fee. $17.00
N/C Fee: $0.00

11/01/2004 14:43:25
T20040123054
Requestor:
NATIONWIDE TITLE CLEARING INC

Frances Deane DCM
Clark County Recorder Pgs: 1

When Recorded Mail To:
Nationwide Title Clearing
2100 Alt. 19 North
Palm Harbor, FL 34683

Parcel #: 162-10-812-185
Loan No 0081699902

SUBSTITUTION OF TRUSTEE and FULL RECONVEYANCE

Whereas, the undersigned, as the present Beneficiary(s) under a Deed of Trust recorded on 10/16/2003 in the office of the County Recorder of Clark County, Nevada, as Doc No. 01641 in Book 20031016 , Page

made by MICHAEL T ELLIOTT as Trustor, desires to substitute a new Trustee under said Deed of Trust in place and stead of original Trustee, now therefore, the undersigned hereby substitutes himself (themselves) as Trustee under said Deed of Trust and does hereby reconvey without warranty to the persons legally entitled thereto all Estate now held by it under said Deed of Trust this 23RD day of October in the year 2004
WASHINGTON MUTUAL BANK, FA

By: _____
TOM MCKINNON ASST. VICE PRESIDENT

STATE OF FLORIDA COUNTY OF PINELLAS
On 10/23/2004 before me, the undersigned, a Notary Public for said County and State, personally appeared TOM MCKINNON , personally known to me to be the ASST. VICE PRESIDENT of the corporation that executed the foregoing instrument as Trustee, and known to me to be the person who executed the same on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors
WITNESS MY hand and official seal.

_____
MARY JO MCGOWAN
Notary Public
Commission expires
07/30/2007

MARY JO MCGOWAN
Notary Public State of Florida
My Commission Exp. July 30, 2007
No. DD 0236404
Bonded through (800) 432-4254
Florida Notary Assn., Inc.

Prepared By:
V. Escalante/NTC,2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152

Mail Tax Statements to:
MICHAEL T ELLIOTT
2918 5TH AVE STE 210
SAN DIEGO, CA 92103

W156R 2028774 JHU185951
rcnnv1

Description: Clark,NV Document-Year.Date.DocID 2004.1101.4788 Page: 1 of 1
Order: nv Comment:

Exhibit 10

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 Pge: 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

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5805-1

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

Description: Clark,NV Document-Year.Date.DocID 2012.621.1804 Page: 1 of 1
Order: nv Comment:

Exhibit 11

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:

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)

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5805-1

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

SIGNATURE Karen Ann Richards
(Notary Pubic)

Description: Clark,NV Document-Year.Date.DocID 2012.725.2134 Page: 2 of 2
Order: nv Comment:

Exhibit 12

APN # 162-10-812-185

NOTICE OF LIS PENDENS
TYPE OF DOCUMENT

Inst #: 201210100002912
Fees: $20.00
N/C Fee: $0.00
10/10/2012 03:50:30 PM
Receipt #: 1338926
Requestor:
MILES, BAUER, BERGSTROM & W
Recorded By: COJ Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

Above space for
Recorder's use only

Recording requested by:
MILES, BAUER, BERGSTROM & WINTERS, LLP
2200 Paseo Verde Parkway, Suite 250
Henderson, Nevada 89052

Return to:

Miles, Bauer, Bergstrom & Winters, LLP
2200 Paseo Verde Parkway, Suite 250
Henderson, Nevada 89052

This page added to provide additional information required by NRS 111.312 Sections 1-2
(An additional recording fee of $1.00 will apply)

This cover page must be typed or printed clearly in black ink only.

Electronically Filed
10/05/2012 08:14:00 AM

CLERK OF THE COURT

LISP
Jeremy Bergstrom, Esq.
Nevada Bar No. 6904
jbergstrom@mileslegal.com
Jory C. Garabedian, Esq.
jgarabedian@mileslegal.com
Nevada Bar No. 10352
MILES, BAUER, BERGSTROM & WINTERS, LLP
2200 Paseo Verde Pkwy., Ste. 250
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-12-669570-C Dept. No.: XIII **NOTICE OF LIS PENDENS**

NOTICE OF LIS PENDENS

ALL PERSONS TAKE NOTICE that a Complaint has been filed in the above captioned matter by Plaintiff, BANK OF AMERICA, N.A. (hereinafter "BANA"), against the above named Defendants, concerning and affecting the real property located at 3111 Bel Air Drive, Unit 24G, Las Vegas, Nevada 89109, APN 162-10-812-185, and legally described as follows:

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 CHAINN 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.

The Complaint seeks to reform that Deed of Trust, recorded on October 20, 2004 in the Office of the Clark County Recorder as document number 20041020-0001569, to include the correct legal description of the above-referenced property. In the alternative, the Complaint also seeks to establish an equitable lien against the above-referenced property in favor of BANA, or equitably subrogate BANA's interest to that Deed of Trust recorded on October 16, 2003 in the Office of

the Clark County Recorder as document number 20031016-01641. Finally, the Complaint seeks a declaration that BANA has a valid first lien security interest in the above-referenced property.

DATED this 3rd day of October, 2012.

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 Pasco Verde Pkwy., Ste. 250
Henderson, NV 89052
Attorneys for Plaintiff

Exhibit 13

Inst #: 201211150002365
Fees: $18.00
N/C Fee: $0.00
11/15/2012 01:20:15 PM
Receipt #: 1383773
Requestor:
COLLECTIONS OF AMERICA
Recorded By: SAO Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY &
when recorded return to:
Collections of America, Inc.
1500 East Tropicana Avenue #108
Las Vegas, NV. 89119
TS# 4936

APN#: 162-10-812-185

NOTICE OF TRUSTEE SALE

To: Michael T. Elliott
You are in default of your **Las Vegas International Country Club Estates** assessments. Unless you take action to protect your property, it may be sold at a public sale. If you need an explanation of the nature of the proceedings against you, you should contact a lawyer.

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE.
IF YOU HAVE ANY QUESTIONS, PLEASE CALL CAROL SALMON OF COLLECTIONS OF AMERICA,(702-463-3285) ACTING ON BEHALF OF LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT THEIR TOLL FREE NUMBER (877-829-9907) IMMEDIATELY.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly authorized agent shown below, of all right, title, and interest, subject to any (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to; (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative; and (d) Any other liens deemed superior to the assessment lien that is being foreclosed. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the amount if delinquent assessment, with interest and late charges thereon, management fees, attorney's fees charges and cost of the sale for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

TRUSTOR: **Michael T. Elliott**

Authorized Agent: COLLECTIONS OF AMERICA
Assessment Lien Recorded; June 21, 2012, Book 20120621 as Instrument No. 0001804 in the Official Records of the Office of the County Recorder of CLARK County, Nevada, described as follows: PARCEL# 162-10-812-185 REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37 UNIT 185 SEC 10 TWP 21 RNG 61 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY NEVADA.

Date of sale: December 12, 2012 at 10:00 AM
Place of Sale: At the front entrance to the Nevada Legal News located at 930 South 4th Street, Las Vegas, Nevada 89101.
Amount necessary to satisfy lien as of November 15, 2012 $6,248.50
Estimated Sale Amount: $7,000.00
Street Address or other common designation of real property: 5111 Bel Air Drive #24G Las Vegas, NV 89109

The undersigned Authorized Agent disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above.

Date: November 15, 2012

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5605-1

COLLECTIONS OF AMERICA
1500 EAST TROPICANA AVENUE #108
LAS VEGAS, NV. 89119
(702) 463-3285

Amanda Olen
Collections of America

STATE OF NEVADA
COUNTY OF CLARK

SUBSCRIBED and SWORN to before me this 15 day of November 2012.

Notary Public in and for said State NV

Exhibit 14

Jory Garabedian

From: collect1@lvcoxmail.com
Sent: Friday, December 07, 2012 2:32 PM
To: Jory Garabedian
Subject: RE: Michael T. Elliott - 3111 Bel Air Drive Unit 24G, Las Vegas, NV 89109 (TS 4936)

Yes that is correct Thank you

On Fri, Dec 7, 2012 at 11:56 AM, Jory Garabedian wrote:

> Hi Carol:
>
> This will confirm our phone conversation this morning that Collections
> of America and Las Vegas International Country Club Estates HOA is not
> foreclosing on a super-priority lien pursuant to NRS 116.3116.
> Moreover, Collections of America and Las Vegas International Country
> Club Estates HOA is not claiming to have a super-priority lien since
> the first mortgage has not foreclosed on the property. Please confirm
> receipt of this email and acknowledgement of this understanding. If I
> am mistaken in any way, please contact me immediately and/or provide
> me with a payoff demand of any super-priority lien that may exist at
> this time. Obviously, my client Bank of America would like to payoff
> any potential senior lien, should one exist, to protect its first
> mortgage security interest.
> Thank you for your time and attention.
>
> <<Elliott Payoff.pdf>>
> Jory C. Garabedian MILES, BAUER, BERGSTROM & WINTERS, LLP 2200 Paseo
> Verde Parkway, Suite 250 Henderson, NV 89052 Phone: (702) 369-5960 x
> 472 Fax: (702) 369-4955 NOTICE: This E-mail (including attachments) is
> covered by the Electronic Communications Privacy Act, 18 U.S.C. §§
> 2510-2521. The information herein is confidential, privileged and
> exempt from disclosure under applicable law. This E-mail (including
> attachments) are intended solely for the use of the addressee hereof.
> If you are not the intended recipient of this message, you are
> prohibited from reading, disclosing, reproducing, distributing,
> disseminating, or otherwise using this transmission. The originator of
> this e-mail and its affiliates do not represent, warrant or guarantee
> that the integrity of this communication has been maintained or that
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> Delivery of this message or any portions herein to any person other
> than the intended recipient is not intended to waive any right or
> privilege. If you have received this message in error, please promptly
> notify the sender by e-mail and immediately delete this message from
> your system.

Exhibit 15

(3)-1

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

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.

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. 0002134in 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

BY: Carol Salmon

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

STATE OF NEVADA) ss
COUNTY OF CLARK)

BONNIE MOE
NOTARY PUBLIC, STATE OF NEVADA
My Commission Expires: 11-21-2015
Certificate No: 11-6361-1

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

On this 14th 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 Shea Capacity Grantor

Signature _____ Capacity Grantee _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Collections Of America Ave	Print Name: 3111 Bel Air Drive # 246 Trust
Address: 1500 East Tropicana #108	Address: 900 South Las Vegas Blvd #810
City, St., Zip: Las Vegas, NV 89119	City, St., Zip: Las Vegas, NV 89101

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

Print Name: Escrow #:
Address:
City/State/Zip:

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit 16

(3) 1

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)

MICHELLE Y. FAUGHNAN
Notary Public-State of Nevada
APPT. NO. 11-5927-1
My App. Expires October 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)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: 3111 Bel Air Drive 24G Trust	Print Name: LN Management LLC, Series 3111 Bel Air 24G
Address: PO Box 36208	Address: PO Box 36208
City: Las Vegas	City: Las Vegas
State: NV Zip: 89133	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 17

Electronically Filed
05/07/2013 11:01:02 AM

CLERK OF THE COURT

SAO
Jory C. Garabedian, Esq.
Nevada Bar No. 10352
jgarabedian@mileslegal.com
MILES, BAUER, BERGSTROM & WINTERS, LLP
2200 Paseo Verde Pkwy., Ste. 250
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-12-669570-C Dept. No.: XIII **STIPULATION AND ORDER REGARDING STATUS OF LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNERS ASSOCIATION**

COME 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 Defendant LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATE HOME OWNERS ASSOCIATION, INC. (hereinafter "LVIC"), by and through its attorney of record Michael R. Mushkin, Esq. and hereby stipulate and agree as follows:

//

RECEIVED
APR 29 2013
DISTRICT COURT DEPT# 13

1. The real property subject to this action is located in Clark County, Nevada and commonly known as 3111 Bel Air Drive, Unit 24G, Las Vegas, Nevada 89109 [APN 162-10-812-185] (hereinafter the "Subject Property").

2. Plaintiff is the beneficiary of a deed of trust (hereinafter the "Deed of Trust") recorded against the Subject Property on October 20, 2004 as instrument/document number 20041020-0001569 on file in the Office of the Clark County Recorder.

3. LVIC acknowledges that the Deed of Trust is a valid first mortgage against the Subject Property.

4. LVIC caused to be recorded a Notice of Claim of Lien-Delinquent Homeowners Assessment against the Subject Property on March 28, 2011 as document/instrument 20110328-0002335 in the Office of the Clark County Recorder (hereinafter the "First HOA Lien").

5. On or around December 1, 2011, LVIC caused to be recorded against the Subject Property a Notice of Default and Election to Sell as to the First HOA Lien, which is on file with the Office of the Clark County Recorder as document/instrument number 20111201-0002276.

6. On or around June 21, 2012, LVIC caused to be recorded against the Subject Property another Notice of Claim of Lien-Delinquent Homeowners Assessment, which is on file with the Office of the Clark County Recorder as document/instrument number 20120621-0001804 (hereinafter the "Second HOA Lien").

7. The Second HOA Lien included the delinquent amounts secured under the First HOA Lien, as well as additional and subsequent delinquent amounts, and therefore constituted only one and not two different or separate liens.

8. On or around July 25, 2012, LVIC caused to be recorded against the Subject Property a Notice of Default and Election to Sell as to the Second HOA Lien, which is on file

with the Office of the Clark County Recorder as document/instrument number 20120725-0002134.

9. On or around November 15, 2012, LVIC caused to be recorded against the Subject Property a Notice of Trustee Sale as to the Second HOA Lien, which is on file with the Office of the Clark County Recorder as document/instrument number 20121115-0002365.

10. On December 12, 2012, a foreclosure sale was held on the Second HOA Lien and the Subject Property was purchased by a third party known as 3111 Bel Air Drive 24G Trust (hereinafter the "Trust").

11. The Second HOA Lien has been satisfied and paid in full as a result of the foreclosure sale.

12. LVIC acknowledges that the Second HOA Lien did not contain and/or constitute a super-priority lien pursuant to NRS 116.3116(2) and the ensuing foreclosure sale did not affect the priority or extinguish the Deed of Trust, which remains a valid first mortgage/deed of trust on the Subject Property.

13. LVIC further acknowledges and agrees to be bound by a final order, decree, ruling and/or judgment reforming the Deed of Trust to include the correct legal description of the Subject Property and further establishing the Deed of Trust as a valid first mortgage lien against the Subject Property.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G, Appellant, v. BANK OFAMERICA, N.A.; DITECH FINANCIAL LLC, Respondent.	)	Supreme Court Case No.: 82534

Appeal
From the Eighth Judicial District Court, Clark County, Nevada
The Honorable Mark R. Denton
District Court Case A-12-669570-C

APPENDIX TO BRIEFS
VOLUME 2

Kerry Faughnan, Esq., NSB# 12204
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Docket 82534 Document 2021-26777

INDEX OF DOCUMENTS

File Date	Title	Page(s)
10/03/2012	Bank of America Complaint	1PA1-1PA92
05/17/2013	LN Management Complaint	1PA93-1PA104
10/29/2013	Order Granting Motion to Consolidate	1PA105-1PA106
10/30/2013	Notice of Entry of Order Granting Motion to Consolidate	1PA107-1PA111
06/19/2014	Green Tree Servicing's Motion for Summary Judgment	1PA112-2PA263
08/12/2014	Order Granting Green Tree Servicing's Motion for Summary Judgment	2PA264-2PA270
09/03/2014	LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment Entered August 12, 2014	2PA271-2PA276
09/24/2014	Order Granting LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment	2PA277-2PA278
09/25/2014	Notice of Entry of Order Granting LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment	2PA279-2PA282
07/27/2018	LN Management LLC Series 3111 Bel Air 24G's Motion for Summary Against Green Tree Servicing LLC	2PA283-2PA363
08/28/2018	Bank of America's Opposition to Plaintiff's Motion	2PA364-2PA376

	for Summary Judgment	
09/17/2018	Reply to Green Tree's Opposition to LN Management LLC Series 3111 Bel Air 24G's Motion for Summary Judgment; Errata to LN Management's Motion for Summary Judgment	2PA377-2PA381
03/26/2018	Errata to Bank of America's Opposition to Plaintiff's Motion for Summary Judgment	2PA382-2PA495
03/27/2019	Notice of Bankruptcy Filing and Imposition of Automatic Stay	2PA496-3PA583
09/29/2020	Bank of America N.A. and Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	3PA584-4PA867
11/11/2020	Opposition to Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	4PA868-4PA879
11/30/2020	Bank of America N.A. and Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Reply Supporting Motion for Summary Judgment	4PA880-4PA935
12/14/2020	Court Minutes from Hearing on Bank of America N.A. and Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	4PA936
01/20/2021	Findings of Fact, Conclusions of Law and Judgment	4PA937-4PA962
01/21/2021	Notice of Entry of Findings of Fact, Conclusions of Law and Judgment	4PA963-4PA991
02/22/2021	Notice of Appeal	4PA992-4PA993

CERTIFICATE OF SERVICE

I certify that on September 16, 2021, I served a copy of the foregoing pleading upon all counsel of record by allowing the Court's ECF system to serve same upon:

Ariel Stern, Esq.
AKERMAN LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134
(702) 634-5000
(702) 380-8572- Fax
Attorneys for Respondent

DATED September 16, 2021

/s/ Kerry P. Faughnan
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Attorney for Appellant

14. Based upon the foregoing, LVIC is hereby dismissed from the above-captioned action, with each party to bear their own fees and costs. However, Plaintiff reserves all rights and claims against LVIC in the event the Trust and/or its successors and assigns assert quiet title and declaratory relief claims against Plaintiff due to the foreclosure sale.

IT IS SO STIPULATED AND AGREED.

Dated this 29th day of April, 2013. MILES, BAUER, BERGSTROM & WINTERS, LLP

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

Dated this 24 day of April, 2013 MUSHKIN & ASSOCIATES

Michael R. Mushkin
Nevada Bar No. 2421
4475 South Pecos Road
Las Vegas, NV 89121
Attorney for Defendant LVIC

Based upon the foregoing stipulation between Plaintiff and LVIC, and good cause appearing, IT IS SO ORDERED.

Dated this 3rd day of May, 2013.

DISTRICT COURT JUDGE

4/13

Exhibit 18

FILED
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Joey Orduna Hastings
Clerk of the Court
Transaction # 4254379

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THUNDER PROPERTIES, INC, a Nevada company,

Plaintiff,

vs.

GREATER NEVADA MORTGAGE SERVICES, LLC, a Nevada limited liability company; FEDERAL NATIONAL MORTGAGE ASSOCIATION; PATERNO, C. JURANI, ESQ., an individual; CARLOS MEJIA and GISSELA MEJIA individuals; DOES 1 THROUGH 20, AND ROE CORPORATIONS 1 THROUGH 20, inclusive,

Defendants.
_____/

Case No.: CV13-01840

Dept. No.: 7

ORDER

On October 8, 2013, Defendant PATERNO C. JURANI (Jurani), filed a *Motion to Dismiss*. On October 23, 2013, Plaintiff filed an *Opposition to Motion to Dismiss*. On October 24, 2013, Defendants GREATER NEVADA MORTGAGE SERVICES (Greater Nevada), and FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA), filed a *Joinder* to Jurani's *Motion to Dismiss* and *Motion for Summary Judgment*. On November 5, 2013, Jurani filed his *Reply in Support of Motion to Dismiss*. On November 12, 2013, Plaintiff filed a *Countermotion for*

Summary Judgment; Opposition to Motion for Summary Judgment. On November 25, 2013, GNV and FNMA filed a *Joinder to Jurani's Reply as Basis for Reply in Support of Summary Judgment & Opposition to Countermotion for Summary Judgment.* On November 26, 2013, Jurani filed a *Joinder to Defendants' Opposition to Countermotion for Summary Judgment.* On December 5, 2013, Plaintiff filed a *Reply in Support of Countermotion for Summary Judgment.* On December 9, 2013, Plaintiff submitted the *Countermotion for Summary Judgment* for decision. On December 12, 2013, Plaintiff filed a *Supplement to the Reply in Support of the Countermotion for Summary Judgment.* On December 16, 2013, Jurani submitted the *Motion to Dismiss* for decision.[1]

Background

This Court is asked to decide whether the judicial or non-judicial foreclosure of real property by a home owner's association extinguishes a first deed of trust. Certainly a prolific issue throughout the State, district courts have come down on both sides of the issue. However, guided by Nevada's public policy, this question is answered in the negative.

In 2004, Carlos and Gissela Mejia acquired real-property in Sun Valley, Nevada. To purchase the property the Mejias obtained a loan from Greater Nevada. Greater Nevada was also the beneficiary under the first Deed of Trust. The property is subject to the Highland Ranch Homeowner's Association (HOA) and CC&Rs, which require residents to pay monthly assessments. In September of 2010, the Mejias failed to pay the monthly assessments required by the HOA and CC&Rs. On September 24, 2010, the HOA took action to foreclose. On December 14, 2012, the HOA recorded a Notice of Default and Election to Sell. On April 4, 2013, a Notice of HOA Lien Foreclosure was recorded. The HOA's foreclosure sale was set for July 26, 2013. Plaintiff, Thunder Properties, acquired title to the property at the HOA foreclosure. On July 9, 2013, Jurani, as trustee under the

[1] Several of these pleadings violate WDCR 10.9 which requires all motions be filed in separate moving documents.

Deed of Trust, recorded a notice of trustee's sale which was set for August 5, 2013. FNMA acquired title to the property at the August fifth sale.

Legal Standard

In reviewing motions to dismiss under NRCP 12(b)(5), the district court must liberally construe the pleadings, accept as true the facts in the pleadings, and draw all inferences in favor of the nonmoving party. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). A claim will be dismissed "only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Id.* Thus, the standard to grant a motion to dismiss is very high. *Stubbs v. Strickland*, 129 Nev. Adv. Op. 15, 297 P.3d 326, 328 (2013) (stating a motion to dismiss under NRCP 12(b)(5) is "subject to a rigorous standard of review on appeal.").

Additionally, both parties have requested this Court take judicial notice of public documents included in the moving papers as exhibits. Pursuant to NRS 47.130(1)-(2) the Court will take judicial notice of facts generally known within this jurisdiction and facts capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questioned.

Discussion

At its core, the issue here is whether NRS 116.3110(2)(c)'s provisions permit nine months of assessments to become a first-in-time encumbrance which extinguishes all junior liens upon foreclosure, including a first deed of trust. Defendants' argue: 1) NRS 116.3116(2)(b) conclusively establishes that an encumbrance recorded before the assessments became delinquent receives priority status; 2) the legislative history of NRS 116.3116(2)(c) establishes that subsection (2)(c) merely creates a payment schedule upon foreclosure; 3) the plain language of NRS 116.3116 requires a judicial foreclosure; 4) permitting a non-judicial foreclosure violates due process; and 5) the CC&Rs contain protections which subordinate the HOA's lien to the first deed of trust.

Plaintiff counters: 1) Defendants misread NRS 116.3116(2)(c), which provides for a super priority lien in the amount of nine months of assessments and creates a super priority position for these liens – senior to the first-in-time deed of trust; 2) legislative intent and Nevada's Real Estate Division supports this view; 3) notice was provided to the parties negating Defendants' due process argument; 4) NRS 116.3116 - 3117, do not require a judicial foreclosure; and 5) the CC&Rs are pre-empted by NRS 116 *et seq*. For the reasons that follow, Nevada's public policy rejects the interpretation that NRS 116.3116(2)(c)'s super priority provision permits an HOA foreclosure sale to extinguish the first deed of trust.

A. Policy and Historical Overview of NRS 116.3116

NRS Chapter 116 is Nevada's codification of the Uniform Common Interest Ownership Act (UCIOA). UCIOA was initially promulgated in 1982 as a comprehensive scheme for states to manage HOAs. Only seven (7) states have enacted UCIOA in its entirety. Nevada is one of them. NRS 116.3116(2)(b) & (c) are the focus of the parties' dispute and, indeed, are the current focus of this issue, which is prolific throughout the Nation. Although most courts agree the statute is not ambiguous, Nevada decisions interpreting this statute have come down on both sides of the argument.

NRS 116.3116 provides in relevant part:

> 1. The [HOA] has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due.
>
> 2. A lien under this section is prior to all other liens and encumbrances on a unit except:
>
> . . . .
>
> (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected

> before the date on which the assessment sought to be enforced became delinquent; and
>
> (c) The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien. [2]

NRS 116.3116(1),(2)(b)-(c).

UCIOA's purpose is to strike a balance between the first deed of trust holder's rights to foreclosure and the HOA's need for assessments. The drafters, recognizing that HOAs derive income from timely paid assessments, provided a super priority for six months (nine in Nevada) worth of assessments, which are collected upon swift foreclosure by either the lender or the HOA.[3] The intent of the drafters was to spur action by either the lender or the HOA to settle the issue of assessments through foreclosure. *Id.* It should also be stated that a foreclosure under NRS Chapter 116 has relaxed notice requirements, i.e., the HOA is only required to send the notice of default and notice of sale to junior interest holders who request such notice. NRS 116.31163, 31165. However, swift foreclosure is no longer in Nevada's public policy and these considerations are no longer in balance. *See infra* Part C.

B. History and Nature of a Homeowner's Association

HOAs gained popularity in the latter half of the Twentieth Century when homeowners, dealing with rising land costs, sought alterative avenues to share the costs of private parks and schools within a community.[4] "Today, an estimated

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[2] In 2009 the six month provision was extended to nine months in light of the time it takes foreclosures to reach a conclusion. *Hearing on AB 204 Before Assemb. Comm. on the Judiciary, 75th Leg.* p. 34 (2009) (statement of Assemb. Ellen Spiegel).

[3] *Report of the Joint Editorial Board for Uniform Real Property Acts: The Six Month "Limited Priority Lien" for Association Fees Under the Uniform Common Interest Ownership Act* (JEB Report June 1, 2013).

[4] Casey Perkins, *Privatopia in Distress: The Impact of the Foreclosure Crisis on Homeowners' Associations*, 10 Nev. L.J. 561, 563 (2010).

60,000 million Americans live in over 300,000 association-governed communities in the United States." *Id.* Rapid growth cities, such as Las Vegas, have seen an exponential increase in HOAs primarily due to two driving factors: 1) consumer demand; and 2) so-called "load-shedding." *Id.*

Increasingly, consumers are purchasing homes in common-interest communities governed by HOAs with the express desire to live in a maintained neighborhood with private amenities that help maintain property values. Municipalities encourage the construction of common-interest communities because HOAs help bear the cost of maintaining common-areas and neighborhood aesthetics which would otherwise be borne by the overall tax base. Thus, a municipality increases its tax base while simultaneously "load-shedding" the accompanying facilities and services costs onto the developer and the HOA. *Id.* at 564.

C. Nevada's Public Policy of Real Property Foreclosures

Adopted in 2009, Nevada's Foreclosure Mediation Program (FMP) was enacted to encourage deed of trust beneficiaries and homeowners to exchange information and negotiate possible debt restructuring to avoid both judicial and non-judicial foreclosure. FMR Rule 1(2) & 8(1); NRS 40.437. The program's enactment began with Assembly Bill 149 (A.B. 149).[5] The primary sponsor of A.B. 149, Assemblywoman Barbara Buckley, commented that the purpose of this program is to "make foreclosure a remedy of last resort." *Id.* The program's broad swath applies to any grantor or person who holds title of record and is the owner-occupant of a residence. FMR Rule 7(1). Any trustee or person presenting a notice of default and election to sell must notice the grantor/homeowner of the default and provide an "Election of Mediation" allowing the grantor/homeowner to opt into the program within ten (10) days'. FMR 8(1). Prior to a trustee's sale being conducted, a mediator's certificate must issue. FMR Rule 7(3). Thus, each lender or

[5] *Foreclosure Mediation Program: Joint Meeting on A.B. 149 Before the Assemb. & Senate Comm. on Commerce & Labor* 2009 Leg. 75th Sess. (Nev. 2009) (statement by Assemb. Barbara Buckley).

beneficiary seeking to foreclose must first comply with the requirements of the program. FMR Rule 7(1). HOAs do not.

Nevada's Foreclosure Mediation Program is not the only protection afforded to homeowners facing foreclosure. In 2013, the Seventy-Seventh (77th) regular session of the Nevada Legislature enacted NRS 107.400 *et seq.*, Nevada's Homeowner's Bill of Rights. This section was enacted as additional consumer protection in response to the mortgage foreclosure crisis. *See* S.B. 321, 77th Leg., Reg. Sess. (Nev. 2013). At its core, S.B. 321, now NRS 107.400 *et seq.*, requires large lending institutions seeking either judicial or non-judicial foreclosure in which a notice of default and election to sell is recorded on or after October 1, 2013, to provide certain information to the borrower concerning the borrower's account, the foreclosure prevention alternatives offered by the mortgage servicer, mortgagee or beneficiary and a statement of facts supporting the right of the mortgagee or beneficiary to foreclose. *Id.* Moreover, homeowners may elect to seek mediation under the FMP. NRS 40.437(1)(a)(3). HOAs are not subject to the Homeowner's Bill of Rights or the Foreclosure Mediation Program.

D. Analysis

The facts here are not in dispute; these issues boil down to statutory interpretation. In Nevada, "words in a statute should be given their plain meaning unless this violates the spirit of the act." *V & S Ry. LLC v. White Pine Cnty.*, 125 Nev. 233, 239, 211 P.3d 879, 882 (2009) (citing *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986)). Further, a statute should not be read in a manner that renders a part of a statute meaningless or produces an absurd or unreasonable result. *Id.*; *see also, Sheriff, Clark Cnty. v. Burcham*, 124 Nev. 1247, 1253, 198 P.3d 326, 329 (2008). Therefore, where the legislative intent is clear, the court must effectuate that intent. However, statutory construction should always avoid an absurd result.

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A court should apply a statute as written unless "doing so would frustrate [the Legislature's] clear intention or yield patent absurdity." *Hubbard v. United States*, 514 U.S. 695, 703 (1995). The absurdity doctrine is an exception to the plain meaning rule. *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892). Nevada has adopted the absurdity doctrine. *See V & S Ry. LLC*, 125, Nev. at 239, *and see Cote H. v. Eighth Judicial Dist. Court ex. Rel. County of Clark*, 124 Nev. 36, 175 P.3d 906 (2008). "A 'statutory outcome is absurd if it defies rationality' by 'render[ing] a statute nonsensical or superfluous' or if it creates 'an outcome so contrary to perceived social values that [the Legislature] could not have intended it.'" *United States v. Cook*, 594 F.3d 883, 891 (D.C. Cir. 2010) (internal quotations omitted).

Defendants argue that by allowing a first deed of trust to be extinguished by an HOA's assessment, renders nugatory NRS 116.3116(2)(b)'s exception to liens taking priority over the first deed of trust. However, the language of NRS 116.3116(2)(c) is clear: up to nine months of the assessment shall be "prior to all security interests described in paragraph (b)," thereby creating a super priority for up to nine months of assessments over the first deed of trust. NRS 116.3116(2)(c). Thus, subsection (2)(c) is an exception to the exception.

A fundamental principle of property law is that the foreclosure of a senior encumbrance extinguishes all junior encumbrances. *Erickson Const. Co. v. Nevada Nat. Bank*, 89 Nev. 350, 353, 513 P.2d 1236, 1238 (1973). As applied, NRS 116.3116(2)(c) subordinates the first deed of trust to nine months of the HOA's assessment, extinguishing the first deed of trust upon foreclosure.

Although a literal reading of NRS 116.3116(2)(c) gives nine months of an HOAs assessments a super priority position, senior to a first-in-time deed of trust, application of the statute in this manner creates an absurd result by allowing an HOA to expedite foreclosure, eject the homeowners, engage relaxed notice

requirements and extinguish the first deed of trust. This is expressly contrary to Nevada's public policy regarding foreclosures.

In both 2009 and 2013, the Nevada Legislature announced that home retention is Nevada's current public policy regarding real-estate foreclosures, thereby repealing previous public policies. By allowing an HOA to foreclose on a property already encumbered by a first deed of trust and subsequently extinguish the first deed of trust completely undermines Nevada's current public policy. HOAs are not on equal footing with lenders. HOAs are not subject to the Homeowner's Bill of Rights (as they will most likely never foreclose on more than 100 properties per year) or the Foreclosure Mediation Program. NRS 107.460, FMR Rule 7(1). Nor is an HOA subject to the heightened foreclosure requirements of NRS Chapter 40.

Allowing an assessment to take priority over a first-in-time deed of trust and extinguish that deed of trust upon foreclosure is patently inequitable. To hold otherwise would create an incentive for HOAs to foreclose on encumbered properties without notice unless requested[6] and eject the home owners without engaging the current protections afforded to homeowners under the FMP program and the Home Owner's Bill of Rights. Further, if NRS 116.3116(2)(c) permits foreclosure by an HOA and extinguishes the first-in-time deed of trust, a disincentive is created for lenders to issue loans to Nevada residents seeking to purchase property subject to an HOA. Plaintiff's current position furthers a policy to steer would-be homeowners away from properties governed by HOAs. This cannot be what the Nevada Legislature had in mind when it enacted NRS 116.3116.

Conclusion

This Court understands that HOAs provide a necessary service to rapid growth cities, such as Las Vegas. However, permitting an HOA foreclosure to extinguish the first deed of trust creates a disincentive for lending institutions to

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[6] *See* NRS 116.31163, NRS 116.31165.

lend in Nevada, materially hampering the HOA, Nevada's real-estate economy and all other would-be Nevada home owners seeking to purchase property subject to an HOA. Reading NRS 116.3116(2)(c) as a payment schedule avoids this absurd result and comports with Nevada's current public policy. This conclusion strikes the appropriate balance by providing HOAs the first cut of any monies recovered after sale while also providing protections to the homeowner trying to retain their home. As this issue is dispositive, the Court declines to consider the remaining arguments.

Based on the foregoing, the first deed of trust was not extinguished at the HOA's trustee sale and Defendants' Motion to Dismiss is **GRANTED** as to Defendants Jurani, Greater Nevada Mortgage Services, Greater Nevada, LLC, and the Federal National Mortgage Association. As this *Motion* is dispositive of the case, the remaining motions for summary judgment are **DENIED** as moot.

IT IS FURTHER ORDERED that the status hearing currently set for January 17, 2014, at 10:00 a.m. is hereby vacated.

DATED this 13 day of January, 2014.

Patrick Flanagan
PATRICK FLANAGAN
District Judge

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 13 day of January, 2014, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Marilyn Fine, Esq. and Rachel Donn, Esq. for Thunder Properties, Inc.;

Douglas Gerrard, Esq. for Greater Nevada Mortgage Services, et al.; and

Jory Garabedian, Esq. for Paterno Jurani

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Kathryn Lisso
Judicial Assistant

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CLERK OF THE COURT

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MBBW File No. 13-L0121

Attorneys for Plaintiff
GREEN TREE SERVICING LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

GREEN TREE SERVICING LLC,

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-12-669570-C
Dept. No.: XIII

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

In this action, after review and consideration of GREEN TREE SERVICING LLC's (hereinafter "GREEN TREE") Motion for Summary Judgment, and no opposition having been filed and served after proper service of said Motion and Notice of Hearing, the Court hereby finds as follows:

UNDISPUTED FACTS

1. The instant action concerns the reformation of a first Deed of Trust to correct the legal description therein and to declare the first Deed of Trust a valid lien on that real property

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located at 3111 Bel Air Drive, Unit 24-G, Las Vegas, NV 89109 (hereinafter the "Subject Property).

2. The Subject Property has the following 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. 220126 AND MAY 10, 1973, 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.

3. On or about October 8, 2002, MICHAEL T. ELLIOTT ("ELLIOTT") and his wife Regan Dawn Elliott, purchased and acquired title to the Subject Property as community property with rights of survivorship by way of a "Grant, Bargain, Sale Deed."

4. On or about October 9, 2003, Regan Dawn Elliott conveyed her interest in the Subject Property to ELLIOTT by way of a Grant Deed.

5. Shortly before, on or around October 2, 2003, ELLIOTT took out a mortgage loan with Washington Mutual Bank, F.A. for $315,000.00. The loan was secured by a deed of trust (hereinafter the "WMB Deed of Trust") and recorded against the Subject Property.

6. The WMB Deed of Trust was intended to be a first security interest in senior position against the Subject Property.

7. On or about October 6, 2004, ELLIOTT took out a mortgage loan with Bank of America, N.A. ("BANA") for $322,100.00 to refinance the WMB Deed of Trust and associated loan. The loan is secured by a deed of trust and was recorded against the Subject Property on October 20, 2004 in the Office of the Clark County Recorder as document/instrument 20041020-0001569. (hereinafter the "Deed of Trust").

8. The Deed of Trust contains the Subject Property's common address and the assessor's parcel number ("APN") and was recorded and indexed with the Clark County Recorder under the Subject Property's APN with ELLIOTT as grantor and BANA as grantee.

9. However, the Deed of Trust does not contain the legal description of the Subject Property.

10. When the mortgage loan associated with the Deed of Trust was funded, a HUD Settlement Statement was executed by ELLIOTT listing the Subject Property address and further directing $313,615.59 of the loaned funds to be distributed to Washington Mutual to satisfy the WMB Deed of Trust.

11. The WMB Deed of Trust was paid off and on or around October 23, 2004, and a Substitution of Trustee and Full Reconveyance of the WMB Deed of Trust was executed and recorded by Washington Mutual.

12. On or around June 21, 2012, Defendant LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNERS ASSOCIATION, INC. (hereinafter "LVIC") caused to be recorded a Notice of Claim of Lien-Delinquent Homeowners Assessment in the amount of $4,366.00, which purports to encumber the Subject Property.

13. On or around July 25, 2012, LVIC caused to be recorded a Notice of Default and Election to Sell as to the June 21, 2012 Notice of Claim of Lien-Delinquent Homeowners Assessment.

14. On October 3, 2012, GREEN TREE's predecessor BANA, commenced the instant action seeking among other things to reform the Deed of Trust to include the correct legal description of the Subject Property, and further to declare the Deed of Trust as a first security interest with priority over defendants REGENCY and LVIC's lien interests on the Subject Property.

15. On October 10, 2012, counsel for BANA and GREEN TREE recorded a Notice of Lis Pendens of the instant action.

16. On November 15, 2012, LVIC caused to be recorded a Notice of Trustee Sale concerning its Notice of Claim of Lien-Delinquent Homeowners Assessment.

17. The Notice of Trustee Sale states that the Subject Property is being sold subject to a first security interest on the Subject Property.

18. On December 7, 2012, counsel for BANA contacted LVIC's foreclosure trustee/agent Collections of America, Inc. for any super-priority amounts that might have had priority over the Deed of Trust; however, no such amounts were provided or claimed to be part of the Notice of Claim of Lien-Delinquent Homeowners Assessment.

19. On December 17, 2012, a Trustee's Deed Upon Sale Nevada was recorded wherein LVIC through its trustee/agent Collections of America, Inc. purportedly sold and conveyed, without warranty, the Subject Property to 3111 Bel Air Drive 24G Trust (hereinafter the "Bel Air Trust") for $7,001.00 to satisfy the Notice of Claim of Lien-Delinquent Homeowners Assessment.

20. On April 26, 2013, a Quitclaim Deed was recorded wherein the Bel Air Trust conveyed the Subject Property for zero consideration to LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G (hereinafter "LN MANAGEMENT").

21. On May 7, 2013, a Stipulation and Order Regarding the Status of LVIC was filed and entered wherein LVIC expressly acknowledged that it did not have, or foreclose on, a super-priority lien, and that the foreclosure sale did not affect the or extinguish the Deed of Trust.

22. On May 17, 2013, LN MANAGEMENT filed a complaint in a separate action which sought to, among other things, quiet or vest title to the Subject Property in LN MANAGEMENT free and clear of all claims of BANA and its successor GREEN TREE as a result of LVIC's foreclosure sale.

23. On October 29, 2013, this Court consolidated the two cases into the prior case initially filed by BANA.

24. On January 23, 2014, a Stipulation and Order was entered in this Court wherein GREEN TREE was substituted in for BANA[1].

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[1] A Stipulation and Order Regarding Status of REGENCY TOWERS ASSOCIATION, INC. was also entered on December 26, 2012, which also acknowledged BANA's first lien rights. Factual background concerning REGENCY TOWERS ASSOCIATION, INC. is omitted since it did not foreclosure on the Subject Property and agreed to be bound by a final non-monetary order or judgment in this matter. Further, it appears from the public records that it has subsequently released its Delinquent Assessment Lien from record.

LEGAL DETERMINATIONS

THE COURT FINDS that no opposition was filed or served to contest the aforesaid undisputed facts, or the legal arguments asserted by GREEN TREE in the Motion for Summary Judgment, and on that basis, grants GREEN TREE's Motion for Summary Judgment pursuant to EDCR 2.20(e) and EDCR 2.23(c).

THE COURT FURTHER FINDS that good cause exists to reform the Deed of Trust under the doctrine of mutual mistake to correct and include the legal description as set forth in paragraph 2 above.

THE COURT FURTHER FINDS that good cause exists to support GREEN TREE's statutory interpretation of NRS 116.3116 that a super-priority interest is a mere payment priority and not a separate lien that operates to eliminate a first deed of trust/security interest. Such interpretation avoids absurd results, is supported by Nevada's legislative history, is read in harmony with other NRS 116 provisions, and avoids offending due process.

THE COURT FURTHER FINDS that good cause appearing, LVIC did not have or claim to have had a super-priority interest within its foreclosed lien and that LN MANAGEMENT had constructive notice of the lack of super-priority interest through LVIC's Notice of Sale. Further, LN MANAGEMENT took title with a recorded Lis Pendens and its title is subject to the outcome of this matter.

NOW WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that GREEN TREE's Motion for Summary Judgment is GRANTED in its entirety and this shall be a final order/judgment in this matter including case number A-13-682055-C.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Deed of Trust is hereby reformed to include the correct legal description of the Subject Property as set forth in paragraph 2 of the Undisputed Facts above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Deed of Trust remains a valid first security interest and lien on the Subject Property despite LVIC's foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that any title or interest in the Subject Property acquired by LN MANAGEMENT, including its predecessors and successors, is subject to the Deed of Trust.

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: Oct 8, 2014

DISTRICT COURT JUDGE

Respectfully submitted by:

MILES, BAUER, BERGSTROM &
WINTERS, LLP

Jory C. Garabedian, Esq.
Nevada Bar No. 10352
2200 Paseo Verde Pkwy., Ste. 250
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Attorney for Green Tree Servicing LLC

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CLERK OF THE COURT

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Attorney for LN Management LLC Series 3111 Bel Air 24G

EIGHTH JUDICIAL DISTRICT COURT FOR

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-12-669570-C Dept. No.: XIII Consolidated with Case No. A-13-682055-C **LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G'S MOTION TO SET ASIDE SUMMARY JUDGMENT ENTERED AUGUST 12, 2014**

COMES NOW, LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G, by and through its attorney, Kerry P. Faughnan, Esq., and files this Motion to Set Aside Summary Judgment entered August 12, 2014. This pleading is based upon the papers and pleadings on file and any evidence or argument heard at the time of hearing on this matter.

DATED September 3, 2014.

/s/Kerry P. Faughnan
Kerry P. Faughnan, Esq.

NOTICE OF MOTION

TO: All Interested Parties and their Respective Counsels of Record, Plaintiff;

YOU AND EACH OF YOU WILL PLEASE TAKE NOTE that the undersigned will bring LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G'S MOTION TO SET ASIDE SUMMARY JUDGMENT ENTERED AUGUST 12, 2014 on for hearing before the Court at the courtroom of the above-entitled Court located at 200 Lewis Ave., Las Vegas, NV 89155 on the 6 day of Oct., 2014, at 9:00a.m. of said day, in Department 13 of said Court.

DATED September 3, 2014.

/s/Kerry P. Faughnan
Kerry P. Faughnan, Esq.

POINTS AND AUTHORITIES
BACKGROUND

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").

On or about April 26, 2013, LN Management LLC Series 3111 Bel Air 24G ("LN") 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. 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.

LN was 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.

LN filed an action in the Eighth Judicial District Court on May 17, 2013, (Case No. A-13-682055-C) claiming Quiet Title and Declaratory Relief against all parties with potential equitable interest in the Property.

On September 9, 2013, Plaintiffs filed a Motion to Consolidate LN's case with the instant case.

LN filed an Opposition on September 30, 2013.

The Court granted Plaintiff's Motion on October 21, 2013.

On June 19, 2014, Plaintiff, Green Tree Servicing LLC filed a Motion for Summary Judgment and subsequently served the same on June 20, 2014 via USPS mail.

Due to an inadvertent calendaring error on the part of Counsel for LN, an Opposition was never filed and the Court granted Green Tree's Motion o July 17, 2014 by minute order.

LN attempted to reach a stipulated agreement with Green Tree to set aside the Summary Judgment Order but was unsuccessful and filed the instant Motion.

LEGAL ARGUMENT

The Court may set aside a judgment for good cause showing in Nevada pursuant to NRCP 60(b).

NRCP 60(b) states:

> **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) **mistake, inadvertence, surprise, or excusable neglect**; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application. **The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served.** A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. [Emphasis added]

There is longstanding Nevada public policy of "resolving cases on their merits wherever possible" Yochum v. Davis, 653 P.2d 1215, 98 Nev. 484 (Nev., 1982). Judgment against LN based on Counsel's's excusable neglect would deny LN a resolution based on the merits thus violating this policy.

Under NRCP 60(b)(1) a judgment may be set aside based upon excusable neglect. The Nevada Supreme Court has held that the following factors must be met to warrant setting aside a judgment; "(1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith." Id. at 1217.

In the instant case, when LN became aware of the Order Granting Summary Judgment on July 23, 2014, Counsel immediately contacted Green Tree's Counsel to attempt to reach a stipulated agreement to set the summary judgment aside. When Counsel were unable to reach an agreement, this application was promptly prepared and filed. NRCP 60(b)(1) requires that in the case of excusable neglect, a motion to set aside a judgment be commenced within 6 months. Within days of being notified of the July 17, 2014 decision, LN took action to set aside it thus satisfying the "promptness" requirement.

As to Intent to Delay, LN does not file this motion with the intent of delaying these proceedings. LN would like these issues decided as quickly as possible because until they are decided LN is not able to secure title insurance on the property.

As to the element of Lack of Knowledge, LN inadvertently scheduled the Opposition due date for 2015 instead of 2014. Had LN had knowledge of this calendaring error, LN would have immediately remedied the error, and contacted opposing counsel and the Court if necessary.

As to the Good Faith requirement, there is no evidence that LN has acted in bad faith. Evidence shows that at all times, LN has acted in good faith and this motion is a good faith attempt to have the summary judgment set aside so that the case may be decided on the merits.

Based upon the foregoing facts, LN respectfully requests that the summary judgment entered by this Court on July 17, 2014 be set aside and the matter be placed back on the calendar and LN be allowed time to file an Opposition to Plaintiff's Motion for Summary Judgment.

CONCLUSION

Nevada has a longstanding policy of deciding cases upon the merits. Allowing this Summary Judgment to stand would violate that policy. LN has shown that the failure to file an Opposition was a result of excusable error. Again, Counsel for LN believes that but for the calendaring error, he would have timely filed an Opposition to Green Tree's Motion for Summary Judgment. This delay was not a result of bad faith or any other dilatory reason. LN's failure to file an Opposition was based on excusable neglect which is what NRCP 60 was designed to address and to allow summary judgment to stand would prejudice LN by denying them a resolution based upon the merits. LN desires to have this case proceed expeditiously and respectfully requests only that this Court grant its motion and set aside summary judgment and place Plaintiff's Motion back on calendar and allow LN an opportunity to file an Opposition.

DATED September 3, 2014.

/s/Kerry P. Faughnan_____
Kerry P. Faughnan, Esq.
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(702) 301-3096
(702) 331-4222- Fax
Kerry.faughnan@gmail.com
Attorney for LN Management LLC Series 3111 Bel Air 24G

CERTIFICATE OF SERVICE

I certify that on September 3, 2014**,** I served the foregoing notice by placing a copy of it in the U.S. Mail, postage paid, to the following interested parties:

Jory C. Garabedian, Esq.
MILES, BAUER, BERGSTROM & WINTERS, LLP
2200 Paseo Verde Parkway, Suite 250
Henderson, Nevada 89052
Attorneys for Green Tree Servicing LLC

Gregory P. Kerr, Esq.
WOLF RIFKIN SHAPIRO SCHULMAN RABKIN, LLP
3556 East Russell Road, Second Floor
Las Vegas, Nevada 89120
Attorney for Regency Towers Association, Inc.

Michael R. Mushkin, Esq.
MICHAEL R. MUSHKIN & ASSOCIATES
4475 S. Pecos Rd.
Las Vegas, Nevada 89121
Attorney for Las Vegas International Country Club Estates Homeowners Association, Inc.

Dated September 3, 2014.

s/ Kerry P. Faughnan
Kerry P. Faughnan, Esq.

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CLERK OF THE COURT

ORDR
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Kerry.faughnan@gmail.com

Attorney for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT FOR

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-12-669570-C

Dept. No.: XIII

Consolidated with Case No. A-13-682055-C

ORDER GRANTING PLAINTIFF'S MOTION TO SET ASIDE SUMMARY JUDGMENT

This matter having come before this Court on September 9, 2014 on an Order Shortening Time to hear Plaintiff, LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G's Motion to Set Aside Summary Judgment entered August 12, 2014; Plaintiff appearing by and through their attorney, Kerry P, Faughnan, Esq. and Defendant, Green Tree Servicing LLC, appearing by and though their attorney, Jory C. Garabedian, Esq., of the Law Firm Miles, Bauer, Bergstrom & Winters LLP; The Court having examined all documents and pleadings on file herein, having heard arguments of the parties, and the Court being fully advised in the premises, orders;

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DISTRICT COURT DEPT# 13

IT IS HEREBY ORDERED that Plaintiff's Motion to Set Aside Summary Judgment entered August 12, 2014 is GRANTED.

IT IS FURTHER ORDERED that Plaintiff shall file and serve an Opposition to Defendant's Motion for Summary Judgment on Defendant by September 19, 2014 at 5:00pm.

IT IS FURTHER ORDERED that Defendant shall file and serve a Reply by September 26, 2014 at 5:00pm.

IT IS FURTHER ORDERED that a hearing on Defendant's Motion for Summary Judgment shall be held on October 2, 2014 at 9:00 a.m. in Department 13.

DATED this 23rd day of September, 2013.

DISTRICT COURT JUDGE

T.K.

Respectfully submitted by:

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Attorney for Plaintiff

Approved as to Form and Content:

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Attorneys for Green Tree Servicing LLC

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EIGHTH JUDICIAL DISTRICT COURT FOR

CLARK COUNTY, NEVADA

BANK OF AMERICA, N.A., Plaintiff, v. 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, Defendants.	Case No. A-12-669570-C Consolidated with A-13-682055-C Dept. No. 14 **NOTICE OF ENTRY OF ORDER**

TO: ALL PARTIES

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order Granting Plaintiff LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment was entered September 24, 2014, a copy of which is attached hereto.

DATED September 25, 2014

/s/ Kerry P. Faughnan
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Kerry.faughnan@gmail.com

Attorney for LN Management LLC Series 3111 Bel Air

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2014, and pursuant to NRCP 5, I let the court's electronic system send a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER, addressed to:

Joy C. Garabedian, Esq.
MILES, BAUER, BERGSTROM & WINTERS, LLP
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Attorney for Bank of America

Gregory Kerr, Esq.
N. Miller, Esq.
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Attorney for Regency Towers Association, Inc.

Michael R. Mushkin, Esq.
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Attorney for Las Vegas International Country Club Estates Homeowners Assoc., Inc.

DATED September 25, 2014

/s/ Kerry P. Faughnan
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CLERK OF THE COURT

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Attorney for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT FOR

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-12-669570-C

Dept. No.: XIII

Consolidated with Case No. A-13-682055-C

ORDER GRANTING PLAINTIFF'S MOTION TO SET ASIDE SUMMARY JUDGMENT

This matter having come before this Court on September 9, 2014 on an Order Shortening Time to hear Plaintiff, LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G's Motion to Set Aside Summary Judgment entered August 12, 2014; Plaintiff appearing by and through their attorney, Kerry P, Faughnan, Esq. and Defendant, Green Tree Servicing LLC, appearing by and though their attorney, Jory C. Garabedian, Esq., of the Law Firm Miles, Bauer, Bergstrom & Winters LLP; The Court having examined all documents and pleadings on file herein, having heard arguments of the parties, and the Court being fully advised in the premises, orders;

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DISTRICT COURT DEPT# 13

IT IS HEREBY ORDERED that Plaintiff's Motion to Set Aside Summary Judgment entered August 12, 2014 is GRANTED.

IT IS FURTHER ORDERED that Plaintiff shall file and serve an Opposition to Defendant's Motion for Summary Judgment on Defendant by September 19, 2014 at 5:00pm.

IT IS FURTHER ORDERED that Defendant shall file and serve a Reply by September 26, 2014 at 5:00pm.

IT IS FURTHER ORDERED that a hearing on Defendant's Motion for Summary Judgment shall be held on October 2, 2014 at 9:00 a.m. in Department 13.

DATED this 23rd day of September, 2013.

DISTRICT COURT JUDGE

T.F.

Respectfully submitted by:

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Attorneys for Green Tree Servicing LLC

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Steven D. Grierson
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Attorney for LN Management LLC Series 3111 Bel Air 24G

EIGHTH JUDICIAL DISTRICT COURT FOR

CLARK COUNTY, NEVADA

GREEN TREE SERVICING LLC, Plaintiff, Vs. MICHAEL T. ELLIOT, LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNER ASSOCIATION, REGENCY TOWERS ASSOCIATION, INC., DOES I – X, Defendants. --- LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G Plaintiff, v. MICHAEL T. ELLIOT, an individual, GREEN TREE SERVICING LLC, DOES 1 through 10, inclusive; Defendants.	Case No.: A-12-669570-C Dept. No. XIII Consolidated with: Case No. A-13-682055-C Dept. No. XIII **LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G'S MOTION FOR SUMMARY JUDGMENT AGAINST GREEN TREE SERVICING LLC**

Comes now LN Management LLC Series 3111 Bel Air 24G, by and through its attorney, who moves for summary judgment against Green Tree Servicing LLC ("Green Tree") declaring LN Management LLC Series 3111 Bel Air 24G the rightful holder of title to certain real property, commonly described as the real property located at 3111 Bel Air Drive #24G, Las Vegas, NV

89109, Parcel No. 162-10-812-185 (the "Property") and forever enjoining Bank of America, N.A. from claiming any estate, right, title, or interest in the Property.

This motion is made is made pursuant to N.R.C.P. 56 based on attached points and authorities, the exhibits and affidavit of Iyad Haddad and Kerry P. Faughnan, Esq. attached hereto, the papers and pleadings on file herein, and any arguments the court may consider at the hearing upon the matter.

Dated July 27, 2018.

/s/Kerry P. Faughnan
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Kerry.faughnan@gmail.com
Attorney for LN Management LLC
Series 3111 Bel Air 24G

NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for hearing in Dept. 13 on August 27, 2018, at 9:00AM, or as soon thereafter as counsel may be heard.

Dated July 27, 2018.

/s/Kerry P. Faughnan
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P.O. Box 335361
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Kerry.faughnan@gmail.com
Attorney for LN Management LLC
Series 3111 Bel Air 24G

POINTS AND AUTHORITIES

I. INTRODUCTION

This is an action to quiet title to real property after a homeowners association foreclosure auction. 3111 Bel Air Drive 24G Trust was the winning bidder at the auction, subsequently taking possession of the unoccupied property upon the December 17, 2012 recording of a Trustee's Deed Upon Sale in its favor. 3111 Bel Air Drive 24G Trust subsequently Quitclaimed the property to LN Management LLC Series 3111 Bel Air 24G without consideration, and since that time, LN Management LLC Series 3111 Bel Air 24G has maintained possession of the property to the present.

II. STATEMENT OF FACTS

On or about October 8, 2002, Michael T. Elliot and his wife Regan Dawn Elliot purchased the real property located at 3111 Bel Air Drive #24G, Las Vegas, NV 89109, Parcel No. 162-10-812-185 (the "Property"). **Exhibit 1-A**. On October 16, 2003, Regan Dawn Elliot deeded her interest to Michael T. Elliot, as his sole and separate property. **Exhibit 1-B**. On October 20, 2004, Michael T. Elliot gave a Deed of Trust to Bank of America in the amount of $322,100.00, **Exhibit 1-C**, which was subsequently assigned to Green Tree Loan Servicing July 30, 2013. **Exhibit 1-D,** who then substituted in place of Bank of America pursuant to the stipulation and order entered January 23, 2014**. Exhibit 1-E**. Affidavit of Kerry P. Faughnan, Esq., **Exhibit 8.**

On June 21, 2012, the Las Vegas International Country Club Estates Association (the "Association") recorded a Notice of Delinquent Assessment Lien against the Property with the Clark County Recorder as Instrument Number 20120621-0001804. See Notice of Delinquent Assessments, attached as **Exhibit 2**, Affidavit of Kerry P. Faughnan, Esq., **Exhibit 8.**

On July 25, 2012, the Association recorded a Notice of Default and Intent to Sell against the Property with the Clark County Recorder as Instrument Number 20120725-0002134. See Notice of Default attached as **Exhibit 3,** Affidavit of Kerry P. Faughnan, Esq., **Exhibit 8.**

On November 15, 2012, the Association recorded a Notice of Trustee Sale against the Property with the Clark County Recorder as Instrument Number 20121115-0002365. See Notice of Sale attached as **Exhibit 4,** Affidavit of Kerry P. Faughnan, Esq., **Exhibit 8.**

On December 12, 2012, the Association foreclosed on its lien for delinquent assessments. LN Management, LLC was the highest bidder at the foreclosure sale auction, bidding $7,001.00, and the resulting foreclosure deed Plaintiff received was recorded on December 17, 2012 with the Clark County Recorder as Instrument Number 20121217-0000834. See Trustee's Deed Upon Sale attached as **Exhibit 5-A**. 3111 Bel Air Drive 24G Trust was the winning bidder at the auction, who subsequently Quitclaimed the property to LN Management LLC Series 3111 Bel Air 24G **Exhibit 5-B**. Affidavit of Iyad Haddad, **Exhibit 6,** Affidavit of Kerry P. Faughnan, Esq., **Exhibit 8.**

Upon the recording of the Trustee's Deed upon Sale, possession was taken of the unoccupied Property and possession has been maintained to the present. Affidavit of Iyad Haddad, **Exhibit 6**.

On May 17, 2013, LN Management LLC Series 3111 Bel Air 24G commenced this action for quiet title and declaratory relief against Michael T. Elliot and Bank of America, N.A., Court Record, May 17, 2013 Complaint, in addition to filing and recording a notice of lis pendens. See Lis Penden, **Exhibit 9**. Affidavit of Kerry P. Faughnan, Esq., **Exhibit 8.**

Default Judgment was entered against Michael T. Elliot on December 23, 2014. **Exhibit 7,** Affidavit of Kerry P. Faughnan, Esq., **Exhibit 8.**

III. LEGAL ARGUMENT

Summary judgment is appropriate where no genuine issue of fact remains for trial and one party is entitled to judgment as a matter of law. NRCP 56. Shapro v. Forsythe, 103 Nev. 666, 747 P.2d 241 (1987). Under Rule 56 of the Nevada Rules of Civil Procedure, a motion for summary judgment should only be granted "when the pleadings and other evidence on file demonstrate that

no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" Wood v. Safeway, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); see also Nev. R. Civ. P.56(c). Whether the facts in dispute are material depends on the underlying substantive law, and includes only those factual disputes that could change the ultimate outcome of a case. Wood, 121Nev. at 729, 121 P.3d at 1029. In evaluating a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See Torrealba v. Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008).

Pursuant to NRS 116.3116(5), an association has a lien on a unit that is perfected at the time the association recorded its declaration of CC&Rs.

An association may foreclose upon its lien upon due notice to the owner of a unit as required pursuant to NRS 116.31162 – 116.31168, inclusive. NRS 116.31162. SFR Investments Pool v. U.S. Bank, 130 Nev. Adv Op. 75, 334 P.3d 408 (2014).

As a matter of law, a first deed of trust is extinguished at a homeowner association foreclosure sale when the first deed of trust does not protect itself by tendering the super priority portion of the HOA's lien in advance of the foreclosure sale. NRS 116.3116. SFR.

3111 Bel Air Drive 24G Trust acquired the property when the Association foreclosed on its lien for delinquent assessments. Trustee's Deed Upon Sale, **Exhibit 5-A,** and 3111 Bel Air Drive 24G Trust subsequently Quitclaimed the property to LN Management LLC Series 3111 Bel Air 24G. **Exhibit 5-B.**

The Trustee's Deed Upon Sale states: "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 sell, and

the mailing, posting, and publication of the Notice of Sale have been complied with." Trustee's Deed Upon Sale, **Exhibit 5-A**.

Pursuant to NRS 116.31166, such recitals in the Association foreclosure deed are "conclusive proof of the matters recited," and the deed "is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons." Accordingly, the Trustee's Deed Upon Sale vested title in Plaintiff, and Defendant is "without equity or right of redemption." NRS 116.31166(3).

"A plea to quiet title does not require any particular elements, but "each party must plead and prove his or her own claim to the property in question" . . . " Chapman v. Deutsche Nat'l Trust Co., __ P.3d __, 129 Nev. Adv. Op. 34 at 5 (Nev. May 30, 2013).

The purpose of a quiet title action is to determine superiority of title in property. Chapman. This action is against the real estate, not any specific party, with the opportunity for all claimants known and unknown to make a claim against the real estate.

When filing an action to quiet title, a party must file and record with the count recorder of the county where the property is situated, a notice of pendency of action. NRS 14.010. Lis Pendens, **Exhibit 9**. Affidavit of Kerry P. Faughnan, Esq., **Exhibit 8.**

LN Management LLC Series 3111 Bel Air 24G has complied with the requirements to bring a quiet title action, and has established its claim to legal title of the Property through purchase of the Property at auction.

There is no evidence that Bank of America, Green Tree Servicing LLC's predecessor in interest, tendered the super-priority portion of the HOA's lien in advance of the HOA's foreclosure sale.

LN Management LLC Series 3111 Bel Air 24G is therefore entitled to a judgment that Green Tree Servicing LLC has no right, title or interest in the Property, and LN Management LLC Series 3111 Bel Air 24G is the legal owner of the Property.

EXHIBIT 1-A

EXHIBIT 1-A

20021017
.01112

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s) 163-10-812-185

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

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_____

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 [signature] Capacity Seller

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (Required)	BUYER (GRANTEE) INFORMATION (Required)
Print Name: Elizabeth Seibold	Print Name:
Address: 5770 Pueblo	Address:
City/State/Zip: Las Vegas, NV 89122	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)

Code 1112

200210 17
.01112

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s) 162-30-812-185

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

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_____

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 _____ Capacity _____
Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (Required)	BUYER (GRANTEE) INFORMATION (Required)
Print Name: _____	Print Name: Michael Tuchscher
Address: _____	Address: 3990 Fifth Ave, Suite 210
City/State/Zip: _____	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 #: 2020265-JF

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

pvi

1112

3

20021017
01112

Escrow No. 2020245-JF
APN No.: 162-10-812-185
R.P.T.T: $ 1,125.00

Grant, Bargain, Sale Deed

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

Elizabeth Seibold

STATE OF NEVADA
COUNTY OF CLARK
) ss:

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

NOTARY PUBLIC

NOTARY PUBLIC
County of Clark-State of Nevada
J. FITZWATER
No. 00-62591-1
My Appointment Expires Jun 1, 2004

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

MAIL TAX STATEMENTS TO:
Michael T. Elliot
See above

SPACE FOR RECORDER'S USE

Initials

20021017
.01112

Escrow No. 2020245-JF

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 10:30 ASH PAGE COUNT: 2
OFFICIAL RECORDS
BOOK/INSTR#20021017-01112 FEE: 13.00
RPTT: 1,125.00

EXHIBIT 1-B

EXHIBIT 1-B

20031016
01640

STATE OF NEVADA
DECLARATION OF VALUE

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

38

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

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_____

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. If Exemption Claimed
   a. Transfer Tax Exemption, per NRS 375.090, Section 5
   b. Explain Reason for Exemption: Release of Lien/Easement

5. Partial Interest: Percentage being transferred: 100 %

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

Pursuant to NRS 375.060 the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [signature] Signature Regan Dawn Elliott

Capacity Grantee Capacity Grantor

SELLER (GRANTOR) INFORMATION (Required)	BUYER (GRANTEE) INFORMATION (Required)
Print Name: Regan Dawn Elliott	Print Name: Michael T. Elliott
Address: 2440 Bel Air Dr	Address: 3111 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 #: 3510574-VT

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

1640 DVI

200310 16
.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

FEE: 15.00
RPTT: EXEMPT

38

RECORDING REQUESTED BY
Unified Title Company - Orange County

AND WHEN RECORDED MAIL TO:
Michael T. Elliott
P.O. Box 24
Rancho Santa Fe, CA 92067

Tax Statements TO:

Title Order No. 13828
Escrow No. 53005499-LW
035/0674 YS

Spac

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

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
City Transfer Tax is $.00
County Transfer Tax is $.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

Regan Dawn Elliott
Regan Dawn Elliott

STATE OF CALIFORNIA)ss
COUNTY OF San Diego)

On Oct. 9, 2003 before me
Scott William Deckard

Personally appeared Regan Dawn Elliott

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

SCOTT WILLIAM DECKARD
Commission # 1308185
Notary Public - California
Orange County
My Comm. Expires May 27, 2006

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.

EXHIBIT 1-C

EXHIBIT 1-C

20041020-0001569

Fee: $42.00
T/C Fee: $0.00

10/20/2004 12:32:56
F20041016980
Requestor:
BANK OF AMERICA

Frances Deane SUD
Clark County Recorder Pgs 29

Assessor's Parcel Number: 162108121E5

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

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

[Space Above This Line For Recording Data]

LOAN # 3300690454

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.

(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 901 GEORGE WASHINGTON, WICHITA, KS 67211-3901

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]:

[X] Adjustable Rate Rider	[X] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[X] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] 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.

Initials: _____

(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: [illegible] which currently has the address of

3111 BEL AIR DR UNIT 246 [Street]

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

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

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

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

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

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

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

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

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

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

Initials: _____

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

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

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

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

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

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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

entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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

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

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

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

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

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

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

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ 1% UPB, MIN $400, MAX $800

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

Witnesses:

_____ _____

_____ (Seal)
-Borrower

_____ _____

_____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

FWW 12/05/04 7:53 AM 3370692454

STATE OF NEVADA California
COUNTY OF San Diego

This instrument was acknowledged before me on October 6th 2004
by Jason Woodward
Michael T Elliott

JASON E. WOODWARD
Commission # 1400483
Notary Public - California
San Diego County
My Comm. Expires Feb 13, 2007

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

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 20030131, 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 246, 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:

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 percentage points (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.

(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.

#S899R -6101101 Page 5 of 6 AGNR 10/05/04 7:55 A# 330D630454

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

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 246
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

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

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

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

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

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

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

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

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

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

MICHAEL T ELLIOTT

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

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 AMER CA, 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 240, 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."

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.

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 P ELLIOTT

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

EXHIBIT 1-D

EXHIBIT 1-D

Recording Requested By:
Bank of America
Prepared By: **Julia Cortez**

When recorded mail to:
CoreLogic
Mail Stop: ASGN
1 CoreLogic Drive
Westlake, TX 76262-9823

DocID# **79587042543111415**
Tax ID: **16210812003**
Property Address:
3111 Bel Air Dr Unit 24G
Las Vegas, NV 89109-1507
NV0-ADT 24889029 5/20/2013 GT0430E

Inst #: 201307300000199
Fees: $18.00
N/C Fee: $25.00
07/30/2013 09:01:38 AM
Receipt #: 1712397
Requestor:
CORELOGIC
Recorded By: DHG Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

This space for Recorder's use

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is **1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063** does hereby grant, sell, assign, transfer and convey unto **GREEN TREE SERVICING LLC** whose address is **7360 S. KYRENE ROAD, TEMPE, AZ 85283** all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: **BANK OF AMERICA, N.A.**
Made By: **MICHAEL T. ELLIOTT, AN UNMARRIED PERSON**
Trustee: **PRLAP, INC.**
Date of Deed of Trust: **10/6/2004** Original Loan Amount: **$322,100.00**

Recorded in **Clark County, NV** on: **10/20/2004**, book **N/A**, page **N/A** and instrument number **20041020-0001569**

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on
MAY 20 2013

Bank of America, N.A.

By: _____
Martha R. Gallardo
Assistant Vice President

Description: Clark,NV Document-Year.Date.DocID 2013.730.199 Page: 1 of 2
Order: 2 Comment:

State of California
County of Los Angeles

On MAY 20 2013 before me, Rhonda E. Kaley, Notary Public, personally appeared Martha R. Gallardo, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

RHONDA E. KALEY
Commission # 1863505
Notary Public - California
Los Angeles County
My Comm. Expires Sep 29, 2013

Rhonda E. Kaley

Notary Public: Rhonda E. Kaley (Seal)
My Commission Expires: Sept. 29, 2013

DocID# 79587042543111415

Description: Clark,NV Document-Year.Date.DocID 2013.730.199 Page: 2 of 2
Order: 2 Comment:

EXHIBIT 1-E

EXHIBIT 1-E

Electronically Filed
01/23/2014 11:55:58 AM

CLERK OF THE COURT

SAO
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Henderson, NV 89052
(702) 369-5960 / FAX: (702) 382-9452
MBBW File No. 13-L0121

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-12-669570-C Dept. No.: XIII **STIPULATION AND ORDER**

BANK OF AMERICA, N.A., (hereinafter "BANA"), proposed substituted party GREEN TREE SERVICING LLC (hereinafter "GREEN TREE"), and LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G (hereinafter "LN MANAGEMENT"), by and through their respective attorneys of record hereby stipulate and agree as follows:

WHEREAS on October 3, 2012, the above-captioned action was commenced by BANA seeking in part to reform the legal description in a Deed of Trust recorded against the property

RECEIVED
JAN 15 2014
DISTRICT COURT DEPT# 13

3111 Bel Air Drive, Unit 24G, Las Vegas, Nevada 89109 (hereinafter the "Subject Property") and further seeking to establish a first position lien on the Subject Property.

WHEREAS, on December 12, 2012, BANA entered default against MICHAEL T. ELLIOTT in the above-captioned action.

WHEREAS, on December 26, 2012, a Stipulation and Order was entered in the above-captioned action by and between BANA and REGENCY TOWERS ASSOCIATION, INC. resolving the legal issues between them.

WHEREAS, on May 7, 2013, a Stipulation and Order was entered in the above-captioned action by and between BANA and LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNERS ASSOCIATION, INC. resolving the legal issues between them.

WHEREAS, on May 17, 2013, LN MANAGEMENT commenced a quiet title action against BANA and MICHAEL T. ELLIOTT in Department 14 of this District (Case No. A-13-682055-C) alleging that a foreclosure sale of the Subject Property by or through LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNERS ASSOCIATION, INC. eliminated or extinguished BANA's Deed of Trust.

WHEREAS, on July 30, 2013, an Assignment of Deed of Trust was recorded in the Office of the Clark County Recorder assigning BANA's interest in the Deed of Trust to GREEN TREE.

WHEREAS, neither BANA nor MICHAEL T. ELLIOTT have filed or served a response to LN MANAGEMENT's quiet title Complaint and a default was subsequently entered against BANA in the quiet title action on August 31, 2013.

WHEREAS, on October 30, 2013, Department 13 entered an Order consolidating LN MANAGEMENT's quiet title action into the above-captioned action.

NOW WHEREFORE, to facilitate moving this matter forward, IT IS HEREBY STIPULATED AND AGREED that LN MANAGEMENT shall have until January 31, 2014 to file an amended complaint concerning its quiet title and related claims to the Subject Property.

IT IS FURTHER STIPULATED AND AGREED that the default entered against BANA in LN MANAGEMENT's quiet title action shall be set aside.

IT IS FURTHER STIPULATED AND AGREED that GREEN TREE is hereby substituted in the place and stead of BANA.

IT IS SO STIPULATED AND AGREED.

DATED: 1/15/14

MILES, BAUER, BERGSTROM & WINTERS, LLP

Jory C. Garabedian, Esq.
Nevada Bar No. 10352
2200 Paseo Verde Parkway, Suite 250
Henderson, Nevada 89052
(702) 369-5960 / Fax (702) 942-0411
Attorneys for Bank of America, N.A. & Green Tree Servicing, LLC

DATED: 1/10/14

Kerry P. Faughnan, Esq.
Nevada Bar No. 12204
P.O. Box 335361
North Las Vegas, Nevada 89086
Attorney for LN Management LLC Series 311 Bel Air 24G

Based upon the foregoing stipulation, and good cause appearing, IT IS SO ORDERED.

Dated: January 22, 2014

DISTRICT COURT JUDGE

Exhibit 2

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

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5805-1

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

Description: Clark,NV Document-Year.Date.DocID 2012.621.1804 Page: 1 of 1
Order: 12850 Comment:

Exhibit 3

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

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

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:

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)

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5805-1

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

SIGNATURE Karen Ann Richards
(Notary Pubic)

Exhibit 4

Inst #: 201211150002365
Fees: $18.00
N/C Fee: $0.00
11/15/2012 01:20:15 PM
Receipt #: 1383773
Requestor:
COLLECTIONS OF AMERICA
Recorded By: SAO Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY &
when recorded return to:
Collections of America, Inc.
1500 East Tropicana Avenue #108
Las Vegas, NV. 89119
TS# 4936

APN#: 162-10-812-185

NOTICE OF TRUSTEE SALE

To: Michael T. Elliott

You are in default of your **Las Vegas International Country Club Estates** assessments. Unless you take action to protect your property, it may be sold at a public sale. If you need an explanation of the nature of the proceedings against you, you should contact a lawyer.

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE.

If YOU HAVE ANY QUESTIONS, PLEASE CALL CAROL SALMON OF COLLECTIONS OF AMERICA,(702-463-3285) ACTING ON BEHALF OF LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT THEIR TOLL FREE NUMBER (877-829-9907) IMMEDIATELY.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly authorized agent shown below, of all right, title, and interest, subject to any (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to; (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative; and (d) Any other liens deemed superior to the assessment lien that is being foreclosed. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the amount if delinquent assessment, with interest and late charges thereon, management fees, attorney's fees charges and cost of the sale for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

TRUSTOR: **Michael T. Elliott**

Description: Clark,NV Document-Year.Date.DocID 2012.1115.2365 Page: 1 of 2
Order: 12850 Comment:

Authorized Agent: **COLLECTIONS OF AMERICA**
Assessment Lien Recorded; **June 21, 2012**, Book 20120621 as Instrument No. 0001804 in the Official Records of the Office of the County Recorder of **CLARK** County, Nevada, described as follows: **PARCEL# 162-10-812-185 REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37 UNIT 185 SEC 10 TWP 21 RNG 61 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY NEVADA.**

Date of sale: **December 12, 2012** at 10:00 AM
Place of Sale: **At the front entrance to the Nevada Legal News located at 930 South 4th Street, Las Vegas, Nevada 89101.**
Amount necessary to satisfy lien as of **November 15, 2012** **$6,248.50**
Estimated Sale Amount:**$7,000.00**
Street Address or other common designation of real property: **3111 Bel Air Drive #24G Las Vegas, NV 89109**

The undersigned Authorized Agent disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above.

Date: **November 15, 2012**

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5805-1

COLLECTIONS OF AMERICA
1500 EAST TROPICANA AVENUE #108
LAS VEGAS, NV. 89119
(702) 463-3285

Amanda Olen
Collections of America

STATE OF NEVADA
COUNTY OF CLARK

SUBSCRIBED and **SWORN** to before me this 15 day of November 2012.

Notary Public in and for said State NV

Description: Clark,NV Document-Year.Date.DocID 2012.1115.2365 Page: 2 of 2
Order: 12850 Comment:

EXHIBIT 5-A

EXHIBIT 5-A

(3)-1

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

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.

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. 0002134in 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.

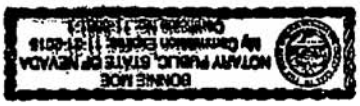
Dated: December 14, 2012

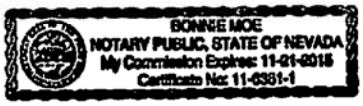
Collections of America, Inc. Trustee

BY: Carol Salmon

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

STATE OF NEVADA) ss
COUNTY OF CLARK)





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

On this 14th 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 Shea Capacity Grantor

Signature _____ Capacity Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Collections Of America	Print Name: 3111 Bel Air Drive # 246 Trust
Address: 1500 East Tropicana Ave #108	Address: 900 South Las Vegas Blvd #810
City, St., Zip: Las Vegas, NV 89119	City, St., Zip: Las Vegas, NV 89101

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

EXHIBIT 5-B

EXHIBIT 5-B

(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)

MICHELLE Y. FAUGHNAN
Notary Public-State of Nevada
APPT. NO. 11-5927-1
My App. Expires October 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)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: 3111 Bel Air Drive 24G Trust	Print Name: LN Management LLC, Series 3111 Bel Air 24G
Address: PO Box 36208	Address: PO Box 36208
City: Las Vegas	City: Las Vegas
State: NV Zip: 89133	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 6

DELCARATION OF IYAD HADDAD

IN SUPPORT OF APPLICATION FOR SUMMARY JUDGMENT

State of Nevada)

County of Clark) ss

I, Iyad Haddad, declare that:

1. I am the trustee of the trust that is the manager of LN Management LLC Series 3111 Bel Air 24G and over 18 years of age. Unless otherwise stated, I have personal knowledge of the facts set forth in this Declaration, and am competent to testify to the facts thereto.
2. 3111 Bel Air Drive 24G Trust acquired the real property commonly known as 3111 Bel Air Drive #24G, Las Vegas, NV 89109, APN #162-10-712-185 ("the Property") On December 12, 2012 at a public auction conducted by Collections of America, Inc. on behalf of Las Vegas International Country Club Estates (the "Association"), which I attended, I bid for and won the auction concerning the real property commonly known as 3111 Bel Air Drive #24G, Las Vegas, NV 89109, APN #162-10-712-185 ("the Property").
3. My winning bid was $7,001.00, for which I received a Trustee's Deed Upon Sale to the Property, which was subsequently recorded December 17, 2012 in the office of the Clark County Recorder, a true copy being attached to this motion as Exhibit 5.
4. Upon the recording of the Trustee's Deed Upon Sale, 3111 Bel Air Drive 24G Trust took possession of the unoccupied property, and it and LN Management LLC Series 3111 Bel Air 24G have maintained possession of the property to the present.

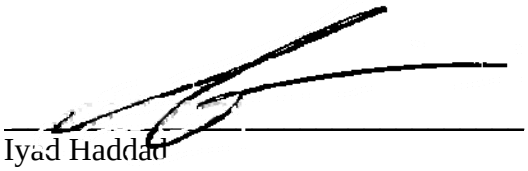
5. I have no reason to doubt the recitals in the Trustee's Deed Upon Sale which state that "All requirements of law regarding the recording of the Notice of Delinquent Assessments, mailing of the Notice of Delinquent Assessments, recording of the Notice of Default and Election to Sell, mailing of the Notice of Default and Election to Sell, the lapsing of ninety days after the recording of the Notice of Default and Election sell, and the mailing, posting, and publication of the Notice of Sale have been complied with." I personally made plans to attend the auction only after the Notice of Sale had been recorded concerning the Property, and I obtained a copy of the Notice. I am aware of no defects in the foreclosure process, and no one announced at the time of the auction that anyone tendered, or attempted to tender, the super-priority portion of the HOA's lien before the auction.

6. Neither I nor LN Management LLC Series 3111 Bel Air 24G have any relationship with, or interest in, any of the persons or parties involved in this lawsuit outside the attendance at the foreclosure auction, competitively bidding at these publicly held auctions, and purchasing properties at the auctions when I am the successful bidder.

7. Neither I nor LN Management LLC Series 3111 Bel Air 24G have any relationship with, or interest in, the Association, other than occasionally purchasing property from the Association, and owning property within the Association.

Pursuant to NRS 53.045, I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

Dated July 27, 2018.



Iyad Haddad

Exhibit 7

Electronically Filed
12/23/2014 03:29:23 PM

CLERK OF THE COURT

JDDF
Kerry Faughnan, Esq.
Nevada Bar No.12204
P.O. Box 335361
North Las Vegas, NV 89033
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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-13-682055-C Dept. No. XIII **JUDGMENT BY DEFAULT AGAINST MICHAEL T. ELLIOT**

This matter came before the Court on Plaintiff LN Management LLC Series 3111 Bel Air 24G's application for default against defendant Michael T. Elliot. Having considered the application, including the Declarations attached thereto, the Court makes the following findings of fact and conclusions of law:

1. On May 17, 2013, LN Management LLC Series 3111 Bel Air 24G filed a complaint for Quiet Title and Declaratory Relief ("Complaint") relating to the real property commonly known as 3111 Bel Air Drive #24G, Las Vegas, NV 89109, Parcel No. 162-10-812-185 against Michael T. Elliot and Bank of America, N.A.
2. The Defendant Michael T. Elliot was duly served and subsequently failed to appear or otherwise answer the complaint.
3. The Clerk of the Court appropriately entered default against Michael T. Elliot on January 28, 2014.

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4. There is no evidence that the Defendant Michael T. Elliot is an infant, an incompetent person, or serving in the United States military.

5. Plaintiff purchased the Property at a publicly conducted foreclosure sale held December 12, 2012, receiving a Trustee's Deed Upon Sale that was recorded December 17, 2012 in the Office of The Clark County Recorder.

6. Plaintiff submitted credible evidence in support of its application that demonstrate prima facie grounds sufficient to enter default judgment against the Defendant.

NOW, THEREFORE, pursuant to NRCP 55(b)(2), having considered the evidence and made the foregoing findings of fact and conclusions of law, and finding good cause,

IT IS ORDERED, ADJUDGED AND DECREEED that the Defendant Michael T. Elliot has no right, title or interest in the property commonly known as 3111 Bel Air Drive #24G, Las Vegas, NV 89109, Parcel No. 162-10-812-185, and LN Management LLC Series 3111 Bel Air 24G is deemed the legal owner of said property as of December 17, 2012, the legal description of which is attached hereto as **Exhibit 1**.

Dated December 18, 2014.

DISTRICT COURT JUDGE

Respectfully submitted by:

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Exhibit 1

Assessor's Parcel No: 162-10-812-185

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.

Exhibit 8

DELCARATION OF KERRY P. FAUGHNAN

IN SUPPORT OF APPLICATION FOR SUMMARY JUDGMENT

State of Nevada)

County of Clark) ss

I, Kerry P. Faughnan, Esq. declare that:

1. I am the attorney for the Plaintiff. Unless otherwise stated, I have personal knowledge of the facts set forth in this Declaration, and am competent to testify to the facts thereto.
2. The exhibits attached to this Application are true copies of the documents they purport to be.

Pursuant to NRS 53.045, I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

Dated July 27, 2018.

/s/ Kerry P. Faughnan
Kerry P. Faughnan, Esq.

Exhibit 9

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CLERK OF THE COURT

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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-13-682055-C Dept. No. XIV

NOTICE OF LIS PENDENS

NOTICE is hereby given that an action has been commenced and is now pending in this Court on the Complaint of the above-entitled Plaintiff against the above-entitled Defendants seeking to Quiet Title of real property in favor of Plaintiff and that the real property in Clark County affected is particularly 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.

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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.

with Assessor's Parcel No. 162-10-812-185 and commonly known as 3111 Bel Air Drive, #24G, Las Vegas, Nevada 89109.

DATED May 22, 2013.

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Attorneys for Bank of America, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

GREEN TREE SERVICING, LLC,

Plaintiff,

v.

MICHAEL T. ELLIOT, LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNER ASSOCIATION, REGENCY TOWERS ASSOCIATION, INC., DOES 1-X,

Defendants.

LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G,

Plaintiff,

v.

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

Defendants.

Case No.: A-12-669570-C

Dept. No.: XIII

Consolidated with: A-13-682055-C

BANK OF AMERICA, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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Defendant Bank of America, N.A. (**Bank of America**) hereby files its opposition to Plaintiff LN Management LLC Series 3111 Bel Air 24G's (**Plaintiff**) motion for summary judgment (the **Motion**). This Opposition relies upon the Memorandum of Points and Authorities and exhibits attached hereto, and oral argument at hearing.

INTRODUCTION

Plaintiff purports to have acquired his interest as a result of an HOA foreclosure sale and asks this Court to declare that Bank of America has no interest in the Property following the same before the parties have started discovery and before this Court has even entered a scheduling order. Plaintiff's Motion should be denied for two reasons. *First*, Plaintiff's Motion should be denied because the super-priority amount of the HOA's lien was tendered prior to the foreclosure sale, thereby extinguishing that portion of the HOA's lien. Consequently, to the extent the HOA's foreclosure sale was valid, the HOA could only convey its interest in the subject property that was subordinate to the Deed of Trust.

Second, Plaintiff alleges that it purchased property at a homeowners' association foreclosure sale (**HOA Sale**), which it contends extinguished a deed of trust then encumbering the property. Plaintiff relies on NRS § 116.3116(2) (**State Foreclosure Statute**), which allows properly conducted HOA foreclosure sales to extinguish all junior interests. But at the time of the HOA Sale, Federal National Mortgage Association (**Fannie Mae**) owned the deed of trust and therefore had a property interest in the collateral. A federal statute provides that while Fannie Mae is in conservatorship of the Federal Housing Finance Agency (**FHFA**), none of its property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the **Federal Foreclosure Bar**). The Nevada Supreme Court has recently confirmed that the Federal Foreclosure Bar preempts the State Foreclosure Statute. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417 P.3d 363 (Nev. 2018). The Ninth Circuit and many state and federal trial courts have held the same, and further concluded that the Federal Foreclosure Bar protects Fannie Mae's property interests under circumstances, like here, where a servicer appeared as record beneficiary of a deed of trust owned by Fannie Mae. *See, e.g.*, *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *FHFA v. SFR Invs. Pool 1, LLC*,--F.3d--, 2018 WL 3097719 (9th Cir. June 25, 2018); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir. 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir.

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2017). Here, Fannie Mae has been in FHFA conservatorship at all relevant times, and FHFA did not consent to extinguish Fannie Mae's property interest. Under the Supremacy Clause, the Federal Foreclosure Bar preempts the State Foreclosure Statute, and the HOA Sale did not extinguish Fannie Mae's interest.

STATEMENT OF UNDISPUTED FACTS

The Subject Property, Note, and Deed of Trust

1. A Deed of Trust listing Michael T. Elliott (**Borrower**) as the borrower and Bank of America as the lender and the beneficiary was executed on October 6, 2004, and recorded on October 20, 2004 (the **Deed of Trust**). **Exhibit A**. The Deed of Trust granted Lender a security interest in real property known as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada 89109 (the **Property**) to secure the repayment of a promissory note (the **Note**) in the original amount of $322,100.00 to the Borrower (the Note and Deed of Trust together constitute the **Loan**). *Id.*

The HOA Foreclosure Sale and Plaintiff's Purported Acquisition of the Property

2. On June 21, 2012, Collections of America, Inc. (the **HOA Trustee**), as agent for the Las Vegas International Country Club Estates Association (the **HOA**), recorded a Notice of Claim of Lien – Delinquent Homeowners Assessment Notice. **Exhibit B**.

3. On July 25, 2012, the HOA Trustee, as agent for the HOA, recorded a Notice of Default and Election to Sell. **Exhibit C**.

4. The HOA, through the HOA Trustee, recorded a Notice of Trustee Sale on November 15, 2012. **Exhibit D**.

5. On or about January 12, 2012, Bank of America contacted the HOA Trustee and requested a payoff statement so that it could satisfy the super-priority amount. **Exhibit E-1**.

6. The HOA Trustee refused to respond to this request. **Exhibit E ¶ 7**.

7. A foreclosure deed was recorded against the Property on December 17, 2012. **Exhibit F**. The foreclosure deed states that the Property was sold in an HOA foreclosure sale on December 12, 2012, to Plaintiff for $7,001.00 (the **HOA Sale**). *See id.*

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LEGAL STANDARD

Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. NRCP 56(c); *see also Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005). After the movant has carried its burden to identify issues where there is no genuine issue of material fact, the non-moving party must "set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Wood*, 121 Nev. at 732. Summary judgment is particularly appropriate where issues of law are controlling and dispositive of the case. *American Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P.2d 274, 277 (1979). "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Id.* at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Accordingly, Nevada courts follow the federal summary judgment standard, not the "slightest doubt" standard previously applicable before *Wood*. *Id.* at 1031, 1037.

LEGAL ARGUMENT

I. Bank of America Tendered the Super-Priority Amount of the HOA Lien Prior to the HOA Sale.

The HOA's foreclosure sale did not extinguish the senior Deed of Trust because Bank of America tendered the super-priority portion of the HOA's lien prior to the sale. A valid tender extinguishes the super-priority lien, even if the tender is unjustifiably rejected, and any subsequent foreclosure by an HOA would be subject to the prior-recorded deed of trust. *See Hohn v. Morrison*, 870 P.2d 513, 516–17 (Colo. App. 1993) ("[J]urisdictions which have adopted the lien theory of real estate mortgages have also adopted the rule that an unconditional tender of the amount due by the debtor releases the lien of the mortgage unless the creditor establishes a justifiable and good faith reason for rejection of the tender.").

…

The tender doctrine is designed "**to enable the debtor to** … relieve his property of encumbrance by **offering his creditor** all that he has any right to claim," which "does not mean that the debtor must offer an amount beyond reasonable dispute, but it means **the amount due, — actually due**." *Dohrman v. Tomlinson,* 399 P.2d 255, 258 (Id. 1965) (emphasis added). The Nevada Supreme Court has confirmed that tender is a "valid, unconditional ***offer of payment*** in full or with conditions for which the tendering party has a right to insist." *Bank of Am., N.A. v. Ferrell Street Tr.*, No. 70299, 2018 WL 2021560 at *2-3.

There are several ways a party can establish a valid non-payment tender. For example, an offer is a valid tender if it is coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the payee, the obligation would be immediately satisfied. *Cochran v. Griffith Energy Serv., Inc.*, 993 A.2d 153, 166 (Md. Ct. Apec. App. 2010); *Graff v. Burnett*, 414 N.W.2d 271, 276 (Neb. 1987). Alternatively, an offer is a valid tender if it is a present offer rather than an offer of future payment that may never materialize. *McDowell Welding & Pipefitting, Inc. v. U.S. Gypsum, Co.*, 320 P.3d 579, 585 (Or. Ct. App. 2014) ("In order to serve the same function as the production of money, a written offer of payment must communicate a present offer of timely payment. The ***prospect that payment might occur at some point in the future*** is not sufficient for a court to conclude that there has been a tender . . . .") (emphasis added).

A tendering party can also establish excuse from tender. *See, e.g., Chesapeake Bay Distrib. Co. v. Buck Distrib. Co., Inc.*, 481 A.2d 1156, 1158 (M.D. Ct. Spec. App. 1984) ("A tender is excused where the obligee has manifested to the obligor that tender, if made, will not be accepted, or that tender would be at most merely a futile gesture"); *see also* 74 Am. Jur. 2d Tender § 4 (2018) ("One is not obligated to do the useless and futile thing in complying with the formalities of tender. Since the law does not require a useless formality, the making of a formal tender that otherwise would be required is excused where it is reasonably clear that if made, such a tender would be of no avail . . . A tender of an amount due is waived when the party entitled to the payment, by declaration or by conduct, proclaims that, if tender of the amount due is made, it will not be accepted."); 86 C.J.S. Tender § 5 (2018) (Tender "is waived when the party entitled to payment, by declaration or conduct . . . make clear that they will not perform, *or they have evaded tender, or in any other way obstructs or prevents*

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a tender . . .) (emphasis added); 28 Williston on Contracts § 72:47 (4th ed.) ("[T]ender is excused by obstruction of prevention . . . *A common form of prevention is the creditor's evading the debtor* . . .") (emphasis added).

The tender in this case is valid under this authority. The letter offered to pay the superpriority amount, regarding of what the actual amount was:

> It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount [Bank of America] should be required to rightfully pay to fully discharge its obligation to the HOA per NRD 116.2102 and my client ***hereby offers to pay that sum*** upon presentation of adequate proof of the same by the HOA.

Exhibit E. The letter requested disclosure of the superpriority amount, so that Bank of America would know how much to pay. It made clear that Bank of America would deliver payment upon learning the amount owed, not at some undetermined or deferred time. The letter uses the present tense to convey the offer—it says the bank "hereby offers to pay" the superpriority amount. The letter does not make payment contingent on a future occurrence that may not materialize. To the contrary, it explains why a payment was not delivered at that time: the bank did not know how much to pay. Bank of America had the present ability to pay—an issue the Plaintiff does not dispute, but did not know the amount—a matter controlled by the HOA.

Even if Bank of America's super-priority tender did not extinguish the super-priority portion of the HOA's lien, the HOA sale is still invalid because the HOA Trustee's refusal to provide Bank of America with the information it needed to make a super-priority payment was made in bad faith. The State Foreclosure Statute imposes an obligation of good faith in the "performance and enforcement" of "every duty governed by" the statute. NRS 116.1113. When Bank of America offered to pay the super-priority amount to the HOA, the HOA Trustee had two choices: (1) provide Bank of America with the super-priority payoff amount, accept the super-priority payment, and forego foreclosure, or (2) refuse to provide the payoff information and proceed with the foreclosure. Under either scenario, the HOA would receive the same amount—the super-priority portion of its lien. By capriciously choosing to reject Bank of America's super-priority tender and proceed with foreclosure, the HOA unnecessarily attempted to extinguish the Deed of Trust. This clear violation of the HOA and HOA

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Trustee's obligation to act in good faith invalidates the foreclosure sale on which Plaintiff's quiet title claim relies.

II. The Federal Foreclosure Bar Defeats Plaintiff's Claim to an Interest in the Property Free and Clear of the Deed of Trust.

As the Nevada Supreme Court and the Ninth Circuit recently held, the Federal Foreclosure Bar preempts the State Foreclosure Statute that would otherwise permit the HOA's foreclosure of its superpriority lien to extinguish the Enterprises' interest in property while the Enterprises are under FHFA's conservatorship. *Christine View*, 417 P.3d at 367-68; *Berezovsky*, 869 F.3d at 930-31; *FHFA v. SFR*, 2018 WL 3097719, at *6-7. Indeed, over thirty related cases in the U.S. District Court of Nevada agree.[1] Similarly, Nevada state courts have resolved similar claims in favor of Freddie Mac, Fannie Mae, and their servicers in more than thirty other cases.[2]

The State Foreclosure Statute is preempted either through express or conflict preemption. A federal statute expressly preempts contrary law when it "explicitly manifests Congress's intent to displace state law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). This is the case here: the text of HERA declares that "[n]o property of the Agency shall be subject to levy,

[1] *See, e.g.*, *Skylights v. Byron*, 112 F. Supp. 3d 1145, 1153 (D. Nev. 2015); *Opportunity Homes, LLC v. Freddie Mac*, 169 F. Supp. 3d 1073 (D. Nev. 2016); *My Glob. Vill., LLC v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-CV-2046-JAD-PAL, 2015 WL 5723647 (D. Nev. Sept. 29, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *FHFA v. SFR Investments Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2, 2016); *G & P Inv. Enters., LLC v. Wells Fargo Bank*, N.A., No. 2:15-cv-0907-JCM-NJK, 2016 WL 4370055 (D. Nev. Aug. 4, 2016); *FHFA v. Nevada New Builds, LLC*, No. 2:16-cv-1188-GMN-CWH, 2017 WL 888480 (D. Nev. Mar. 6, 2017); *JP Morgan Chase Bank, N.A. v. Las Vegas Dev't Grp., LLC*, No. 2:15-cv-1701-JCM-VCF, 2017 WL 937722 (D. Nev. Mar. 9, 2017); *Springland Vill. Homeowners Ass'n v. Pearman*, No. 3:16-cv-00423-MMD-WGC, 2018 WL 357853 (D. Nev. Jan. 10, 2018); *MRT Assets LLC v. Nationstar Mortg., LLC*, No. 2:17-cv-0070-JCM-CWH, 2018 WL 1245501 (D. Nev. Mar. 9, 2018); *Nationstar Mortg., LLC v. Tow Props. LLC II*, No. 2:17-cv-01770-APG-VCF, 2018 WL 2014064 (D. Nev. Apr. 27, 2018).

[2] *See, e.g.*, Order, *RLP-Buckwood Court, LLC, v. GMAC Mortg., LLC*, No. A-13-686438-C (Nev. Dist. Ct. May 24, 2016); Order, *Saticoy Bay LLC Series 4930 Miners Ridge v. JPMorgan Chase Bank N.A.*, No. A-13-681090-C (Nev. Dist. Ct. June 27, 2017); Order, *RJRN Holdings, LLC v. Green Tree Servicing LLC*, A-14-704682-C (Nev. Dist. Ct. July 21, 2017); *Hampton & Hampton Collections, LLC v. Pan*, No. 14-A-706519-C, 2017 WL 5660707 (Nev. Dist. Ct. Oct. 6, 2017); *Nationstar Mortg., LLC v. Kincer*, No. 14-A-698443-C, 2017 WL 6940444 (Nev. Dist. Ct. Nov. 27, 2017); *Nevada New Builds, LLC v. JPMorgan Chase Bank*, No. 13-A-690954, 2017 WL 7058170 (Nev. Dist. Ct. Dec. 14, 2017); *J&K USA, Inc. v. BAC Home Loans Servicing, LP*, No. 14-A-702573, 2018 WL 1612075 (Nev. Dist. Ct. Feb. 27, 2018); *Saticoy Bay 10021 Via Toro v. Chase*, A-14-694140-C, 2018 WL 1995672 (Nev. Dist. Ct. March 15, 2018); *NV Eagles, LLC v. BAC Home Loan Servicing*, No. A-16-733337, 2018 WL 1989741 (Nev. Dist. Ct. Mar. 15, 2018); *Renfroe v. Bank of America*, N.A., No. 14-A-701932, 2018 WL 1995668 (Nev. Dist. Ct. Mar. 21, 2018); *Gutierrez v. SFR Investments Pool 1*, LLC, No. 13-A-684715-C, 2018 WL 2336188 (Nev. Dist. Ct. Apr. 11, 2018); *TRP Fund IV, LLC v. Fannie Mae*, No. A-16-735893, 2018 WL 2338239 (Nev. Dist. Ct. Apr. 13, 2018). Bank of America does not cite these cases as precedential authority but rather, consistent with Nev. R. App. P. 36(c)(3), cites them for their persuasive value.

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attachment, garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3). The Federal Foreclosure Bar automatically bars any nonconsensual limitation or extinguishment through foreclosure of any interest in property held by Fannie Mae while in conservatorship. All of these "adverse actions . . . could otherwise be imposed on FHFA's property under state law. Accordingly, Congress's creation of these protections clearly manifests its intent to displace state law." *Skylights*, 112 F. Supp. 3d at 1153.

The Federal Foreclosure Bar also preempts the State Foreclosure Statute under a theory of conflict preemption because "state law is naturally preempted to the extent of any conflict with a federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect FHFA conservatorships from actions, such as the HOA Sale, that otherwise would deprive them of their property interests. Accordingly, "the [State Foreclosure Statute] is in direct conflict with Congress's clear and manifest goal to protect [Freddie Mac]'s property interest while under the FHFA's conservatorship from threats arising from state foreclosure law." *Christine View*, 417 P.3d at 367; *see also Berezovsky*, 869 F.3d at 930 ("[T]he Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the State Foreclosure Statute]."); *FHFA v. SFR*, 2018 WL 3097719, at *6-7 (following *Berezovsky*); *Elmer*, 707 F. App'x at 427-28 (same); *Flagstar*, 699 F. App'x at 658-59 (same).

To successfully invoke the Federal Foreclosure Bar's pre-emptive protection, Bank of America needs to establish two things: (1) Fannie Mae owned the Loan at the time of the HOA Sale; and (2) ownership of the Loan was a property interest covered by the Federal Foreclosure Bar's protection. Once discovery opens, Bank of America will disclose documents and supporting affidavits that show Fannie Mae owned the Loan at the time of the HOA Sale and that FHFA did not consent to extinguishment or foreclose of Fannie Mae's Deed of Trust. Accordingly, Plaintiff's Motion should be denied.

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

Plaintiff's premature Motion relies entirely on the recitals in the foreclosure deed. The *Shadow Wood* Court held the "conclusive" deed recitals found in HOA foreclosure deeds do not bar

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

In its motion for summary judgment, Plaintiff makes the same argument the *Shadow Wood* Court rejected. Here, however, Bank of America asserts that the sale of the Property was invalid and, even if it was valid, Plaintiff's interest is subordinate to the Deed of Trust because Bank of America tendered the super-priority portion of the HOA's lien prior to the HOA Sale and the State Foreclosure Statute is preempted by the Federal Foreclosure Bar. As the Nevada Supreme Court made clear in *Shadow Wood*, the conclusive recitals are irrelevant to these arguments. Accordingly, Plaintiff's motion for summary judgment, which is based on its mistaken contention that the deed recitals conclusively show the foreclosure sale was valid, must be denied.

IV. Plaintiff Cannot Use the Bona Fide Purchaser Doctrine as a Shield.

Under Nevada law, bona fide purchaser status is an affirmative defense for which the asserting party bears the burden of proof. Nev. Rev. Stat. § 111.325. Here, Plaintiff knew it was purchasing an encumbered interest at the HOA Sale.

Another trust managed by Eddie Haddad – the manager of Plaintiff – filed for Chapter 11 bankruptcy several months before the HOA's foreclosure sale here. In the Chapter 11 Petition, Haddad listed as assets eleven properties that he purchased at association foreclosure sales. **Exhibit G**. For each property, Haddad declared that the senior deed of trust remained fully enforceable after the respective association's foreclosure. *Id.* Later in the bankruptcy, Haddad filed a Motion to Use Cash

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Collateral, in which he described his business model as follows: "Mr. Haddad funds the Trust, which then purchases **junior liens** through [homeowners association] sales held at Nevada Legal News, and **thus acquires ownership of the properties, subject to the first mortgage lien on the properties**." **Exhibit H** (emphasis added), at 2. Haddad continued by stating that "[e]ach of the above-references properties was purchased through auction via a secondary, utility, or HOA lien, **and is thus subject to the first mortgage**." *Id.* (emphasis added). Accordingly, Plaintiff cannot claim to be a bona fide purchaser and Plaintiff's Motion should be denied.

Even if Plaintiff were a bona were a bona fide purchaser, which it is not, the Federal Foreclosure Bar still applies. *First*, Plaintiff is not a bona fide purchaser because it had "actual knowledge, constructive notice of, or reasonable cause to know that there exists . . . adverse rights, title, or interest to, the real property." NRS 111.180. The Deed of Trust was recorded prior to the HOA Sale and stated that the note, along with the Deed of Trust, "can be sold one or more times without prior notice to Borrower." *See* **Exhibit A**. In fact, the face of the Deed of Trust identifies it as a "NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT," indicating that an Enterprise might have an interest in the Deed of Trust. *Id.* Thus, Plaintiff was on notice that unnamed other parties, including an Enterprise, might have an interest in the Property or could acquire one at some point throughout the life of the Loan. In this case, Fannie Mae had such an interest. It is immaterial whether the state statutes render an *unrecorded* deed of trust invalid against a subsequent bona fide purchaser—the Deed of Trust embodying Fannie Mae's interest was recorded at the time of the HOA Sale.

Furthermore, Plaintiff could and should have anticipated that there was a significant chance that a property it purchased at an HOA foreclosure sale was subject to an interest owned by one of the Enterprises. Fannie Mae and Freddie Mac have a large, well-publicized, and well-known role in the national housing market, especially in the aftermath of the recent housing crisis. In 2008, the Enterprises' "mortgage portfolios had a combined value of $5 trillion and accounted for nearly half of the United States mortgage market." *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 599-600 (D.C. Cir. 2017). Since 2012, "Fannie and Freddie, among other things, collectively purchased at least 11 million mortgages." *Id.* Accordingly, "[t]he position held in the home mortgage business by Fannie

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Mae and Freddie Mac make[s] them *the dominant force* in the market." *Town of Babylon v. FHFA*, 699 F.3d 221, 225 (2d Cir. 2012) (emphasis added); *see Nomura Holding Am., Inc.*, 873 F.3d 85, 105 (2d Cir. 2017) (same). Any purchaser of a property sold at an HOA sale in recent years should expect that there is a significant likelihood that Fannie Mae or Freddie Mac own the loan secured by the deed of trust that the purchaser hopes to secure in the course of the HOA sale or subsequent transfers.

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

Second, even if Nevada's bona fide purchaser statutes were read to protect Plaintiff from Fannie Mae's property interest because Fannie Mae's servicer appeared as the Deed of Trust's record beneficiary, the bona fide purchaser statutes would then be preempted by the Federal Foreclosure Bar. Indeed, in citing another opinion from this District, the Nevada Supreme Court recently recognized that "authority suggest[s] that the Federal Foreclosure Bar would preempt Nevada's law on bona fide purchasers." *Guberland*, 2018 WL 3025919 at *2 n.3 (Nev. June 15, 2018) (unpublished disposition) (citing *JPMorgan Chase Bank, N.A. v. GDS Fin. Servs.*, No. 2:17-cv-02451-APG-PAL, 2018 WL 2023123, at *3 (D. Nev. May 1, 2018)). Other courts recently have held that the Federal Foreclosure Bar preempts the bona fide purchaser statutes. *E.g.*, *U.S. Bank Home Mortg. v. Jensen*, No. 3:17-cv-0603-MMD-VPC, 2018 WL 3078753, at *2 (D. Nev. June 20, 2018).

Indeed, the conflict between the Federal Foreclosure Bar and the bona fide purchaser statutes, as Plaintiff would interpret them, is obvious. The Federal Foreclosure Bar automatically bars any nonconsensual extinguishment through foreclosure of any interest in property held by Fannie Mae while in conservatorship. However, Plaintiff's re-interpreted bona fide purchaser laws would allow

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state HOA lien sales to extinguish Fannie Mae's property interests whenever the associated deed of trust appeared in the name of Fannie Mae's servicer, an arrangement (as discussed *supra*) otherwise permitted under Nevada law. Federal law thus precludes what state law would purportedly permit: extinguishment of the Fannie Mae conservatorship's deed-of-trust interest.

Finally, the Nevada Supreme Court's *Shadow Wood* decision also does not support Plaintiff's claim to bona fide purchaser status. Opp. at 7-8 (citing *Shadow Wood Homeowners Assoc. v. N.Y. Bancorp, Inc.*, 366 P.3d 1005 (Nev. 2016)). In *Shadow Wood*, the Court examined whether an entity challenging the validity of an HOA foreclosure sale was entitled to equitable relief under state law. *Shadow Wood* did not need to resolve who had interests at the time of the HOA foreclosure sale, but instead employed its balancing test to determine whether the previous owner of a property could have the foreclosure sale set aside. *See* 366 P.3d at 1116.

Here, the equitable balancing test described in *Shadow Wood* is irrelevant to the existence of Fannie Mae's property interest at the time of sale. A federal statute governs the preservation of Fannie Mae's interest, and the Federal Foreclosure Bar contains no limitation that it applies only when it would achieve an equitable result. Accordingly, the factors considered by the Nevada Supreme Court in evaluating the equitable claim under state law at issue in *Shadow Wood* are not relevant here. Because the Federal Foreclosure Bar protected the deed of trust from extinguishment, *Shadow Wood* is inapposite.

CONCLUSION

For these reasons, the Court should deny Plaintiff's Motion.

DATED this 28th day of August, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 28th day of August, 2018, I caused to be served a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

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EIGHTH JUDICIAL DISTRICT COURT FOR

CLARK COUNTY, NEVADA

GREEN TREE SERVICING LLC, Plaintiff, Vs. MICHAEL T. ELLIOT, LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNER ASSOCIATION, REGENCY TOWERS ASSOCIATION, INC., DOES I – X, Defendants. --- LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G Plaintiff, v. MICHAEL T. ELLIOT, an individual, GREEN TREE SERVICING LLC, DOES 1 through 10, inclusive; Defendants.	Case No.: A-12-669570-C Dept. No. XIII Consolidated with: Case No. A-13-682055-C Dept. No. XIII **REPLY TO GREEN TREE'S OPPOSITION TO LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G'S MOTION FOR SUMMARY JUDGMENT; ERRATA TO LN MANAGEMENT'S MOTION FOR SUMMARY JUDGMENT** Hearing Date: 9/27/2018 Hearing Time: 9:00 A.M.

Comes now LN Management LLC Series 3111 Bel Air 24G, by and through its attorney, who replies to Green Tree Servicing LLC ("Green Tree") opposition to LN Management LLC Series 3111 Bel Air 24G's Motion for Summary Judgment.

//

This is a consolidated action. Green Tree's predecessor in interest, Bank of America, commenced this case October 3, 20012.

LN Management LLC Series 3111 Bel Air 24G commenced its case May 17, 2013.

Bank of America moved to consolidate the cases September 10, 2013, which was opposed by LN Management LLC Series 3111 Bel Air 24G. The court granted consolidation October 29, 2013.

Green Tree appeared in the action March 11, 2014.

Since that time, Green Tree did not hold an early case conference, make an initial disclosure of documents, or submit any sort of case conference report causing any scheduling in the case.

The Court dismissed the consolidated cases May 23, 2018 for lack of bringing the action to trial in 5 years, then subsequently reopened the matter to allow LN Management LLC Series 3111 Bel Air 24G to bring a motion for summary judgment.

Green Tree recently opposed the Motion for Summary Judgment, raising as defenses tender and Federal Foreclosure Bar. While the opposition references numerous documents, none were attached to the opposition.

In that Green Tree, or Bank of America, has never disclosed any documents in this case, LN Management LLC Series 3111 Bel Air 24G opposes any attempt by Green Tree to introduce documents never disclosed in more than five years, and not even disclosed a single document up to today, (since they were not attached to the opposition), Green Tree has waived the right to make such defenses after five years, for want of prosecution and/or laches.

This court may have no jurisdiction at all pursuant to NRCP 41(e), which states that the court **shall** dismiss the matter if the matter is not brought to trial within 5 years. Johnson v. Harber, 94 Nev. 524, 582 P.2d 800 (1978), dismissal is mandatory.

Therefore if this Court finds it still has jurisdiction to consider the Motion for Summary Judgment, it should grant the motion for summary judgment as the motion is not opposed with any admissible evidence to support the arguments of Green Tree, and such evidence has not been disclosed in 5 years, waiving the right to raise the defenses.

Also, in review of Plaintiff's Motion for Summary Judgment, it appears Page 7 of the motion was omitted from the filing. Page 7 of the Motion for Summary Judgment, containing the conclusion and certificate of service, is attached hereto as Exhibit 10.

Dated September 17, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 17, 2018, I allowed the Court's ECF system to serve a true and correct copy of the foregoing documents to be e-filed and e-served through the Eighth Judicial District to all parties listed on the ECF system.

/s/Kerry P. Faughnan_____
Kerry P. Faughnan, Esq.

EXHIBIT 10

EXHIBIT 10

IV. CONCLUSION

3111 Bel Air Drive 24G Trust purchased the Property at public auction, subsequently assigned the Property to LN Management LLC Series 3111 Bel Air 24G, who properly commenced this action to quiet title.

LN Management LLC Series 3111 Bel Air 24G is entitled to judgment that Green Tree Servicing LLC has no right, title or interest in the Property, and that the Deed of Trust recorded in the Official Records of the Clark County Recorder as Instrument Number 20041020-0001569, subsequently assigned to Green Tree Servicing LLC, is and was at the time of the HOA foreclosure through which title was obtained, extinguished as a matter of law pursuant to SFR.

Dated July 27, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 27, 2018, I allowed the Court's ECF system to serve a true and correct copy of the foregoing documents to be e-filed and e-served through the Eighth Judicial District to all parties listed on the ECF system.

/s/Kerry P. Faughnan_____
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DISTRICT COURT

CLARK COUNTY, NEVADA

GREEN TREE SERVICING, LLC,

Plaintiff,

v.

MICHAEL T. ELLIOT, LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNER ASSOCIATION, REGENCY TOWERS ASSOCIATION, INC., DOES 1-X,

Defendants.

LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G,

Plaintiff,

v.

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

Defendants.

Case No.: A-12-669570-C

Dept. No.: XIII

Consolidated with: A-13-682055-C

ERRATA TO BANK OF AMERICA, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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Defendant Bank of America, N.A. (**Bank of America**), hereby files this errata to their Opposition to Plaintiff's Motion for Summary Judgment, filed on August 28, 2018. Bank of America inadvertently neglected to include the exhibits. A full copy of the opposition with exhibits is attached hereto as **Exhibit 1.**

DATED this 26h day of September, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 26th day of September, 2018, I caused to be served a true and correct copy of the foregoing **ERRATA TO BANK OF AMERICA, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

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EXHIBIT 1

EXHIBIT 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

GREEN TREE SERVICING, LLC,

Plaintiff,

v.

MICHAEL T. ELLIOT, LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOME OWNER ASSOCIATION, REGENCY TOWERS ASSOCIATION, INC., DOES 1-X,

Defendants.

LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G,

Plaintiff,

v.

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

Defendants.

Case No.: A-12-669570-C

Dept. No.: XIII

Consolidated with: A-13-682055-C

BANK OF AMERICA, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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Defendant Bank of America, N.A. (**Bank of America**) hereby files its opposition to Plaintiff LN Management LLC Series 3111 Bel Air 24G's (**Plaintiff**) motion for summary judgment (the **Motion**). This Opposition relies upon the Memorandum of Points and Authorities and exhibits attached hereto, and oral argument at hearing.

INTRODUCTION

Plaintiff purports to have acquired his interest as a result of an HOA foreclosure sale and asks this Court to declare that Bank of America has no interest in the Property following the same before the parties have started discovery and before this Court has even entered a scheduling order. Plaintiff's Motion should be denied for two reasons. *First*, Plaintiff's Motion should be denied because the super-priority amount of the HOA's lien was tendered prior to the foreclosure sale, thereby extinguishing that portion of the HOA's lien. Consequently, to the extent the HOA's foreclosure sale was valid, the HOA could only convey its interest in the subject property that was subordinate to the Deed of Trust.

Second, Plaintiff alleges that it purchased property at a homeowners' association foreclosure sale (**HOA Sale**), which it contends extinguished a deed of trust then encumbering the property. Plaintiff relies on NRS § 116.3116(2) (**State Foreclosure Statute**), which allows properly conducted HOA foreclosure sales to extinguish all junior interests. But at the time of the HOA Sale, Federal National Mortgage Association (**Fannie Mae**) owned the deed of trust and therefore had a property interest in the collateral. A federal statute provides that while Fannie Mae is in conservatorship of the Federal Housing Finance Agency (**FHFA**), none of its property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the **Federal Foreclosure Bar**). The Nevada Supreme Court has recently confirmed that the Federal Foreclosure Bar preempts the State Foreclosure Statute. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417 P.3d 363 (Nev. 2018). The Ninth Circuit and many state and federal trial courts have held the same, and further concluded that the Federal Foreclosure Bar protects Fannie Mae's property interests under circumstances, like here, where a servicer appeared as record beneficiary of a deed of trust owned by Fannie Mae. *See, e.g.*, *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *FHFA v. SFR Invs. Pool 1, LLC*,--F.3d--, 2018 WL 3097719 (9th Cir. June 25, 2018); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir. 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir.

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2017). Here, Fannie Mae has been in FHFA conservatorship at all relevant times, and FHFA did not consent to extinguish Fannie Mae's property interest. Under the Supremacy Clause, the Federal Foreclosure Bar preempts the State Foreclosure Statute, and the HOA Sale did not extinguish Fannie Mae's interest.

STATEMENT OF UNDISPUTED FACTS

The Subject Property, Note, and Deed of Trust

1. A Deed of Trust listing Michael T. Elliott (**Borrower**) as the borrower and Bank of America as the lender and the beneficiary was executed on October 6, 2004, and recorded on October 20, 2004 (the **Deed of Trust**). **Exhibit A**. The Deed of Trust granted Lender a security interest in real property known as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada 89109 (the **Property**) to secure the repayment of a promissory note (the **Note**) in the original amount of $322,100.00 to the Borrower (the Note and Deed of Trust together constitute the **Loan**). *Id.*

The HOA Foreclosure Sale and Plaintiff's Purported Acquisition of the Property

2. On June 21, 2012, Collections of America, Inc. (the **HOA Trustee**), as agent for the Las Vegas International Country Club Estates Association (the **HOA**), recorded a Notice of Claim of Lien – Delinquent Homeowners Assessment Notice. **Exhibit B**.

3. On July 25, 2012, the HOA Trustee, as agent for the HOA, recorded a Notice of Default and Election to Sell. **Exhibit C**.

4. The HOA, through the HOA Trustee, recorded a Notice of Trustee Sale on November 15, 2012. **Exhibit D**.

5. On or about January 12, 2012, Bank of America contacted the HOA Trustee and requested a payoff statement so that it could satisfy the super-priority amount. **Exhibit E-1**.

6. The HOA Trustee refused to respond to this request. **Exhibit E ¶ 7**.

7. A foreclosure deed was recorded against the Property on December 17, 2012. **Exhibit F**. The foreclosure deed states that the Property was sold in an HOA foreclosure sale on December 12, 2012, to Plaintiff for $7,001.00 (the **HOA Sale**). *See id.*

…

…

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LEGAL STANDARD

Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. NRCP 56(c); *see also Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005). After the movant has carried its burden to identify issues where there is no genuine issue of material fact, the non-moving party must "set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Wood*, 121 Nev. at 732. Summary judgment is particularly appropriate where issues of law are controlling and dispositive of the case. *American Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P.2d 274, 277 (1979). "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Id.* at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Accordingly, Nevada courts follow the federal summary judgment standard, not the "slightest doubt" standard previously applicable before *Wood*. *Id.* at 1031, 1037.

LEGAL ARGUMENT

I. Bank of America Tendered the Super-Priority Amount of the HOA Lien Prior to the HOA Sale.

The HOA's foreclosure sale did not extinguish the senior Deed of Trust because Bank of America tendered the super-priority portion of the HOA's lien prior to the sale. A valid tender extinguishes the super-priority lien, even if the tender is unjustifiably rejected, and any subsequent foreclosure by an HOA would be subject to the prior-recorded deed of trust. *See Hohn v. Morrison*, 870 P.2d 513, 516–17 (Colo. App. 1993) ("[J]urisdictions which have adopted the lien theory of real estate mortgages have also adopted the rule that an unconditional tender of the amount due by the debtor releases the lien of the mortgage unless the creditor establishes a justifiable and good faith reason for rejection of the tender.").

…

The tender doctrine is designed "**to enable the debtor to** … relieve his property of encumbrance by **offering his creditor** all that he has any right to claim," which "does not mean that the debtor must offer an amount beyond reasonable dispute, but it means **the amount due, — actually due**." *Dohrman v. Tomlinson,* 399 P.2d 255, 258 (Id. 1965) (emphasis added). The Nevada Supreme Court has confirmed that tender is a "valid, unconditional ***offer of payment*** in full or with conditions for which the tendering party has a right to insist." *Bank of Am., N.A. v. Ferrell Street Tr.*, No. 70299, 2018 WL 2021560 at *2-3.

There are several ways a party can establish a valid non-payment tender. For example, an offer is a valid tender if it is coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the payee, the obligation would be immediately satisfied. *Cochran v. Griffith Energy Serv., Inc.*, 993 A.2d 153, 166 (Md. Ct. Apec. App. 2010); *Graff v. Burnett*, 414 N.W.2d 271, 276 (Neb. 1987). Alternatively, an offer is a valid tender if it is a present offer rather than an offer of future payment that may never materialize. *McDowell Welding & Pipefitting, Inc. v. U.S. Gypsum, Co.*, 320 P.3d 579, 585 (Or. Ct. App. 2014) ("In order to serve the same function as the production of money, a written offer of payment must communicate a present offer of timely payment. The ***prospect that payment might occur at some point in the future*** is not sufficient for a court to conclude that there has been a tender . . . .") (emphasis added).

A tendering party can also establish excuse from tender. *See, e.g., Chesapeake Bay Distrib. Co. v. Buck Distrib. Co., Inc.*, 481 A.2d 1156, 1158 (M.D. Ct. Spec. App. 1984) ("A tender is excused where the obligee has manifested to the obligor that tender, if made, will not be accepted, or that tender would be at most merely a futile gesture"); *see also* 74 Am. Jur. 2d Tender § 4 (2018) ("One is not obligated to do the useless and futile thing in complying with the formalities of tender. Since the law does not require a useless formality, the making of a formal tender that otherwise would be required is excused where it is reasonably clear that if made, such a tender would be of no avail . . . A tender of an amount due is waived when the party entitled to the payment, by declaration or by conduct, proclaims that, if tender of the amount due is made, it will not be accepted."); 86 C.J.S. Tender § 5 (2018) (Tender "is waived when the party entitled to payment, by declaration or conduct . . . make clear that they will not perform, *or they have evaded tender, or in any other way obstructs or prevents*

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a tender . . .) (emphasis added); 28 Williston on Contracts § 72:47 (4th ed.) ("[T]ender is excused by obstruction of prevention . . . *A common form of prevention is the creditor's evading the debtor* . . .") (emphasis added).

The tender in this case is valid under this authority. The letter offered to pay the superpriority amount, regarding of what the actual amount was:

> It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount [Bank of America] should be required to rightfully pay to fully discharge its obligation to the HOA per NRD 116.2102 and my client ***hereby offers to pay that sum*** upon presentation of adequate proof of the same by the HOA.

Exhibit E. The letter requested disclosure of the superpriority amount, so that Bank of America would know how much to pay. It made clear that Bank of America would deliver payment upon learning the amount owed, not at some undetermined or deferred time. The letter uses the present tense to convey the offer—it says the bank "hereby offers to pay" the superpriority amount. The letter does not make payment contingent on a future occurrence that may not materialize. To the contrary, it explains why a payment was not delivered at that time: the bank did not know how much to pay. Bank of America had the present ability to pay—an issue the Plaintiff does not dispute, but did not know the amount—a matter controlled by the HOA.

Even if Bank of America's super-priority tender did not extinguish the super-priority portion of the HOA's lien, the HOA sale is still invalid because the HOA Trustee's refusal to provide Bank of America with the information it needed to make a super-priority payment was made in bad faith. The State Foreclosure Statute imposes an obligation of good faith in the "performance and enforcement" of "every duty governed by" the statute. NRS 116.1113. When Bank of America offered to pay the super-priority amount to the HOA, the HOA Trustee had two choices: (1) provide Bank of America with the super-priority payoff amount, accept the super-priority payment, and forego foreclosure, or (2) refuse to provide the payoff information and proceed with the foreclosure. Under either scenario, the HOA would receive the same amount—the super-priority portion of its lien. By capriciously choosing to reject Bank of America's super-priority tender and proceed with foreclosure, the HOA unnecessarily attempted to extinguish the Deed of Trust. This clear violation of the HOA and HOA

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Trustee's obligation to act in good faith invalidates the foreclosure sale on which Plaintiff's quiet title claim relies.

II. The Federal Foreclosure Bar Defeats Plaintiff's Claim to an Interest in the Property Free and Clear of the Deed of Trust.

As the Nevada Supreme Court and the Ninth Circuit recently held, the Federal Foreclosure Bar preempts the State Foreclosure Statute that would otherwise permit the HOA's foreclosure of its superpriority lien to extinguish the Enterprises' interest in property while the Enterprises are under FHFA's conservatorship. *Christine View*, 417 P.3d at 367-68; *Berezovsky*, 869 F.3d at 930-31; *FHFA v. SFR*, 2018 WL 3097719, at *6-7. Indeed, over thirty related cases in the U.S. District Court of Nevada agree.[1] Similarly, Nevada state courts have resolved similar claims in favor of Freddie Mac, Fannie Mae, and their servicers in more than thirty other cases.[2]

The State Foreclosure Statute is preempted either through express or conflict preemption. A federal statute expressly preempts contrary law when it "explicitly manifests Congress's intent to displace state law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). This is the case here: the text of HERA declares that "[n]o property of the Agency shall be subject to levy,

[1] *See, e.g.*, *Skylights v. Byron*, 112 F. Supp. 3d 1145, 1153 (D. Nev. 2015); *Opportunity Homes, LLC v. Freddie Mac*, 169 F. Supp. 3d 1073 (D. Nev. 2016); *My Glob. Vill., LLC v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-CV-2046-JAD-PAL, 2015 WL 5723647 (D. Nev. Sept. 29, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *FHFA v. SFR Investments Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2, 2016); *G & P Inv. Enters., LLC v. Wells Fargo Bank*, N.A., No. 2:15-cv-0907-JCM-NJK, 2016 WL 4370055 (D. Nev. Aug. 4, 2016); *FHFA v. Nevada New Builds, LLC*, No. 2:16-cv-1188-GMN-CWH, 2017 WL 888480 (D. Nev. Mar. 6, 2017); *JP Morgan Chase Bank, N.A. v. Las Vegas Dev't Grp., LLC*, No. 2:15-cv-1701-JCM-VCF, 2017 WL 937722 (D. Nev. Mar. 9, 2017); *Springland Vill. Homeowners Ass'n v. Pearman*, No. 3:16-cv-00423-MMD-WGC, 2018 WL 357853 (D. Nev. Jan. 10, 2018); *MRT Assets LLC v. Nationstar Mortg., LLC*, No. 2:17-cv-0070-JCM-CWH, 2018 WL 1245501 (D. Nev. Mar. 9, 2018); *Nationstar Mortg., LLC v. Tow Props. LLC II*, No. 2:17-cv-01770-APG-VCF, 2018 WL 2014064 (D. Nev. Apr. 27, 2018).

[2] *See, e.g.*, Order, *RLP-Buckwood Court, LLC, v. GMAC Mortg., LLC*, No. A-13-686438-C (Nev. Dist. Ct. May 24, 2016); Order, *Saticoy Bay LLC Series 4930 Miners Ridge v. JPMorgan Chase Bank N.A.*, No. A-13-681090-C (Nev. Dist. Ct. June 27, 2017); Order, *RJRN Holdings, LLC v. Green Tree Servicing LLC*, A-14-704682-C (Nev. Dist. Ct. July 21, 2017); *Hampton & Hampton Collections, LLC v. Pan*, No. 14-A-706519-C, 2017 WL 5660707 (Nev. Dist. Ct. Oct. 6, 2017); *Nationstar Mortg., LLC v. Kincer*, No. 14-A-698443-C, 2017 WL 6940444 (Nev. Dist. Ct. Nov. 27, 2017); *Nevada New Builds, LLC v. JPMorgan Chase Bank*, No. 13-A-690954, 2017 WL 7058170 (Nev. Dist. Ct. Dec. 14, 2017); *J&K USA, Inc. v. BAC Home Loans Servicing, LP*, No. 14-A-702573, 2018 WL 1612075 (Nev. Dist. Ct. Feb. 27, 2018); *Saticoy Bay 10021 Via Toro v. Chase*, A-14-694140-C, 2018 WL 1995672 (Nev. Dist. Ct. March 15, 2018); *NV Eagles, LLC v. BAC Home Loan Servicing*, No. A-16-733337, 2018 WL 1989741 (Nev. Dist. Ct. Mar. 15, 2018); *Renfroe v. Bank of America*, N.A., No. 14-A-701932, 2018 WL 1995668 (Nev. Dist. Ct. Mar. 21, 2018); *Gutierrez v. SFR Investments Pool 1*, LLC, No. 13-A-684715-C, 2018 WL 2336188 (Nev. Dist. Ct. Apr. 11, 2018); *TRP Fund IV, LLC v. Fannie Mae*, No. A-16-735893, 2018 WL 2338239 (Nev. Dist. Ct. Apr. 13, 2018). Bank of America does not cite these cases as precedential authority but rather, consistent with Nev. R. App. P. 36(c)(3), cites them for their persuasive value.

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attachment, garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3). The Federal Foreclosure Bar automatically bars any nonconsensual limitation or extinguishment through foreclosure of any interest in property held by Fannie Mae while in conservatorship. All of these "adverse actions . . . could otherwise be imposed on FHFA's property under state law. Accordingly, Congress's creation of these protections clearly manifests its intent to displace state law." *Skylights*, 112 F. Supp. 3d at 1153.

The Federal Foreclosure Bar also preempts the State Foreclosure Statute under a theory of conflict preemption because "state law is naturally preempted to the extent of any conflict with a federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect FHFA conservatorships from actions, such as the HOA Sale, that otherwise would deprive them of their property interests. Accordingly, "the [State Foreclosure Statute] is in direct conflict with Congress's clear and manifest goal to protect [Freddie Mac]'s property interest while under the FHFA's conservatorship from threats arising from state foreclosure law." *Christine View*, 417 P.3d at 367; *see also Berezovsky*, 869 F.3d at 930 ("[T]he Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the State Foreclosure Statute]."); *FHFA v. SFR*, 2018 WL 3097719, at *6-7 (following *Berezovsky*); *Elmer*, 707 F. App'x at 427-28 (same); *Flagstar*, 699 F. App'x at 658-59 (same).

To successfully invoke the Federal Foreclosure Bar's pre-emptive protection, Bank of America needs to establish two things: (1) Fannie Mae owned the Loan at the time of the HOA Sale; and (2) ownership of the Loan was a property interest covered by the Federal Foreclosure Bar's protection. Once discovery opens, Bank of America will disclose documents and supporting affidavits that show Fannie Mae owned the Loan at the time of the HOA Sale and that FHFA did not consent to extinguishment or foreclose of Fannie Mae's Deed of Trust. Accordingly, Plaintiff's Motion should be denied.

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

Plaintiff's premature Motion relies entirely on the recitals in the foreclosure deed. The *Shadow Wood* Court held the "conclusive" deed recitals found in HOA foreclosure deeds do not bar

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

In its motion for summary judgment, Plaintiff makes the same argument the *Shadow Wood* Court rejected. Here, however, Bank of America asserts that the sale of the Property was invalid and, even if it was valid, Plaintiff's interest is subordinate to the Deed of Trust because Bank of America tendered the super-priority portion of the HOA's lien prior to the HOA Sale and the State Foreclosure Statute is preempted by the Federal Foreclosure Bar. As the Nevada Supreme Court made clear in *Shadow Wood*, the conclusive recitals are irrelevant to these arguments. Accordingly, Plaintiff's motion for summary judgment, which is based on its mistaken contention that the deed recitals conclusively show the foreclosure sale was valid, must be denied.

IV. Plaintiff Cannot Use the Bona Fide Purchaser Doctrine as a Shield.

Under Nevada law, bona fide purchaser status is an affirmative defense for which the asserting party bears the burden of proof. Nev. Rev. Stat. § 111.325. Here, Plaintiff knew it was purchasing an encumbered interest at the HOA Sale.

Another trust managed by Eddie Haddad – the manager of Plaintiff – filed for Chapter 11 bankruptcy several months before the HOA's foreclosure sale here. In the Chapter 11 Petition, Haddad listed as assets eleven properties that he purchased at association foreclosure sales. **Exhibit G**. For each property, Haddad declared that the senior deed of trust remained fully enforceable after the respective association's foreclosure. *Id.* Later in the bankruptcy, Haddad filed a Motion to Use Cash

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Collateral, in which he described his business model as follows: "Mr. Haddad funds the Trust, which then purchases **junior liens** through [homeowners association] sales held at Nevada Legal News, and **thus acquires ownership of the properties, subject to the first mortgage lien on the properties**." **Exhibit H** (emphasis added), at 2. Haddad continued by stating that "[e]ach of the above-references properties was purchased through auction via a secondary, utility, or HOA lien, **and is thus subject to the first mortgage**." *Id.* (emphasis added). Accordingly, Plaintiff cannot claim to be a bona fide purchaser and Plaintiff's Motion should be denied.

Even if Plaintiff were a bona were a bona fide purchaser, which it is not, the Federal Foreclosure Bar still applies. *First*, Plaintiff is not a bona fide purchaser because it had "actual knowledge, constructive notice of, or reasonable cause to know that there exists . . . adverse rights, title, or interest to, the real property." NRS 111.180. The Deed of Trust was recorded prior to the HOA Sale and stated that the note, along with the Deed of Trust, "can be sold one or more times without prior notice to Borrower." *See* **Exhibit A**. In fact, the face of the Deed of Trust identifies it as a "NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT," indicating that an Enterprise might have an interest in the Deed of Trust. *Id.* Thus, Plaintiff was on notice that unnamed other parties, including an Enterprise, might have an interest in the Property or could acquire one at some point throughout the life of the Loan. In this case, Fannie Mae had such an interest. It is immaterial whether the state statutes render an *unrecorded* deed of trust invalid against a subsequent bona fide purchaser—the Deed of Trust embodying Fannie Mae's interest was recorded at the time of the HOA Sale.

Furthermore, Plaintiff could and should have anticipated that there was a significant chance that a property it purchased at an HOA foreclosure sale was subject to an interest owned by one of the Enterprises. Fannie Mae and Freddie Mac have a large, well-publicized, and well-known role in the national housing market, especially in the aftermath of the recent housing crisis. In 2008, the Enterprises' "mortgage portfolios had a combined value of $5 trillion and accounted for nearly half of the United States mortgage market." *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 599-600 (D.C. Cir. 2017). Since 2012, "Fannie and Freddie, among other things, collectively purchased at least 11 million mortgages." *Id.* Accordingly, "[t]he position held in the home mortgage business by Fannie

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Mae and Freddie Mac make[s] them *the dominant force* in the market." *Town of Babylon v. FHFA*, 699 F.3d 221, 225 (2d Cir. 2012) (emphasis added); *see Nomura Holding Am., Inc.*, 873 F.3d 85, 105 (2d Cir. 2017) (same). Any purchaser of a property sold at an HOA sale in recent years should expect that there is a significant likelihood that Fannie Mae or Freddie Mac own the loan secured by the deed of trust that the purchaser hopes to secure in the course of the HOA sale or subsequent transfers.

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

Second, even if Nevada's bona fide purchaser statutes were read to protect Plaintiff from Fannie Mae's property interest because Fannie Mae's servicer appeared as the Deed of Trust's record beneficiary, the bona fide purchaser statutes would then be preempted by the Federal Foreclosure Bar. Indeed, in citing another opinion from this District, the Nevada Supreme Court recently recognized that "authority suggest[s] that the Federal Foreclosure Bar would preempt Nevada's law on bona fide purchasers." *Guberland*, 2018 WL 3025919 at *2 n.3 (Nev. June 15, 2018) (unpublished disposition) (citing *JPMorgan Chase Bank, N.A. v. GDS Fin. Servs.*, No. 2:17-cv-02451-APG-PAL, 2018 WL 2023123, at *3 (D. Nev. May 1, 2018)). Other courts recently have held that the Federal Foreclosure Bar preempts the bona fide purchaser statutes. *E.g.*, *U.S. Bank Home Mortg. v. Jensen*, No. 3:17-cv-0603-MMD-VPC, 2018 WL 3078753, at *2 (D. Nev. June 20, 2018).

Indeed, the conflict between the Federal Foreclosure Bar and the bona fide purchaser statutes, as Plaintiff would interpret them, is obvious. The Federal Foreclosure Bar automatically bars any nonconsensual extinguishment through foreclosure of any interest in property held by Fannie Mae while in conservatorship. However, Plaintiff's re-interpreted bona fide purchaser laws would allow

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state HOA lien sales to extinguish Fannie Mae's property interests whenever the associated deed of trust appeared in the name of Fannie Mae's servicer, an arrangement (as discussed *supra*) otherwise permitted under Nevada law. Federal law thus precludes what state law would purportedly permit: extinguishment of the Fannie Mae conservatorship's deed-of-trust interest.

Finally, the Nevada Supreme Court's *Shadow Wood* decision also does not support Plaintiff's claim to bona fide purchaser status. Opp. at 7-8 (citing *Shadow Wood Homeowners Assoc. v. N.Y. Bancorp, Inc.*, 366 P.3d 1005 (Nev. 2016)). In *Shadow Wood*, the Court examined whether an entity challenging the validity of an HOA foreclosure sale was entitled to equitable relief under state law. *Shadow Wood* did not need to resolve who had interests at the time of the HOA foreclosure sale, but instead employed its balancing test to determine whether the previous owner of a property could have the foreclosure sale set aside. *See* 366 P.3d at 1116.

Here, the equitable balancing test described in *Shadow Wood* is irrelevant to the existence of Fannie Mae's property interest at the time of sale. A federal statute governs the preservation of Fannie Mae's interest, and the Federal Foreclosure Bar contains no limitation that it applies only when it would achieve an equitable result. Accordingly, the factors considered by the Nevada Supreme Court in evaluating the equitable claim under state law at issue in *Shadow Wood* are not relevant here. Because the Federal Foreclosure Bar protected the deed of trust from extinguishment, *Shadow Wood* is inapposite.

CONCLUSION

For these reasons, the Court should deny Plaintiff's Motion.

DATED this 28th day of August, 2018.

AKERMAN LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 28th day of August, 2018, I caused to be served a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

Kerry P. Faughnan, Esq.	kerry.faughnan@gmail.com
DocPrep	filings@docprep.info
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Nina Miller	nmiller@wrslawyers.com

/s/ Patricia Larsen
An employee of AKERMAN LLP

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EXHIBIT A

20041020-0001569

Fee: $42.00
N/C Fee: $0.00

10/20/2004 10:32:56
T20040116980
Requestor:
BANK OF AMERICA

Frances Deane SUO
Clark County Recorder Pgs 29

Assessor's Parcel Number: 162108121B5

Return To: FL9-7CO-05-22
JACKSONVILLE POST CLOSING
9OCO 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

29

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

[Space Above This Line For Recording Data]

LOAN # [redacted]

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 M CHAEL T. ELLIOTT, AN UNMARRIED PERSON

Borrower is the trustor under this Security Instrument.

(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 901 GEORGE WASHINGTON, WICHITA, KS 67213901

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]:

[X] Adjustable Rate Rider	[X] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[X] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] 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.

Initials: _____

CVVV 10:05/04 7:59 AM 3300690454

(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: 162-08-712-185 which currently has the address of

3111 BEL AIR DR UNIT 24G [Street]

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

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

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

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

Initials: _____

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

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

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

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

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

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

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

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

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

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

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

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

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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

entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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

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

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

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

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

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

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

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

Initials: _____

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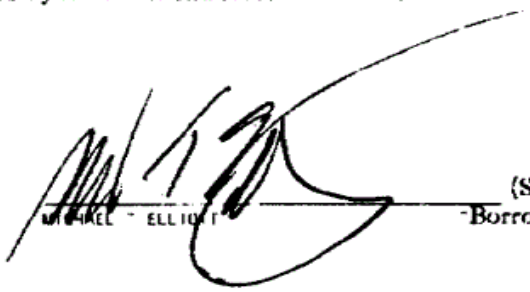
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:



_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

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-Borrower

_____ (Seal)
-Borrower

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STATE OF NEVADA
COUNTY OF San Diego

California

October 6th 2004

This instrument was acknowledged before me on 4001 Jason Woodward

by

Michael T Elliott

JASON S. WOODWARD
Commission # 1400483
Notary Public - California
San Diego County
My Comm. Expires Feb 13, 2007

Mail Tax Statements To: MICHAEL T ELLIOTT
3111 BEL AIR DR UNIT 24G
LAS VEGAS, NV 89109

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 20030131, 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 # [redacted]

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:

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 percentage points (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.

(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.

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

MICHAEL R ELLIOTT _____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

LOAN # [redacted]

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

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.

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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

LOAN # [redacted]

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 AMER CA, 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]

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."

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.

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 _____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

EXHIBIT B

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

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5805-1

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

EXHIBIT C

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

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

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:

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)

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5805-1

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

SIGNATURE Karen Ann Richards
(Notary Pubic)

EXHIBIT D

Inst #: 201211150002365
Fees: $18.00
N/C Fee: $0.00
11/15/2012 01:20:15 PM
Receipt #: 1383773
Requestor:
COLLECTIONS OF AMERICA
Recorded By: SAO Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY &
when recorded return to:
Collections of America, Inc.
1500 East Tropicana Avenue #108
Las Vegas, NV. 89119
TS# **4936**

APN#: **162-10-812-185**

NOTICE OF TRUSTEE SALE

To: Michael T. Elliott
You are in default of your **Las Vegas International Country Club Estates** assessments. Unless you take action to protect your property, it may be sold at a public sale. If you need an explanation of the nature of the proceedings against you, you should contact a lawyer.

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE.
If YOU HAVE ANY QUESTIONS, PLEASE CALL CAROL SALMON OF COLLECTIONS OF AMERICA,(702-463-3285) ACTING ON BEHALF OF LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT THEIR TOLL FREE NUMBER (877-829-9907) IMMEDIATELY.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly authorized agent shown below, of all right, title, and interest, subject to any (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to; (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative; and (d) Any other liens deemed superior to the assessment lien that is being foreclosed. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the amount if delinquent assessment, with interest and late charges thereon, management fees, attorney's fees charges and cost of the sale for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

TRUSTOR: **Michael T. Elliott**

Authorized Agent: **COLLECTIONS OF AMERICA**
Assessment Lien Recorded; **June 21, 2012,** Book 20120621 as Instrument No. 0001804 in the Official Records of the Office of the County Recorder of **CLARK** County, Nevada, described as follows: **PARCEL# 162-10-812-185 REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37 UNIT 185 SEC 10 TWP 21 RNG 61 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY NEVADA.**

Date of sale: **December 12, 2012** at 10:00 AM
Place of Sale: **At the front entrance to the Nevada Legal News located at 930 South 4th Street, Las Vegas, Nevada 89101.**
Amount necessary to satisfy lien as of **November 15, 2012** **$6,248.50**
Estimated Sale Amount:**$7,000.00**
Street Address or other common designation of real property: **3111 Bel Air Drive #24G Las Vegas, NV 89109**

The undersigned Authorized Agent disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above.

Date: **November 15, 2012**

KAREN ANN RICHARDS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 9-21-2015
Certificate No: 11-5805-1

COLLECTIONS OF AMERICA
1500 EAST TROPICANA AVENUE #108
LAS VEGAS, NV. 89119
(702) 463-3285

Amanda Olen
Collections of America

STATE OF **NEVADA**
COUNTY OF **CLARK**

SUBSCRIBED and **SWORN** to before me this 15 day of November 2012.

Notary Public in and for said State NV

EXHIBIT E

MILES, BERGSTROM & WINTERS, LLP AFFIDAVIT

State of California }
}ss.
Orange County }

Affiant being first duly sworn, deposes and says:

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

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

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

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

Loan Number: [redacted]

Borrower(s): Michael T. Elliott

Property Address: 3111 Bel Air Drive #216, Las Vegas, NV 89109

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

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a January 12, 2012 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Las Vegas International Country Club Estates, care of Collections of America, Inc.

7. Based on Miles Bauer's business records, I have not located a response to the above correspondence.

FURTHER DECLARANT SAYETH NOT.

Date: 4/7/16

Declarant Douglas E. Miles

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

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 7th day of April, 2016,

by Douglas E. Miles, proved to me on the basis of satisfactory evidence to be
(Name of Signer)

the person who appeared before me.

Signature _____ (Seal)
(Signature of Notary Public)

AMANDA MARIA MENDOZA
Commission # 2078315
Notary Public - California
Los Angeles County
My Comm. Expires Aug 17, 2018

DOUGLAS E. MILES
Also Admitted in California & Illinois
JEREMY T. BERGSTROM
Also Admitted in Arizona
GINA M. CORENA
ROCK K. JUNG
KRISTA J. NIELSON
JORY C. GARABEDIAN
THOMAS M. MORLAN
Admitted in California
STEVEN E. STERN
Admitted in Arizona & Illinois
ANDREW H. PASTWICK
Also Admitted in Arizona & California

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

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

CALIFORNIA OFFICE
1231 E. Dyer Road, Suite 100
Santa Ana, CA 92705
Phone: (714) 481-9100
Fax: (714) 481-9141

RICHARD J. BAUER, JR.
FRED TIMOTHY WINTERS
KEENAN E. McCLENAHAN
MARK T. DOMEYER
Also Admitted in the District of Columbia & Virginia
TAMI S. CROSBY
L. BRYANT JAQUEZ
WAYNE A. RASH
VY T. PHAM
HADI R. SEYED-ALI
BRIAN H. TRAN
ANNA A. GHAJAR
CORI B. JONES
CATHERINE K. MASON
CHRISTINE A. CHUNG
HANH T. NGUYEN
THOMAS B. SONG
S. SHELLY RAISZADEH
SHANNON C. WILLIAMS
ABTIN SHAKOURI
LAWRENCE R. BOIVIN

January 12, 2012

SENT VIA FIRST CLASS MAIL

Las Vegas International Country Club Estates
Collections of America, Inc.
1500 E. Tropicana Avenue, St. 108
Las Vegas, NV 89119

Re: *Property Address: 3111 Bel Air Drive #216, Las Vegas, NV 89109*
MBBW File No. 12-H0054

Dear Sirs:

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

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

> The association has a lien on a unit for:
> ...
> *any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section*

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

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

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

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

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

Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated November 29, 2011. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0412. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BANA.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

Rock K. Jung, Esq.

EXHIBIT F

(3)-1

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

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.

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. 0002134in 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.

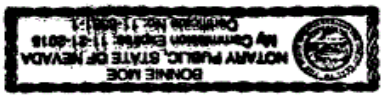
Dated: December 14, 2012

Collections of America, Inc. Trustee

BY: Carol Salmon

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

STATE OF NEVADA) ss
COUNTY OF CLARK)



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

On this 14th 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 Saer Capacity Grantor

Signature _____ Capacity Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Collections Of America	Print Name: 3111 Bel Air Drive # 24G Trust
Address: 1500 East Tropicana Ave #108	Address: 900 South Las Vegas Blvd #810
City, St., Zip: Las Vegas, NV 89119	City, St., Zip: Las Vegas, NV 89101

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

Print Name: Escrow #:
Address:
City/State/Zip:

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT G

B1 (Official Form 1)(12/11)

United States Bankruptcy Court
District of Nevada

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
Paradise Harbor Place Trust	
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all) **46-0636270**	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all)
Street Address of Debtor (No. and Street, City, and State): **C/O Resources Group LLC 900 Las Vegas Blvd S. #810 Las Vegas, NV** ZIP Code **89107**	Street Address of Joint Debtor (No. and Street, City, and State): ZIP Code
County of Residence or of the Principal Place of Business: **Clark**	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): ZIP Code	Mailing Address of Joint Debtor (if different from street address): ZIP Code
Location of Principal Assets of Business Debtor (if different from street address above):	

Type of Debtor (Form of Organization) (Check one box)

- ☐ Individual (includes Joint Debtors) *See Exhibit D on page 2 of this form.*
- ■ Corporation (includes LLC and LLP)
- ☐ Partnership
- ☐ Other (If debtor is not one of the above entities, check this box and state type of entity below.)

Nature of Business (Check one box)

- ☐ Health Care Business
- ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B)
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank
- ■ Other

Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- ☐ Chapter 7
- ☐ Chapter 9
- ■ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding
- ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

Chapter 15 Debtors

Country of debtor's center of main interests:

Each country in which a foreign proceeding by, regarding, or against debtor is pending:

Tax-Exempt Entity (Check box, if applicable)

- ☐ Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).

Nature of Debts (Check one box)

- ☐ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
- ■ Debts are primarily business debts.

Filing Fee (Check one box)

- ■ Full Filing Fee attached
- ☐ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.
- ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.

Chapter 11 Debtors

Check one box:

- ☐ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).
- ■ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).

Check if:

- ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,343,300 *(amount subject to adjustment on 4/01/13 and every three years thereafter).*

Check all applicable boxes:

- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

Statistical/Administrative Information

- ■ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors

■ 1-49	☐ 50-99	☐ 100-199	☐ 200-999	☐ 1,000-5,000	☐ 5,001-10,000	☐ 10,001-25,000	☐ 25,001-50,000	☐ 50,001-100,000	☐ OVER 100,000

Estimated Assets

☐ $0 to $50,000	☐ $50,001 to $100,000	☐ $100,001 to $500,000	☐ $500,001 to $1 million	■ $1,000,001 to $10 million	☐ $10,000,001 to $50 million	☐ $50,000,001 to $100 million	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion

Estimated Liabilities

☐ $0 to $50,000	☐ $50,001 to $100,000	☐ $100,001 to $500,000	☐ $500,001 to $1 million	■ $1,000,001 to $10 million	☐ $10,000,001 to $50 million	☐ $50,000,001 to $100 million	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion

Voluntary Petition *(This page must be completed and filed in every case)*	Name of Debtor(s): **Paradise Harbor Place Trust**

All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)

Location Where Filed: **- None -**	Case Number:	Date Filed:
Location Where Filed:	Case Number:	Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor: **See Attachment**	Case Number:	Date Filed:
District:	Relationship:	Judge:

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b).

X _____
Signature of Attorney for Debtor(s) (Date)

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

■ No.

Exhibit D

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☐ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

Information Regarding the Debtor - Venue

(Check any applicable box)

■ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

■ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Certification by a Debtor Who Resides as a Tenant of Residential Property

(Check all applicable boxes)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

_____
(Name of landlord that obtained judgment)

_____
(Address of landlord)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

Voluntary Petition

(This page must be completed and filed in every case)

Name of Debtor(s):
Paradise Harbor Place Trust

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

_____
Telephone Number (If not represented by attorney)

_____
Date

Signature of Attorney*

X **/s/ Ryan Alexander**
Signature of Attorney for Debtor(s)

Ryan Alexander 10845
Printed Name of Attorney for Debtor(s)

The Firm, PC
Firm Name

200 E Charleston Blvd
Las Vegas, NV 89104

Address

Email: ryan@thefirm-lv.com
(702) 222-3476 Fax: (702) 252-3476
Telephone Number

September 4, 2012
Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X **/s/ Eddie Haddad**
Signature of Authorized Individual

Eddie Haddad
Printed Name of Authorized Individual

Managing Owner
Title of Authorized Individual

September 4, 2012
Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11. United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.

☐ Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
Signature of Foreign Representative

_____
Printed Name of Foreign Representative

_____
Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

_____
Printed Name and title, if any, of Bankruptcy Petition Preparer

_____
Social-Security number (If the bankrutpcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.)(Required by 11 U.S.C. § 110.)

_____
Address

X _____

_____
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person,or partner whose Social Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. §110; 18 U.S.C. §156.

In re **Paradise Harbor Place Trust**, Case No. _____
Debtor

FORM 1. VOLUNTARY PETITION

Pending Bankruptcy Cases Filed Attachment

Name of Debtor / District	Case No. / Relationship	Date Filed / Judge
4208 Rollingstone Dr Trust **District of Nevada**	**12-12363** **Affiliate**	**03/01/12** **Bruce T. Beesley**
Bourne Valley Court Trust **District of Nevada**	**12-16387** **Affiliate**	**05/31/12** **Beesely**
Cape Jasmine Court Trust **District of Nevada**	**12-17498** **Affiliate**	**06/26/12** **Bruce T. Beesely**
Oliver Sagebrush Dr Trust **District of Nevada**	**12-18558** **Affiliate**	**07/23/12** **Beesely**
River Glider Ave Trust **District of Nevada**	**12-17862** **Affiliate**	**07/03/12** **Bruce T. Beesely**
Villa Vecchio Court Trust **District of Nevada**	**12-15254** **Affiliate**	**05/02/12** **Beesely**

B4 (Official Form 4) (12/07)

United States Bankruptcy Court
District of Nevada

In re **Paradise Harbor Place Trust** Debtor(s)

Case No.

Chapter **11**

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [*or* chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1) *Name of creditor and complete mailing address including zip code*	(2) *Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted*	(3) *Nature of claim (trade debt, bank loan, government contract, etc.)*	(4) *Indicate if claim is contingent, unliquidated, disputed, or subject to setoff*	(5) *Amount of claim [if secured, also state value of security]*
Aargon Collection Agency 3025 W. Sahara Ave Las Vegas, NV 89102	**Aargon Collection Agency 3025 W. Sahara Ave Las Vegas, NV 89102**	**Judgment Lien on Stone Hollow Ave**	**Disputed**	**Unknown**
Absolute Collection Services PO Box 12117 Las Vegas, NV 89112	**Absolute Collection Services PO Box 12117 Las Vegas, NV 89112**	**Cortez Heights HOA for La Quinta Hills**	**Disputed**	**Unknown**
Absolute Collection Services PO Box 12117 Las Vegas, NV 89112	**Absolute Collection Services PO Box 12117 Las Vegas, NV 89112**	**Eldoardo 3rd HOA for Indian Peak**	**Disputed**	**Unknown**
Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147	**Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147**	**Camco/Warm Springs HOA for Club Crest**	**Disputed**	**Unknown**
Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147	**Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147**	**Southern Highlands HOA for Lodina**	**Disputed**	**Unknown**
Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147	**Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147**	**Pelican Creek HOA for Paradise Harbor**	**Disputed**	**Unknown**
Allied Trustee Services 701 North Green Valley Pkwy #200 Henderson, NV 89014	**Allied Trustee Services 701 North Green Valley Pkwy #200 Henderson, NV 89014**	**Cortez Heights HOA for La Quinta Hills**	**Disputed**	**Unknown**
City of North Las Vegas 2200 Civic Center Dr North Las Vegas, NV 89030	**City of North Las Vegas 2200 Civic Center Dr North Las Vegas, NV 89030**	**Utility Lien for La Quinta Hills**	**Disputed**	**Unknown**
Countrywide 450 American St #SV416 Simi Valley, CA 93065	**Countrywide 450 American St #SV416 Simi Valley, CA 93065**	**1704 Pacific Breeze Dr Las Vegas NV 89144**		**268,000.00 (119,000.00 secured)**
Countrywide 450 American St #SV416 Simi Valley, CA 93065	**Countrywide 450 American St #SV416 Simi Valley, CA 93065**	**2725 Echo Springs St Las Vegas, NV 89156**		**204,950.00 (60,000.00 secured)**
Countrywide 450 American St #SV416 Simi Valley, CA 93065	**Countrywide 450 American St #SV416 Simi Valley, CA 93065**	**5308 La Quinta Hills St North Las Vegas NV 89081**		**180,000.00 (82,000.00 secured)**

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B4 (Official Form 4) (12/07) - Cont.

In re **Paradise Harbor Place Trust** Case No. _____

Debtor(s)

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

(Continuation Sheet)

(1) *Name of creditor and complete mailing address including zip code*	(2) *Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted*	(3) *Nature of claim (trade debt, bank loan, government contract, etc.)*	(4) *Indicate if claim is contingent, unliquidated, disputed, or subject to setoff*	(5) *Amount of claim [if secured, also state value of security]*
First Guaranty Financial Corp 3 Hutton Center Dr #150 Santa Ana, CA 92707	**First Guaranty Financial Corp 3 Hutton Center Dr #150 Santa Ana, CA 92707**	**3984 Meadow Foxtail Dr Las Vegas, NV 89122**		**260,000.00 (70,000.00 secured)**
First National Bank of Arizona PO Box 66604 Phoenix, AZ 85082	**First National Bank of Arizona PO Box 66604 Phoenix, AZ 85082**	**2088 Club Crest Way Henderson, NV 89014**		**245,000.00 (115,000.00 secured)**
Indymac 1 National City Kalamazoo, MI 49009	**Indymac 1 National City Kalamazoo, MI 49009**	**5005 Paradise Harbor Place North Las Vegas NV 89031**		**141,000.00 (63,000.00 secured)**
Nevada Association Services 6224 W. Desert Inn Rd #A Las Vegas, NV 89146	**Nevada Association Services 6224 W. Desert Inn Rd #A Las Vegas, NV 89146**	**Heritage Estates HOA Lien for Echo Springs**	**Disputed**	**Unknown**
Security Atlantic Mortgage 619 Amboy Ave Edison, NJ 08837	**Security Atlantic Mortgage 619 Amboy Ave Edison, NJ 08837**	**2601 Vendange Place Henderson, NV 89044**		**335,000.00 (190,000.00 secured)**
Spectrum Funding Corp 7084 S. 2300 E. #210 Salt Lake City, UT 84121	**Spectrum Funding Corp 7084 S. 2300 E. #210 Salt Lake City, UT 84121**	**6188 Stone Hollow St Las Vegas, NV 89156**		**297,000.00 (65,000.00 secured)**
US Recordings 2925 Country Dr #201 Saint Paul, MN 55117	**US Recordings 2925 Country Dr #201 Saint Paul, MN 55117**	**8904 Goldstone Ave Las Vegas NV 89143**		**553,000.00 (300,000.00 secured)**
Weststar Credit Union PO Box 96011 Las Vegas, NV 89193	**Weststar Credit Union PO Box 96011 Las Vegas, NV 89193**	**3728 Lodina Court Las Vegas NV 89141**		**258,000.00 (95,000.00 secured)**
World Savings & Loan Attn: Bankruptcy 4101 Wiseman Blvd San Antonio, TX 78251	**World Savings & Loan Attn: Bankruptcy 4101 Wiseman Blvd San Antonio, TX 78251**	**6420 Indian Peak Court North Las Vegas NV 89084**		**165,600.00 (90,000.00 secured)**

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B4 (Official Form 4) (12/07) - Cont.

In re **Paradise Harbor Place Trust** Case No. _____

Debtor(s)

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

(Continuation Sheet)

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the Managing Owner of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing list and that it is true and correct to the best of my information and belief.

Date **September 4, 2012** Signature **/s/ Eddie Haddad**

Eddie Haddad

Managing Owner

Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

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B6 Summary (Official Form 6 - Summary) (12/07)

United States Bankruptcy Court
District of Nevada

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

Chapter **11**

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	1,249,000.00		
B - Personal Property	Yes	3	0.00		
C - Property Claimed as Exempt	No	0			
D - Creditors Holding Secured Claims	Yes	3		2,907,550.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	5		0.00	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	No	0			N/A
J - Current Expenditures of Individual Debtor(s)	No	0			N/A
Total Number of Sheets of ALL Schedules		15			
		Total Assets	1,249,000.00		
			Total Liabilities	2,907,550.00	

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Form 6 - Statistical Summary (12/07)

United States Bankruptcy Court
District of Nevada

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

Chapter **11**

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C.§ 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	**Amount**
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	
TOTAL	

State the following:

Average Income (from Schedule I, Line 16)	
Average Expenses (from Schedule J, Line 18)	
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column		
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		
4. Total from Schedule F		
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		

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B6A (Official Form 6A) (12/07)

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
2088 Club Crest Way Henderson, NV 89014		**-**	**115,000.00**	**245,000.00**
2725 Echo Springs St Las Vegas, NV 89156		**-**	**60,000.00**	**204,950.00**
3984 Meadow Foxtail Dr Las Vegas, NV 89122		**-**	**70,000.00**	**260,000.00**
6188 Stone Hollow St Las Vegas, NV 89156		**-**	**65,000.00**	**297,000.00**
8904 Goldstone Ave Las Vegas NV 89143		**-**	**300,000.00**	**553,000.00**
1704 Pacific Breeze Dr Las Vegas NV 89144		**-**	**119,000.00**	**268,000.00**
2601 Vendange Place Henderson, NV 89044		**-**	**190,000.00**	**335,000.00**
3728 Lodina Court Las Vegas NV 89141		**-**	**95,000.00**	**258,000.00**
5005 Paradise Harbor Place North Las Vegas NV 89031		**-**	**63,000.00**	**141,000.00**
5308 La Quinta Hills St North Las Vegas NV 89081		**-**	**82,000.00**	**180,000.00**
6420 Indian Peak Court North Las Vegas NV 89084		**-**	**90,000.00**	**165,600.00**

Sub-Total > **1,249,000.00** (Total of this page)

Total > **1,249,000.00**

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

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NSB 2456

B6B (Official Form 6B) (12/07)

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

	Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1.	Cash on hand	X			
2.	Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		**Wells Fargo**	**-**	**0.00**
3.	Security deposits with public utilities, telephone companies, landlords, and others.	X			
4.	Household goods and furnishings, including audio, video, and computer equipment.	X			
5.	Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6.	Wearing apparel.	X			
7.	Furs and jewelry.	X			
8.	Firearms and sports, photographic, and other hobby equipment.	X			
9.	Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10.	Annuities. Itemize and name each issuer.	X			

Sub-Total > (Total of this page) **0.00**

2 continuation sheets attached to the Schedule of Personal Property

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NSP0453

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

Sub-Total > (Total of this page) **0.00**

Sheet **1** of **2** continuation sheets attached to the Schedule of Personal Property

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In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

Sub-Total > (Total of this page)	**0.00**
Total >	**0.00**

Sheet **2** of **2** continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)

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NSP0459

B6D (Official Form 6D) (12/07)

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor" ,include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No. **Countrywide** **450 American St #SV416** **Simi Valley, CA 93065**		-	**First Mortgage** **2725 Echo Springs St Las Vegas, NV 89156** Value $ **60,000.00**				**204,950.00**	**144,950.00**
Account No. **Countrywide** **450 American St #SV416** **Simi Valley, CA 93065**		-	**First Mortgage** **1704 Pacific Breeze Dr Las Vegas NV 89144** Value $ **119,000.00**				**268,000.00**	**149,000.00**
Account No. **Countrywide** **450 American St #SV416** **Simi Valley, CA 93065**		-	**First Mortgage** **5308 La Quinta Hills St North Las Vegas NV 89081** Value $ **82,000.00**				**180,000.00**	**98,000.00**
Account No. **xxxx1429** **First Guaranty Financial Corp** **3 Hutton Center Dr #150** **Santa Ana, CA 92707**		-	**First Mortgage** **3984 Meadow Foxtail Dr Las Vegas, NV 89122** Value $ **70,000.00**				**260,000.00**	**190,000.00**
			Subtotal (Total of this page)				**912,950.00**	**581,950.00**

2 continuation sheets attached

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NSP0460

B6D (Official Form 6D) (12/07) - Cont.

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No. **First National Bank of Arizona PO Box 66604 Phoenix, AZ 85082**		-	**First Mortgage 2088 Club Crest Way Henderson, NV 89014** Value $ **115,000.00**				**245,000.00**	**130,000.00**
Account No. **Indymac 1 National City Kalamazoo, MI 49009**		-	**First Mortgage 5005 Paradise Harbor Place North Las Vegas NV 89031** Value $ **63,000.00**				**141,000.00**	**78,000.00**
Account No. **Security Atlantic Mortgage 619 Amboy Ave Edison, NJ 08837**		-	**First Mortgage 2601 Vendange Place Henderson, NV 89044** Value $ **190,000.00**				**335,000.00**	**145,000.00**
Account No. **Spectrum Funding Corp 7084 S. 2300 E. #210 Salt Lake City, UT 84121**		-	**First Mortgage 6188 Stone Hollow St Las Vegas, NV 89156** Value $ **65,000.00**				**297,000.00**	**232,000.00**
Account No. **US Recordings 2925 Country Dr #201 Saint Paul, MN 55117**		-	**First Mortgage 8904 Goldstone Ave Las Vegas NV 89143** Value $ **300,000.00**				**553,000.00**	**253,000.00**
Sheet **1** of **2** continuation sheets attached to Schedule of Creditors Holding Secured Claims			Subtotal (Total of this page)				**1,571,000.00**	**838,000.00**

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B6D (Official Form 6D) (12/07) - Cont.

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No. **Weststar Credit Union** **PO Box 96011** **Las Vegas, NV 89193**		-	**First Mortgage** **3728 Lodina Court Las Vegas NV 89141** Value $ **95,000.00**				**258,000.00**	**163,000.00**
Account No. **World Savings & Loan** **Attn: Bankruptcy** **4101 Wiseman Blvd** **San Antonio, TX 78251**		-	**First Mortgage** **6420 Indian Peak Court North Las Vegas NV 89084** Value $ **90,000.00**				**165,600.00**	**75,600.00**
Account No.			Value $					
Account No.			Value $					
Account No.			Value $					
			Subtotal (Total of this page)				**423,600.00**	**238,600.00**
			Total (Report on Summary of Schedules)				**2,907,550.00**	**1,658,550.00**

Sheet **2** of **2** continuation sheets attached to Schedule of Creditors Holding Secured Claims

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NSP0462

B6E (Official Form 6E) (4/10)

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

■ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic support obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $11,725* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to $5,775* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to $2,600* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and certain other debts owed to governmental units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to maintain the capital of an insured depository institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

☐ **Claims for death or personal injury while debtor was intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* *Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

0 continuation sheets attached

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NSP0463

B6F (Official Form 6F) (12/07)

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. **Aargon Collection Agency** **3025 W. Sahara Ave** **Las Vegas, NV 89102**		-	**Judgment Lien on Stone Hollow Ave**			X	**Unknown**
Account No. **Absolute Collection Services** **PO Box 12117** **Las Vegas, NV 89112**		-	**Cortez Heights HOA for La Quinta Hills**			X	**Unknown**
Account No. **Absolute Collection Services** **PO Box 12117** **Las Vegas, NV 89112**		-	**Eldoardo 3rd HOA for Indian Peak**			X	**Unknown**
Account No. **Alessi & Koenig LLC** **9500 W Flamingo #205** **Las Vegas, NV 89147**		-	**Camco/Warm Springs HOA for Club Crest**			X	**Unknown**
						Subtotal (Total of this page)	**0.00**

4 continuation sheets attached

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B6F (Official Form 6F) (12/07) - Cont.

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. **Alessi & Koenig LLC** **9500 W Flamingo #205** **Las Vegas, NV 89147**		-	**Southern Highlands HOA for Lodina**			X	**Unknown**
Account No. **Alessi & Koenig LLC** **9500 W Flamingo #205** **Las Vegas, NV 89147**		-	**Pelican Creek HOA for Paradise Harbor**			X	**Unknown**
Account No. **Allied Trustee Services** **701 North Green Valley Pkwy #200** **Henderson, NV 89014**		-	**Cortez Heights HOA for La Quinta Hills**			X	**Unknown**
Account No. **City of North Las Vegas** **2200 Civic Center Dr** **North Las Vegas, NV 89030**		-	**Utility Lien for La Quinta Hills**			X	**Unknown**
Account No. **Nevada Association Services** **6224 W. Desert Inn Rd #A** **Las Vegas, NV 89146**		-	**Heritage Estates HOA Lien for Echo Springs**			X	**Unknown**

Sheet no. **1** of **4** sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) **0.00**

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B6F (Official Form 6F) (12/07) - Cont.

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. **Nevada Association Services 6224 W. Desert Inn Rd #A Las Vegas, NV 89146**		-	**Sunrise Ridge HOA Lien for Meadow Foxtail**			X	**Unknown**
Account No. **Nevada Association Services 6224 W. Desert Inn Rd #A Las Vegas, NV 89146**		-	**Sunrise Ridge HOA Lien for Stone Hollow**			X	**Unknown**
Account No. **Nevada Association Services TS #N67297 6224 W Desert Inn Rd #A Las Vegas, NV 89146**		-	**Astoria Iron HOA for Goldstone**			X	**Unknown**
Account No. **Nevada Association Services TS #N67297 6224 W Desert Inn Rd #A Las Vegas, NV 89146**		-	**Pacific Vintage HOA for Pacific Breeze**			X	**Unknown**
Account No. **Nevada Association Services TS #N67297 6224 W Desert Inn Rd #A Las Vegas, NV 89146**		-	**Madiera HOA for Vendange**			X	**Unknown**

Sheet no. **2** of **4** sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) **0.00**

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NEF 2012-466

B6F (Official Form 6F) (12/07) - Cont.

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. **Red Rock Financial Services 6830 W Oquendo Rd #201 Las Vegas, NV 89118**		-	**HOA lien for Lodina**			X	**Unknown**
Account No. **Red Rock Financial Services 6830 W Oquendo Rd #201 Las Vegas, NV 89118**		-	**RMI Management HOA for Paradise Harbor**			X	**Unknown**
Account No. **Republic Services 7 E. Sahara Ave Las Vegas, NV 89104**		-	**Utility Services Lien for Echo Springs**			X	**Unknown**
Account No. **Republic Services 7 E. Sahara Ave Las Vegas, NV 89104**		-	**Utility Services Lien for Stone Hollow**			X	**Unknown**
Account No. **Republic Services 7 E. Sahara Ave Las Vegas, NV 89104**		-	**Utility Services Lien for Goldstone**			X	**Unknown**

Sheet no. **3** of **4** sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) **0.00**

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B6F (Official Form 6F) (12/07) - Cont.

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. **Summerlin North Community Assoc PO Box 96807 Las Vegas, NV 89193**		-	**HOA lien for Pacific Breeze**			X	**Unknown**
Account No. **Taylor Association Management 259 N Pecos Rd #100 Henderson, NV 89074**		-	**Astoria Iron Mountain HOA for Goldstone**			X	**Unknown**
Account No.							
Account No.							
Account No.							

Sheet no. **4** of **4** sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) **0.00**

Total (Report on Summary of Schedules) **0.00**

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B6G (Official Form 6G) (12/07)

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
First Service 630 Trade Center Dr #1000 Las Vegas, NV 89119	**Property Management Agreement for 5005 Paradise Harbor**
First Service 630 Trade Center Dr #1000 Las Vegas, NV 89119	**Property Management Agreement for 3728 Lodina**
First Service 630 Trade Center Dr #1000 Las Vegas, NV 89119	**Property Management Agreement for 2601 Vendange**
First Service 630 Trade Center Dr #1000 Las Vegas, NV 89119	**Property Management Agreement for 1704 Pacific Breeze**
First Service 630 Trade Center Dr #1000 Las Vegas, NV 89119	**Property Management Agreement for 5308 La Quinta Hills St**
First Service 630 Trade Center Dr #1000 Las Vegas, NV 89119	**Property Management Agreement for 6420 Indian Peak**
First Service 630 Trade Center Dr #1000 Las Vegas, NV 89119	**Property Management Agreement for 8904 Goldstone**
First Service 630 Trade Center Dr #1000 Las Vegas, NV 89119	**Property Management Agreement for 2725 Echo Springs St**
First Service 630 Trade Center Dr #1000 Las Vegas, NV 89119	**Property Management Agreement for 2088 Club Crest**
First Service 630 Trade Center Dr #1000 Las Vegas, NV 89119	**Property Management Agreement for 6188 Stone Hollow**
First Service 630 Trade Center Dr #1000 Las Vegas, NV 89119	**Property Management Agreement for 3984 Meadow Foxtail**

0 _____ continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

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B6H (Official Form 6H) (12/07)

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

■ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

0 _____ continuation sheets attached to Schedule of Codebtors

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NSP0470

B6 Declaration (Official Form 6 - Declaration). (12/07)

United States Bankruptcy Court
District of Nevada

In re **Paradise Harbor Place Trust** Debtor(s)

Case No.

Chapter **11**

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the Managing Owner of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of **17** sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date **September 4, 2012**

Signature **/s/ Eddie Haddad**
Eddie Haddad
Managing Owner

Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

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B7 (Official Form 7) (04/10)

United States Bankruptcy Court
District of Nevada

In re **Paradise Harbor Place Trust** Debtor(s)

Case No.

Chapter **11**

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None ■

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

2. Income other than from employment or operation of business

None ■

State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

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3. Payments to creditors

None ■ ***Complete a. or b., as appropriate, and c.***

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than $600. Indicate with an (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING

None ■ b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than $5,850*. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING

None ■ c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

None ■ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION

None ■ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY

5. Repossessions, foreclosures and returns

None ■ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY

* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

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6. Assignments and receiverships

None ■ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT

None ■ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY

7. Gifts

None ■ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT

8. Losses

None ■ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
The Firm, PC 200 E Charleston Blvd Las Vegas, NV 89104	**7/23/12**	**$6600.00**

10. Other transfers

None ■ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED

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None ■ b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY

11. Closed financial accounts

None ■ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING

12. Safe deposit boxes

None ■ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY

13. Setoffs

None ■ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF

14. Property held for another person

None ■ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY

15. Prior address of debtor

None ■ If the debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY

16. Spouses and Former Spouses

None ■ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

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17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None ■ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ■ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ■ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION

18 . Nature, location and name of business

None ☐ a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
Paradise Harbor Place Trust	**46-0636270**	**C/O Resources Group LLC 900 Las Vegas Blvd S. #810 Las Vegas, NV 89107**	**Real Estate**	**7/2012-Current**

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None ■ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None ☐ a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
Rosie Bonilla **900 Las Vegas Blvd #810** **Las Vegas, NV 89101**	**1/2012-Current**

None ■ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME ADDRESS DATES SERVICES RENDERED

None ■ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME ADDRESS

None ■ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS DATE ISSUED

20. Inventories

None ■ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY INVENTORY SUPERVISOR DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)

None ■ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

21 . Current Partners, Officers, Directors and Shareholders

None ■ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS NATURE OF INTEREST PERCENTAGE OF INTEREST

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None ■ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP

22 . Former partners, officers, directors and shareholders

None ■ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL

None ■ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION

23 . Withdrawals from a partnership or distributions by a corporation

None ■ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

24. Tax Consolidation Group.

None ■ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)

25. Pension Funds.

None ■ If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER (EIN)

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date **September 4, 2012** Signature **/s/ Eddie Haddad**
Eddie Haddad
Managing Owner

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

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United States Bankruptcy Court
District of Nevada

In re **Paradise Harbor Place Trust** Debtor(s)

Case No.

Chapter **11**

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	$	**6,600.00**
Prior to the filing of this statement I have received	$	**6,600.00**
Balance Due	$	**0.00**

2. The source of the compensation paid to me was:

■ Debtor ☐ Other (specify):

3. The source of compensation to be paid to me is:

■ Debtor ☐ Other (specify):

4. ■ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
d. [Other provisions as needed]

Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:

Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: **September 4, 2012**

/s/ Ryan Alexander
Ryan Alexander 10845
The Firm, PC
200 E Charleston Blvd
Las Vegas, NV 89104
(702) 222-3476 Fax: (702) 252-3476
ryan@thefirm-lv.com

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United States Bankruptcy Court
District of Nevada

In re **Paradise Harbor Place Trust**, Debtor

Case No. _____

Chapter **11**

LIST OF EQUITY SECURITY HOLDERS

Following is the list of the Debtor's equity security holders which is prepared in accordance with Rule 1007(a)(3) for filing in this chapter 11 case.

Name and last known address or place of business of holder	Security Class	Number of Securities	Kind of Interest
Eddie Haddad **C/O Resources Group LLC** **900 Las Vegas Blvd S. #810** **Las Vegas, NV 89107**			**Owner**

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the Managing Owner of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

Date **September 4, 2012**

Signature **/s/ Eddie Haddad**
Eddie Haddad
Managing Owner

Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C §§ 152 and 3571.

0 continuation sheets attached to List of Equity Security Holders

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United States Bankruptcy Court
District of Nevada

In re **Paradise Harbor Place Trust** Debtor(s)

Case No.

Chapter **11**

VERIFICATION OF CREDITOR MATRIX

I, the Managing Owner of the corporation named as the debtor in this case, hereby verify that the attached list of creditors is true and correct to the best of my knowledge.

Date: **September 4, 2012**

/s/ Eddie Haddad
Eddie Haddad/Managing Owner
Signer/Title

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Paradise Harbor Place Trust
C/O Resources Group LLC
900 Las Vegas Blvd S. #810
Las Vegas, NV 89107

Ryan Alexander
The Firm, PC
200 E Charleston Blvd
Las Vegas, NV 89104

Aargon Collection Agency
3025 W. Sahara Ave
Las Vegas, NV 89102

Absolute Collection Services
PO Box 12117
Las Vegas, NV 89112

Alessi & Koenig LLC
9500 W Flamingo #205
Las Vegas, NV 89147

Allied Trustee Services
701 North Green Valley Pkwy #200
Henderson, NV 89014

BAC Home Loans Servicing
450 American St.
Simi Valley, CA 93065

Bank of America
Acct No xxxx1429
PO Box 2518
Houston, TX 77252

Bank of America
Acct No xxxx1429
400 National Way
Simi Valley, CA 93065

CAMCO
PO BOX 12117
Las Vegas, NV 89112

City of North Las Vegas
2200 Civic Center Dr
North Las Vegas, NV 89030

Clark County Assessor
500 S. Grand Central Parkway
PO Box 5511401
Las Vegas, NV 89155

Clark County Treasurer
500 S. Grand Central Pkwy
PO Box 551220
Las Vegas, NV 89155

CoreLogic
450 E Boundary St
Chapin, SC 29036

Countrywide
450 American St #SV416
Simi Valley, CA 93065

Countrywide
MS SV-79 Document Processing
PO Box 10423
Van Nuys, CA 91410

DETR
Employment Security Division
500 E. Third St
Carson City, NV 89713

Executive Trustee Services
2255 N. Ontario Dr #400
Burbank, CA 91504

Fidelity National Title Agency
5737 Hedgeford Court
Las Vegas, NV 89120

Fidelity National Title Agency
17592 E 17th St #300
Tustin, CA 92780

Fidelity National Title Agency
1920 Main St #1120
Irvine, CA 92614

First Guaranty Financial Corp
Acct No xxxx1429
3 Hutton Center Dr #150
Santa Ana, CA 92707

First National Bank of Arizona
PO Box 66604
Phoenix, AZ 85082

Housekey Financial Corp
PO Box 60145
City of Industry, CA 91716

HSBC Bank
Attn: Bankruptcy
Po Box 5253
Carol Stream, IL 60197

Indymac
1 National City
Kalamazoo, MI 49009

Indymac
155 N. Lake Ave
Pasadena, CA 91101

IRS
PO Box 1303
Charlotte, NC 28201

IRS
PO Box 7346
Philadelphia, PA 19101

KC Wilson & Associates
23232 Peralta Dr #119
Laguna Hills, CA 92653

Mortgage
1350 Deming Way 3rd Floor
Middleton, WI 53562

National Default Servicing Corporation
7720 N. 16th St #300
Phoenix, AZ 85020

Nevada Association Services
6224 W. Desert Inn Rd #A
Las Vegas, NV 89146

Nevada Dept of Taxation
ATTN: Bankruptcy Division
555 E. Washington Ave #1300
Las Vegas, NV 89101

Nevada DMV
ATTN: Legal Division
555 Wright Way
Carson City, NV 89711

Nevada Legal News
930 S. 4th St
Las Vegas, NV 89101

Recontrust Company
2380 Performance Dr TX2-984-0407
Richardson, TX 75082

Red Rock Financial Services
6830 W Oquendo Rd #201
Las Vegas, NV 89118

Republic Services
7 E. Sahara Ave
Las Vegas, NV 89104

Secretary of Treasury
1500 Pennsylvannia Ave NW
Washington, DC 20220

Security Atlantic Mortgage
619 Amboy Ave
Edison, NJ 08837

Spectrum Funding Corp
7084 S. 2300 E. #210
Salt Lake City, UT 84121

Summerlin North Community Assoc
PO Box 96807
Las Vegas, NV 89193

Taylor Association Management
259 N Pecos Rd #100
Henderson, NV 89074

The Cooper Castle Law Firm
820 S. Valley View Blvd
Las Vegas, NV 89107

United States Chapter 11 Trustee
Foley Federal Building
300 S. Las Vegas Blvd
#4300
Las Vegas, NV 89101

US Recordings
2925 Country Dr #201
Saint Paul, MN 55117

Weststar Credit Union
PO Box 96011
Las Vegas, NV 89193

Wf Fin Bank/Wells Fargo Financial
Wells Fargo Financial
4137 121st St
Urbandale, IA 50323

World Savings & Loan
Attn: Bankruptcy
4101 Wiseman Blvd
San Antonio, TX 78251

World Savings & Loan
Attn: Bankruptcy
PO Box 659548
San Antonio, TX 78265

United States Bankruptcy Court
District of Nevada

In re **Paradise Harbor Place Trust** Debtor(s)

Case No.

Chapter **11**

CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the undersigned counsel for **Paradise Harbor Place Trust** in the above captioned action, certifies that the following is a (are) corporation(s), other than the debtor or a governmental unit, that directly or indirectly own(s) 10% or more of any class of the corporation's(s') equity interests, or states that there are no entities to report under FRBP 7007.1:

■ None [*Check if applicable*]

September 4, 2012
Date

/s/ Ryan Alexander
Ryan Alexander 10845
Signature of Attorney or Litigant
Counsel for **Paradise Harbor Place Trust**

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EXHIBIT H

MOT
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re: PARADISE HARBOR PLACE TRUST Debtor.	Case No.: BK-S-12-20213-BTB Hon. Bruce T. Beesely Chapter 11 **MOTION TO USE CASH COLLATERAL *NUNC PRO TUNC*** **Hearing Date: October 16, 2012** **Time of Hearing: 1:30 PM**

The Firm, PC
200 E. Charleston Blvd. Las Vegas, NV 89104

COME NOW **PARADISE HARBOR PLACE TRUST**, ("Debtors"), the debtors and debtors-in-possession in the above-captioned chapter 11 case, hereby move the Court for an Order authorizing the Debtors' use of cash collateral *nunc pro tunc*. This Motion is based on the Memorandum of Points and Authorities incorporated hereto and the Declaration of the Debtors.

MEMORANDUM OF POINTS OF AUTHORITIES

A. **Background Facts**

1. Debtors filed their voluntary petition under Chapter 11 of the United States Bankruptcy Code on September 4, 2012.

2. Debtors own the real properties located at the following residences and described below:

   i. **2088 Club Crest Way Henderson NV 89014** – Investment Property;

   ii. **2725 Echo Springs St Las Vegas NV 89156** – Investment Property;

iii. **3984 Meadow Foxtail Dr Las Vegas NV 89122** – Investment Property;

iv. **6188 Stone Hollow St Las Vegas NV 89156** – Investment Property;

v. **8904 Goldstone Ave Las Vegas NV 89143** – Investment Property;

vi. **1704 Pacific Breeze Dr Las Vegas NV 89144** – Investment Property;

vii. **2601 Vendange Place Henderson NV 89044** – Investment Property;

viii. **3728 Lodina Court Las Vegas NV 89141** – Investment Property;

ix. **5005 Paradise Harbor Place North Las Vegas NV 89031** – Investment Property;

x. **5308 La Quinta Hills St North Las Vegas NV 89081** – Investment Property;

xi. **6420 Indian Peak Court North Las Vegas NV 89084** – Investment Property and

The properties listed above are hereinafter referred to as the "Rental Properties." The Debtor is a Trust that owns all rental properties. The Trustee for this Trust is Resources Group, LLC, and Resources Group LLC manages the collection of rental income, as well as the day-to-day operations for the rental properties for this Trust. The sole owner of Resources Group, LLC and Grantor of the Trust is Mr. Iyad (Eddie) Haddad. Mr. Haddad funds the Trust, which then purchases junior liens through the Trustee's Sales held at Nevada Legal News, and thus acquires ownership of the properties, subject to the first mortgage lien on the properties. Once the properties are ready for occupancy, Resources Group LLC will locate a tenant and rent the properties. The rental properties are all actively leased as of the date of this motion and generate approximately $14,995.00 gross rental income per month. Described on Exhibit "A" is Debtors' estimated income from all sources, along with their expenses, including the proposed mortgage payments on the rental properties.

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3. Each of the above-referenced properties was purchased through auction via a secondary, utility, or HOA lien, and is subject to the first mortgage. With liens totaling $2,907,550.00, the real properties have a combined fair market value of approximately $1,249,000.00, leaving $1,658,550.00 under secured debt. See *Bankruptcy Schedules A and D.*

B. Proposed Use of Cash Collateral

4. The Debtors, as debtors-in-possession, are authorized to use property of the estate in the ordinary course of business. 11 U.S.C. § 363(c). As the mortgage holder, or secured creditor, the income derived from their rental properties constitutes the mortgage companies' "cash collateral."

5. A Motion to Value Collateral, "Strip Off" and Modify Rights of Unsecured Creditors Pursuant to 11 U.S.C. Section 506(a) and Section 1123 for Debtors' investment properties will soon be filed, and will reduce Debtors proposed secured mortgage obligations to $6328.00 per month.

6. Debtors are seeking an order authorizing them to pay the foregoing necessary operating expenses from the cash collateral pending confirmation of its plan of reorganization. These expenses are necessary to preserve their real properties, to maintain an on-going investment business concern, and to keep their rental business in good operational order.

7. The value of the Debtors' assets can only be maximized through continued operations and on-going rental of the rental properties. Without use of cash collateral, the Debtors' operations cannot continue. In addition, continuing operations will protect and preserve the position of the creditor mortgage companies.

D. **The Debtors' Reorganization Goals**

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8. Like many other individual Chapter 11 debtors, Debtors' primary purpose of reorganization is to adjust the valuation of their property and modify the obligations of their existing liens. The Debtors' use of cash collateral is vital to maintaining the value of the Debtors' assets until the Debtors have had a meaningful opportunity to present a Plan of Reorganization.

LEGAL DISCUSSION

A. **The Debtors Should Be Authorized To Use Cash Collateral To Operate, Maintain and Preserve Its Business.**

The Debtors, as debtors-in-possession of the estate, have the duty to protect and conserve the rental properties in its possession for the benefit of creditors. *In re Devers*, 759 F.2d 751 (9th Cir. 1985). The exact nature of the duty owed by a debtor-in-possession of the estate was defined in *In re Morning Star Ranch Resorts*, 64 B. R. 818 (Bkrtcy. D. Colo. 1986):

> The debtor is a fiduciary and operates the property as a fiduciary for the parties in interest. He has obligations to operate the property in good fashion, to pay the expenses of operation and the cost of maintenance, to preserve and protect the property, and to account for the monies received and the expenses paid.

64 B.R. at 822. The Debtors herein have been operating the rental properties, paying the necessary operating and maintenance expenses and they propose that, with the Court's permission, they be allowed to continue to do so. The rental income total is approximately $14,995.00. Debtor's monthly expenses total $12,410.00, with proposed mortgage payments on the rentals of $6328.00. Thus, absent any unforeseen major repairs, there is sufficient income being generated to pay the monthly operating expenses, including the revalued mortgage payments as a result of the anticipated approved motion to value collateral. Further, where a secured party is adequately protected under § 363, then the debtor may use the cash collateral for expenses, not only those directly related to the operation and maintenance of but also administrative expenses.

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11 U.S.C. §363(c)(l). A debtor-in-possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with Section 363. See, 11 U.S.C. § 1107(a).

> "Cash collateral" is defined as "cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents in which the estate and an entity other than the estate have an interest. . . ." 11 U.S.C. §363(a). Section 363(c)(2) establishes a special requirement with respect to "cash collateral," providing that the trustee or debtor-in-possession may use "cash collateral" under subsection (c)(l) if:
>
> (A) each entity that has an interest in such cash collateral consents; or
>
> (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section.

See, 11 U. S.C. § 363(c)(2)(A) and (B).

It is well settled that it is appropriate for a Chapter 11 debtor to use cash collateral for a reasonable period of time for the purpose of maintaining and operating its property. 11 U.S.C. § 363(c)(2)(B); *In re Oak Glen R-Vee*, 8 B.R. 213, 216 (Bankr. C.D. Cal. 1981); *In re Tucson Industrial Partners*, 129 B.R. 614 (9th Cir. BAP 1991). In addition, where the debtor is operating a business, it is extremely important that the access to cash collateral be allowed in order to facilitate the goal of reorganization: "the purpose of Chapter 11 is to rehabilitate debtors and generally access to cash collateral is necessary to operate a business." *In re Dynaco Corporation*, 162 B.R. 389 (Bankr. D.N.H. 1993), *quoting In re Stein*, 19 B.R. 458, 459. The Debtors run a viable and operating entity, and believe that they will successfully reorganize and confirm a plan of reorganization. The continued operation of their investment properties are in the overwhelming best interests of the Debtors' estate. If Debtors are unable to use cash collateral to operate their portfolio of investment properties, Debtors would obviously have to shut down immediately and liquidate. As described above, the Debtors should be permitted to operate and use cash collateral.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order: (1) granting the Motion; (2) authorizing the Debtors to use cash collateral on the conditions set forth hereinabove; and (3) granting such other and further relief as the Court deems just and proper.

Dated this 4th day of September, 2012.

Respectfully submitted,
/s/ Ryan Alexander /s/
Ryan Alexander, Esq.

The Firm, PC
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EXHIBIT "A"
INCOME STATEMENT
PROFIT AND LOSS

Income	
Rental	$ 14,995.00
TOTAL	$ 14,995.00

Expenses			
Proposed Mortgages	$ 6,328.00	Insurance	$ 767.00
Repair/Maint.	$ 690.00	Taxes	$ 1,553.00
Utilities	$ 760.00	Business Supplies	$ 500.00
HOA	$ 642.00	Legal	$ 50.00
Management Fees	$ 900.00	US Trustee Fee	$ 220.00
		TOTAL:	$ 12,410.00

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Steven D. Grierson
CLERK OF THE COURT

BANK
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Attorneys for Bank of America, N.A. and Ditech Financial, LLC fka Green Tree Servicing, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G, Plaintiff, vs. MICHAEL T. ELLIOTT, an individual; BANK OF AMERICA, N.A.; and DOES I through 10, inclusive, Defendants.	Case No.: A-12-669570-C Consolidated with: A-13-682055-C Dept. No.: XIII **NOTICE OF BANKRUPTCY FILING AND IMPOSITION OF AUTOMATIC STAY**
GREEN TREE SERVICING, LLC, Plaintiff, vs. MICHAEL T. ELLIOTT, LAS VEGAS INTERNATIONAL COUNTRY CLUB ESTATES HOMEOWNER ASSOCIATION; REGENCY TOWERS ASSOCIATION, INC.; DOES I-X, Defendants.	

Defendant and debtor, Green Tree Servicing LLC, now known as Ditech Financial LLC (the **Debtor**), by and through its undersigned counsel, in accordance with and consistent with section 362(a) of the United States Bankruptcy Code, 1 U.S.C. §§ 101, *et seq.* (the **Bankruptcy Code**), respectfully submits this Notice of Bankruptcy and Imposition of Automatic Stay, and states as follows:

AKERMAN LLP
1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

PLEASE TAKE NOTICE that on February 11, 2019, (the **Commencement Date**), Ditech Holding Corporation (f/k/a Walter Investment Management Corp.) and its debtor affiliates, as debtors and debtors in possession (collectively, the **Debtors**), each commenced a voluntary case (the **Chapter 11 Cases**) under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 *et seq.*) (the **Bankruptcy Code**) in the United States Bankruptcy Court for the Southern District of New York (the **Bankruptcy Court**). The Chapter 11 Cases are being jointly administered under Case No. 19-10412 (JLG). A copy of the applicable Debtor's chapter 11 petition is attached hereto as **Exhibit A**.

PLEASE BE ADVISED that pursuant to section 362(a) of the Bankruptcy Code (the **Automatic Stay**), the filing of a bankruptcy petition "operates as a stay, applicable to all entities," of, among other things "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under [the Bankruptcy Code], or to recover a claim against the debtor that arose before the commencement of the [bankruptcy] case" and "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(1), (3).

PLEASE BE FURTHER ADVISED that on February 13, 2019, upon the Debtors' motion, the Bankruptcy Court entered an interim order granting, among other things, the Debtors' motion for limited relief from the automatic stay to permit non-Debtor parties to assert and prosecute claims, cross-claims, third-party claims and counter-claims and raise certain defenses on a limited basis as described in the order (the **Interim Order**).

PLEASE BE FURTHER ADVISED that on March 20, 2019, the Bankruptcy Court entered an order clarifying and granting such relief on a final basis (the **Limited Stay Modification Order**). Paragraphs 16-22 of the Limited Stay Modification Order identify the categories of defenses, claims and counter-claims for which the automatic stay has been lifted (the **Permitted Claims**). A copy of the Limited Stay Modification Order is attached hereto as **Exhibit B**.

…

…

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TEL.: (702) 634-5000 – FAX: (702) 380-8572

PLEASE BE FURTHER ADVISED that to the extent that defenses, claims and counter-claims do not constitute Permitted Claims, they are subject to the automatic stay and the continued prosecution of those claims is prohibited.

PLEASE BE FURTHER ADVISED that Debtor's position is that the current claims at issue here asserted by Debtor are permitted, and that there are no claims, counter-claims, or defenses against the Debtor in this action that are subject to the automatic stay. However, future claims, counter-claims, or defenses may be subject to the automatic stay. Further, to the extent Plaintiff seeks to recover its attorneys' fees, Plaintiff's request for attorneys' fees does **not** constitute a Permitted Claim, and it remains subject to the automatic stay and the continued prosecution of this claim is prohibited.

PLEASE BE FURTHER ADVISED that any action taken by the Plaintiff or any other party against the Debtor without obtaining relief from the Bankruptcy Court from the automatic stay may be void *ab initio* and may result in a finding of contempt by the Bankruptcy Court against Plaintiff or such other party. The Debtor reserves and retains all rights to seek relief in Bankruptcy Court from any action, judgment, order, or ruling entered in violation of the automatic stay.

PLEASE BE FURTHER ADVISED that pursuant to paragraphs 18, 19(h), and 22 of the Limited Stay Modification Order, any dispute regarding the extent, application and/or effect of the automatic stay under the Limited Stay Modification Order must be heard and determined in the Bankruptcy Court, jointly administered under Case No. 19-10412, and such other and further orders as may be entered by the Bankruptcy Court.

DATED this 27th day of March, 2019.

AKERMAN LLP

/s/ Jared M. Sechrist
DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
JARED M. SECHRIST, ESQ.
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1635 Village Center Circle, Suite 200
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Attorneys for Ditech Financial LLC f/k/a Green Tree Servicing LLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 27th day of March, 2019 I caused to be served a true and correct copy of foregoing **NOTICE OF BANKRUPTCY FILING AND IMPOSITION OF AUTOMATIC STAY**, 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.

Kerry P. Faughnan, Esq.	kerry.faughnan@gmail.com
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An employee of AKERMAN LLP

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Exhibit A

IN THE SUPREME COURT OF THE STATE OF NEVADA

*****

LN MANAGEMENT LLC SERIES 3111 BEL AIR 24G, Appellant, v. BANK OFAMERICA, N.A.; DITECH FINANCIAL LLC, Respondent.	)	Supreme Court Case No.: 82534

Appeal
From the Eighth Judicial District Court, Clark County, Nevada
The Honorable Mark R. Denton
District Court Case A-12-669570-C

APPENDIX TO BRIEFS
VOLUME 3

Kerry Faughnan, Esq., NSB# 12204
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North Las Vegas, NV 89086
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Attorney for Appellant

Docket 82534 Document 2021-26777

INDEX OF DOCUMENTS

File Date	Title	Page(s)
10/03/2012	Bank of America Complaint	1PA1-1PA92
05/17/2013	LN Management Complaint	1PA93-1PA104
10/29/2013	Order Granting Motion to Consolidate	1PA105-1PA106
10/30/2013	Notice of Entry of Order Granting Motion to Consolidate	1PA107-1PA111
06/19/2014	Green Tree Servicing's Motion for Summary Judgment	1PA112-2PA263
08/12/2014	Order Granting Green Tree Servicing's Motion for Summary Judgment	2PA264-2PA270
09/03/2014	LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment Entered August 12, 2014	2PA271-2PA276
09/24/2014	Order Granting LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment	2PA277-2PA278
09/25/2014	Notice of Entry of Order Granting LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment	2PA279-2PA282
07/27/2018	LN Management LLC Series 3111 Bel Air 24G's Motion for Summary Against Green Tree Servicing LLC	2PA283-2PA363
08/28/2018	Bank of America's Opposition to Plaintiff's Motion	2PA364-2PA376

	for Summary Judgment	
09/17/2018	Reply to Green Tree's Opposition to LN Management LLC Series 3111 Bel Air 24G's Motion for Summary Judgment; Errata to LN Management's Motion for Summary Judgment	2PA377-2PA381
03/26/2018	Errata to Bank of America's Opposition to Plaintiff's Motion for Summary Judgment	2PA382-2PA495
03/27/2019	Notice of Bankruptcy Filing and Imposition of Automatic Stay	2PA496-3PA583
09/29/2020	Bank of America N.A. and Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	3PA584-4PA867
11/11/2020	Opposition to Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	4PA868-4PA879
11/30/2020	Bank of America N.A. and Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Reply Supporting Motion for Summary Judgment	4PA880-4PA935
12/14/2020	Court Minutes from Hearing on Bank of America N.A. and Ditech FinanciaL LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	4PA936
01/20/2021	Findings of Fact, Conclusions of Law and Judgment	4PA937-4PA962
01/21/2021	Notice of Entry of Findings of Fact, Conclusions of Law and Judgment	4PA963-4PA991
02/22/2021	Notice of Appeal	4PA992-4PA993

CERTIFICATE OF SERVICE

I certify that on September 16, 2021, I served a copy of the foregoing pleading upon all counsel of record by allowing the Court's ECF system to serve same upon:

Ariel Stern, Esq.
AKERMAN LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134
(702) 634-5000
(702) 380-8572- Fax
Attorneys for Respondent

DATED September 16, 2021

/s/ Kerry P. Faughnan
Kerry P. Faughnan, Esq.
Nevada Bar No. 12204
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Kerry.faughnan@gmail.com

Attorney for Appellant

Fill in this information to identify the case

United States Bankruptcy Court for the:

Southern District of New York (State)

Case number (*If known*): _____ Chapter 11

☐ Check if this is an amended filing

Official Form 201

Voluntary Petition for Non-Individuals Filing for Bankruptcy 04/16

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals,* is available.

1. Debtor's name Ditech Financial LLC

2. All other names debtor used in the last 8 years

Include any assumed names, trade names, and *doing business as* names

Green Tree Servicing LLC
Ditech

3. Debtor's federal Employer Identification Number (EIN) 41-1795868

4. Debtor's address

Principal place of business

1100 Virginia Drive
Number Street

Suite 100A

Fort Washington Pennsylvania 19034
City State ZIP Code

Montgomery County
County

Mailing address, if different from principal place of business

3000 Bayport Drive, Suite 985
Number Street

P.O. Box

Tampa Florida 33607
City State ZIP Code

Location of principal assets, if different from principal place of business

Number Street

City State ZIP Code

5. Debtor's website (URL) www.ditech.com

6. Type of debtor

☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))
☐ Partnership (excluding LLP)
☐ Other. Specify: _____

3PA501

7. Describe debtor's business

A. *Check one:*

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ☐ Railroad (as defined in 11 U.S.C. § 101(44))
- ☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
- ☒ None of the above

B. *Check all that apply:*

- ☐ Tax- entity (as described in 26 U.S.C. § 501)
- ☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- ☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See http://www.uscourts.gov/four-digit-national-association-naics-codes .

5222

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- ☐ Chapter 7
- ☐ Chapter 9
- ☒ Chapter 11. *Check all that apply*:
  - ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,566,050 (amount subject to adjustment on 4/01/19 and every 3 years after that).
  - ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). If the debtor is a small business debtor, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if all of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
  - ☐ A plan is being filed with this petition.
  - ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
  - ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
  - ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.
- ☐ Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

If more than 2 cases, attach a separate list.

- ☒ No
- ☐ Yes District _____ When _____ Case number _____
  MM/ DD/ YYYY
  District _____ When _____ Case number _____
  MM / DD/ YYYY

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

List all cases. If more than 1, attach a separate list.

- ☐ No
- ☒ Yes Debtor See attached Schedule 1 Relationship _____
  District Southern District of New York When February 11, 2019
  MM / DD/ YYYY
  Case number, if known _____

3PA502

11. Why is the case filed in this district?

Check all that apply:

☐ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

☒ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?

☒ No

☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

Why does the property need immediate attention? (*Check all that apply.*)

☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.
What is the hazard? _____

☐ It needs to be physically secured or protected from the weather.

☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

☐ Other _____

Where is the property?

Number Street

City State ZIP Code

Is the property insured?

☐ No

☐ Yes. Insurance agency _____
Contact Name _____
Phone _____

Statistical and administrative information

13. Debtor's estimation of available funds

Check one:

☒ Funds will be available for distribution to unsecured creditors.

☐ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

14. Estimated number of creditors (on a consolidated basis)

☐ 1-49	☐ 1,000-5,000	☐ 25,001-50,000
☐ 50-99	☐ 5,001-10,000	☒ 50,001-100,000
☐ 100-199	☐ 10,001-25,000	☐ More than 100,000
☐ 200-999		

15. Estimated assets (on a consolidated basis)

☐ $0-$50,000	☐ $1,000,001-$10 million	☐ $500,000,001-$1 billion
☐ $50,001-$100,000	☐ $10,000,001-$50 million	☐ $1,000,000,001-$10 billion
☐ $100,001-$500,000	☐ $50,000,001-$100 million	☒ $10,000,000,001-$50 billion
☐ $500,001-$1 million	☐ $100,000,001-$500 million	☐ More than $50 billion

16. Estimated liabilities (on a consolidated basis)

☐ $0-$50,000	☐ $1,000,001-$10 million	☐ $500,000,001-$1 billion
☐ $50,001-$100,000	☐ $10,000,001-$50 million	☐ $1,000,000,001-$10 billion
☐ $100,001-$500,000	☐ $50,000,001-$100 million	☒ $10,000,000,001-$50 billion
☐ $500,001-$1 million	☐ $100,000,001-$500 million	☐ More than $50 billion

3PA503

Request for Relief, Declaration, and Signatures

WARNING – Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

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

Executed on February 11, 2019
MM/ DD /YYYY

✘ /s/ Kimberly Perez
Signature of authorized representative of debtor

Kimberly Perez
Printed name

Senior Vice President and Chief Accounting Officer
Title

---

18. Signature of attorney

✘ /s/ Ray C. Schrock, P.C.
Signature of attorney for debtor

Date February 11, 2019
MM / DD / YYYY

Ray C. Schrock, P.C.
Printed Name

Weil, Gotshal & Manges LLP
Firm Name

767 Fifth Avenue
Number Street

New York
City

New York
State

10153
ZIP Code

(212) 310–8000
Contact phone

ray.schrock@weil.com
Email address

4860631
Bar Number

New York
State

Schedule 1

Pending Bankruptcy Cases Filed by the Debtor and Affiliates of the Debtor

On the date hereof, each of the affiliated entities listed below, including the debtor in this chapter 11 case, filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the **"Court**"). A motion will be filed with the Court requesting that the chapter 11 cases of the entities listed below be consolidated for procedural purposes only and jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

COMPANY	CASE NUMBER	DATE FILED	DISTRICT	JUDGE
Green Tree Credit LLC	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
Ditech Holding Corporation	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
DF Insurance Agency LLC	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
Ditech Financial LLC	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
Green Tree Credit Solutions LLC	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
Green Tree Insurance Agency of Nevada, Inc.	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
Green Tree Investment Holdings III LLC	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
Green Tree Servicing Corp.	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
Marix Servicing LLC	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
Mortgage Asset Systems, LLC	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
REO Management Solutions, LLC	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
Reverse Mortgage Solutions, Inc.	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
Walter Management Holding Company LLC	19-_____( )	February 11, 2019	S.D.N.Y.	Pending
Walter Reverse Acquisition LLC	19-_____( )	February 11, 2019	S.D.N.Y.	Pending

Exhibit A

Resolutions of the Board of Directors

RESOLUTIONS OF THE
THE BOARD OF DIRECTORS OF
DITECH HOLDING CORPORATION

February 10, 2019

WHEREAS, Ditech Holding Corporation (the "Company"), with the assistance of financial and legal advisors, has been conducting a review of strategic alternatives, including the potential sale of the Company, a sale of all or a portion of the Company's assets, and/or a recapitalization of the Company;

WHEREAS, the Board of Directors (the "Board") of the Company previously established a special committee of the Board composed of independent and disinterested directors (the "Special Committee") to assist management of the Company in evaluating, exploring and negotiating strategic alternatives, and recommending to the Board whether to approve any such potential transaction;

WHEREAS, upon recommendation of the Special Committee, the Board previously approved the form, terms and provisions of, and the execution, delivery, and performance of, and, on February 8, 2019, the Company entered into, the restructuring support agreement (the "RSA") with an ad hoc group of lenders (the "Term Loan Lenders") holding more than 75% of the aggregate total principal amount of the Company's senior secured first lien term loan, borrowed pursuant to the Second Amended and Restated Credit Agreement, dated as of February 9, 2018 (as amended, supplemented or otherwise modified, the "Credit Agreement") establishing the Term Loan Lenders' support for a prearranged chapter 11 plan of reorganization;

WHEREAS, upon recommendation of the Special Committee, the Board previously approved, and on February 8, 2019, the Company entered into, the Commitment Letter (the "Commitment Letter"), by and among the Company as Guarantor, its wholly-owned direct subsidiaries Reverse Mortgage Solutions, Inc. ("RMS") and Ditech Financial LLC ("Ditech") as Sellers, Barclays Bank PLC ("Barclays") as Administrative Agent and as Buyer and Nomura Corporate Funding Americas, LLC ("Nomura") as Buyer (together with Barclays in its capacity as Buyer, the "Buyers"), pursuant to which the Buyers committed to provide new debtor-in-possession financing in an amount of up to $1.9 billion on terms and subject to conditions set forth in the Commitment Letter and the term sheet attached thereto;

WHEREAS, the Board has met on various occasions to review and has had the opportunity to ask questions about the materials presented by the management and the legal and financial advisors of the Company regarding the liabilities and liquidity of the Company, the strategic alternatives available to it and the impact of the foregoing on the Company's business; and

WHEREAS, in connection therewith, the Board desires to approve the following resolutions.

NOW, THEREFORE, BE IT HEREBY

Commencement of Chapter 11 Cases

RESOLVED, that, upon recommendation of the Special Committee, the Board has determined, after consultation with the management and the legal and financial advisors of the Company, that it is desirable and in the best interests of the Company, its creditors, and other parties in interest to approve and authorize the filing of petitions by the Company and certain of its subsidiaries, including RMS and Ditech, seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"); and be it further

RESOLVED, that upon recommendation of the Special Committee, the Board has determined, after consultation with the management and the legal and financial advisors of the Company, that it is desirable and in the best interests of the Company, its creditors, and other parties in interest that the Company and its advisors prepare, finalize and file, as appropriate, the prearranged chapter 11 plan of reorganization (the "Plan") and related disclosure statement (the "Disclosure Statement") consistent with the terms of the RSA;

RESOLVED, that any officer of the Company (each, an "Authorized Officer"), in each case, acting singly or jointly, be, and each hereby is, authorized, empowered, and directed to execute and file in the name and on behalf of the Company all petitions, schedules, motions, lists, applications, pleadings, and other papers in the Bankruptcy Court, and, in connection therewith, to employ and retain all assistance by legal counsel, accountants, financial advisors, investment bankers and other professionals, and to take and perform any and all further acts and deeds which such Authorized Officer deems necessary, proper, or desirable in connection with the chapter 11 cases (the "Chapter 11 Cases"), the Plan and the Disclosure Statement, including, without limitation, negotiating, executing, delivering and performing any and all documents, agreements, certificates and/or instruments in connection with the transactions and professional retentions set forth in these resolutions, with a view to the successful prosecution of the Chapter 11 Cases; and be it further

Debtor-in-Possession Financing

RESOLVED, that in connection with the Chapter 11 Cases, and as previously authorized and agreed to by Ditech and RMS in connection with the Commitment Letter, and upon recommendation of the Special Committee, it is in the best interest of the Company, Ditech, RMS, RMS REO CS, LLC ("RMS REO CS"), RMS REO BRC, LLC ("RMS REO BRC") and RMS REO BRC II, LLC ("RMS REO BRC II") to engage in, and the Company, Ditech, RMS, RMS REO CS, RMS REO BRC and RMS REO BRC II will obtain benefits from, the financing transactions contemplated by the agreements listed on Schedule A hereto and any and all of the other agreements, including, without limitation, any other guarantees, certificates, documents and instruments authorized, executed, delivered, reaffirmed, verified and/or filed in connection with the Debtor-in-Possession Financing (as defined below) (together with the transaction documents listed on Schedule A, collectively, the "DIP Financing Documents"), which, subject to the approval of the Bankruptcy Court, will provide the Company, Ditech, RMS and RMS REO BRC II up to $1.9 billion in available warehouse financing, which is necessary

and appropriate for the conduct, promotion and attainment of the business of the Company and its subsidiaries, including Ditech, RMS and RMS REO BRC II (the "Debtor-in-Possession Financing") (capitalized terms used in this section with respect to Debtor-in-Possession Financing and not otherwise defined herein shall have the meanings ascribed to such terms in the Commitment Letter or the term sheet attached thereto); and be it further

RESOLVED, that the Company's performance of its obligations under the DIP Financing Documents, including the borrowings and guarantees contemplated thereunder, are hereby, in all respects confirmed, ratified and approved; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered and directed, in the name and on behalf of the Company, to cause the Company to negotiate and approve the terms, provisions of and performance of, and to prepare, execute and deliver the DIP Financing Documents, on substantially the same terms and conditions presented to the Board, in the name and on behalf of the Company under its corporate seal or otherwise, and such other documents, agreements, instruments and certificates as may be required by the Administrative Agent or required by the DIP Financing Documents; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, as part of the adequate protection to be provided to the lenders and administrative agent under the Credit Agreement, to grant replacement security interests in, and replacement liens on, any and all property of the Company as collateral pursuant to the Bankruptcy Court's orders to secure all of the obligations and liabilities of the Company thereunder, and to authorize, execute, verify, file and/or deliver to the administrative agent, on behalf of the Company, all agreements, documents and instruments required by the lenders or the administrative agent under the Credit Agreement in connection with the foregoing; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered, and directed, in the name and on behalf of the Company, to take all such further actions including, without limitation, to pay all fees and expenses, in accordance with the terms of the DIP Financing Documents, which shall, in such Authorized Officer's judgment, be necessary, proper or advisable to perform the Company's obligations under or in connection with the DIP Financing Documents and the transactions contemplated therein and to carry out fully the intent of the foregoing resolutions; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered, and directed, in the name and on behalf of the Company, to execute and deliver any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions and extensions of any of the DIP Financing Documents which shall, in such Authorized Officer's sole judgment, be necessary, proper or advisable; and be it further

Retention of Advisors

RESOLVED, that, upon recommendation of the Special Committee, in connection with the Chapter 11 Cases, any Authorized Officer, in each case, acting singly or jointly, be, and each hereby is, authorized, empowered, and directed, with full power of delegation, in the name and on behalf of the Company, to employ and retain all assistance by

legal counsel, accountants, financial advisors, investment bankers and other professionals, on behalf of the Company, which such Authorized Officer deems necessary, appropriate or advisable in connection with, or in furtherance of, the Chapter 11 Cases, with a view to the successful prosecution of the Chapter 11 Cases (such acts to be conclusive evidence that such Authorized Officer deemed the same to meet such standard); and be it further

RESOLVED, that the firm of Houlihan Lokey Capital, Inc., located at 10250 Constellation Blvd., 5th Floor, Los Angeles, California 90067, is hereby retained as investment banker for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

RESOLVED, that the law firm of Weil, Gotshal & Manges LLP, located at 767 Fifth Avenue, New York, NY 10153, is hereby retained as counsel for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

RESOLVED, that the firm of AlixPartners, located at 909 Third Avenue, New York, New York 10022, is hereby retained as financial advisor for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

RESOLVED, that the firm of Epiq Corporate Restructuring, LLC, located at 777 Third Avenue, 12th Floor, New York, New York 10017, is hereby retained as claims, noticing, and solicitation agent and administrative advisor for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

Approval of Actions of Subsidiaries

RESOLVED, that in the judgment of the Board, it is desirable and in the best interests of certain of the Company's direct and indirect subsidiaries for each such entity or entities to take any and all action, including related to the DIP Financing Documents, Debtor-in-Possession Financing and filing in the Bankruptcy Court, and to execute and deliver all documents, agreements, motions and pleadings as are necessary, proper, or desirable to enable such subsidiary to carry out the DIP Financing Documents, Debtor-in-Possession Financing and filing in the Bankruptcy Court contemplated hereby, including granting any director, officer, or other authorized representative as applicable according to local law, the authority to take action in support thereof; and be it further

General

RESOLVED, that any Authorized Officer is hereby authorized, empowered and directed, in the name and on behalf of the Company, to cause the Company to enter into, execute, deliver, certify, file and/or record, perform and approve any necessary public disclosures and filings related to, such documents, agreements, instruments, motions, affidavits, applications for approvals or rulings of governmental or regulatory authorities and certificates as may be required in connection with the Chapter 11 Cases, DIP Financing Documents and Debtor-in-Possession Financing, and to take such other actions that in the judgment of the Authorized Officer shall be or become necessary, proper or desirable in connection therewith; and be it further

RESOLVED, that any actions taken by any Authorized Officer, for or on behalf of the Company, prior to the date hereof that would have been authorized by these resolutions but for the fact that such actions were taken prior to the date hereof be, and they hereby are, authorized, adopted, approved, confirmed and ratified in all respects as the actions and deeds of the Company.

Schedule A

1. Master Refinancing Agreement, dated as of the Closing Date, by and among Barclays, as administrative agent for the Buyers (as defined therein) and other Secured Parties (as defined therein), Barclays and Nomura, each as a Buyer (as defined therein), Barclays Capital Inc. and Nomura Securities International, Inc., each as an MSFTA Counterparty (as defined therein), Ditech and Reverse Mortgage Solutions, Inc., each as a Seller (as defined therein) and RMS REO BRC II, LLC, as REO Subsidiary (as defined therein) (the "Omnibus Agreement").

2. Master DIP Fee Letter, dated as of the Closing Date, among Barclays, as administrative agent, Barclays and Nomura, as Committed Buyers (as defined therein), Ditech, RMS and Ditech Holding Corporation.

3. Master DIP Guaranty, dated as of the Closing Date, made by Guarantor in favor of Barclays, as Administrative Agent, for the benefit of Buyers and the other Buyer Parties (as defined therein).

4. Margin, Setoff and Netting Agreement, dated as of the Closing Date, among Barclays, as Administrative Agent, Barclays Capital, Inc., Nomura Securities International, Inc., Nomura, Ditech, RMS, and RMS REO BRC II, LLC and acknowledged and agreed to by Ditech Holding Corporation.

5. Master Administration Agreement, dated as of the Closing Date, among Barclays, as Administrative Agent for the Buyers and other Secured Parties (as defined therein), Barclays and Nomura, each as a Buyer (as defined therein), Barclays Capital Inc. and Nomura Securities International, Inc., each as a MSFTA Counterparty (as defined therein), Ditech and RMS, each as a Seller (as defined therein), and RMS REO BRC II, LLC as REO Subsidiary (as defined therein).

6. Amended and Restated Master Repurchase Agreement, dated as of the Closing Date, by and among Barclays and Nomura, as Purchasers (as defined therein), Barclays, as Agent (as defined therein), RMS and RMS REO BRC II, LLC.

7. Amended and Restated Pricing Side Letter, dated as of the Closing Date, among Barclays, as Purchaser and Agent, Nomura, as Purchaser, RMS and RMS REO BRC II, LLC.

8. Assignment Agreement, dated as of the Closing Date, between RMS REO CS, LLC and RMS.

9. Assignment Agreement, dated as of the Closing Date, between RMS REO BRC, LLC and RMS.

10. Assignment Agreement, dated as of the Closing Date, between RMS REO BRC II, LLC and RMS.

11. Amended and Restated Custodial Agreement, dated as of the Closing Date, by and among RMS REO BRC II, LLC (the "REO Subsidiary"), RMS, Deutsche Bank National Trust Company, as custodian for Purchasers (as defined therein) and for the REO Subsidiary, Barclays and Nomura, as Purchasers (as defined therein), and Barclays, as Agent (as defined therein).

12. Amended and Restated Deposit Account Control Agreement, dated as of the Closing Date, by and among RMS, Barclays, as Agent (as defined therein), and Wells Fargo Bank, National Association.

13. Amendment No. 1 to the Limited Liability Company Agreement of RMS REO BRC II, LLC, dated as of the Closing Date, entered into by RMS, as the sole member, RMS REO BRC II, LLC, and consented to by Barclays, as Agent.

14. Indenture, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Indenture"), by and among Ditech Agency Advance Trust, as issuer (the "Agency Facility Issuer"), Wells Fargo Bank, N.A. ("Wells Fargo"), as indenture trustee (in such capacity, the "Agency Facility Indenture Trustee"), calculation agent, paying agent and securities intermediary, Ditech, as administrator (in such capacity, the "Agency Facility Administrator") and as servicer (in such capacity, the "Agency Facility Servicer") and Barclays, as administrative agent (in such capacity, the "Agency Facility Administrative Agent") (successor to Credit Suisse First Boston Mortgage Capital LLC, as initial administrative agent).

15. Series 2019-VF1 Indenture Supplement to Agency Facility Indenture, dated as of the Closing Date, by and among the Agency Facility Issuer, the Agency Facility Indenture Trustee (as indenture trustee, calculation agent, paying agent and securities intermediary), the Agency Facility Administrator, the Agency Facility Servicer and the Agency Facility Administrative Agent.

16. Receivables Sale Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Receivables Sale Agreement"), by and among the Agency Facility Servicer, as servicer and as the receivables seller (in such capacity, the "Agency Facility Receivables Seller"), Ditech Agency Advance Depositor LLC, as depositor (the "Agency Facility Depositor") and the Company, as guarantor.

17. Amendment No.1 to the Agency Facility Receivables Sale Agreement, dated as of the Closing Date, by and among the Agency Facility Servicer, the Agency Facility Receivables Seller, the Agency Facility Depositor and the Company, as guarantor.

18. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Receivables Seller.

19. Receivables Pooling Agreement, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Issuer.

20. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Issuer.

21. Administration Agreement, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Issuer and the Agency Facility Administrator.

22. Acknowledgment Agreement with Respect to Servicing Advance Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Acknowledgment Agreement"), by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.

23. Amendment No. 1 to the Agency Facility Acknowledgment Agreement, dated as of April 20, 2018, by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.

24. Amendment No. 2 to the Agency Facility Acknowledgment Agreement, dated as of the Closing Date, by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.

25. Series 2019-VF1 Variable Funding Note Purchase Agreement, dated as of the Closing Date, (the "Agency Facility Note Purchase Agreement"), by and among Ditech, as the Agency Facility Servicer, the Agency Facility Administrator and the Agency Facility Receivables Seller, the Agency Facility Depositor, the Agency Facility Issuer, the Administrative Agent, and Barclays, as a Purchaser Agent ("Agency Facility Purchaser").

26. Ditech Agency Advance Trust Advance Receivables Backed Note, Series 2019-VF1 Note, Number 1 (the "Agency Facility Note"), dated as of the Closing Date, in the name of the Agency Facility Purchaser.

27. Amended and Restated Trust Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Trust Agreement"), by and among the Agency Facility Depositor, Wilmington Trust, National Association, as the owner trustee (in such capacity, the "Agency Facility Owner Trustee"), and the Agency Facility Administrator.

28. Amendment No.1 to the Agency Facility Trust Agreement, dated as of the Closing Date, by and among the Agency Facility Depositor, Wilmington Trust, National Association, the Agency Facility Owner Trustee and the Agency Facility Administrator.

29. Amended and Restated Limited Liability Company Agreement of the Agency Facility Depositor (the "Agency Facility Depositor LLC Agreement"), dated as of February 9, 2018 and effective as of February 12, 2018, by and among Ditech, as the sole economic member of the Agency Facility Depositor and Albert Fioravanti, as the Special Member and Independent Manager of the Agency Facility Depositor.

30. Amendment No. 1 to the Agency Facility Depositor LLC Agreement, dated as of the Closing Date, made by Ditech, as the sole economic member of the Agency Facility Depositor and consented to by Albert Fioravanti, as the Special Member and Independent Manager of the Agency Facility Depositor and Barclays, as sole noteholder.

31. Indenture, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Indenture"), by and among Ditech PLS Advance Trust II, as issuer (the "PLS Facility Issuer"), Wells Fargo Bank, as indenture trustee (in such capacity, the "PLS Facility Indenture Trustee"), calculation agent, paying agent and securities intermediary, Ditech, as administrator (in such capacity, the "PLS Facility Administrator") and as servicer (in such capacity, the "PLS Facility Servicer") and Barclays, as administrative agent (in such capacity, the "PLS Facility Administrative Agent") (successor to Credit Suisse First Boston Mortgage Capital LLC, as initial administrative agent).

32. Series 2019-VF1 Indenture Supplement to PLS Facility Indenture, dated as of the Closing Date (the "PLS Facility Indenture Supplement"), by and among the PLS Facility Issuer, the PLS Facility Indenture Trustee (as indenture trustee, calculation agent, paying agent and securities intermediary), the PLS Facility Administrator, the PLS Facility Servicer and the PLS Facility Administrative Agent.

33. Receivables Sale Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Receivables Sale Agreement"), by and among the PLS Facility Servicer, as servicer and as the receivables seller (in such capacity, the "PLS Facility Receivables Seller"), Ditech PLS Advance Depositor LLC, as depositor (the "PLS Facility Depositor") and the Company, as guarantor.

34. Amendment No.1 to the PLS Facility Receivables Sale Agreement, dated as of the Closing Date, by and among the PLS Facility Servicer, the PLS Facility Receivables Seller, the PLS Facility Depositor and the Company, as guarantor ("PLS Facility Receivables Sale Agreement Amendment").

35. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (the "PLS Facility Assignment of Receivables"), by and between the PLS Facility Depositor and the PLS Facility Receivables Seller.

36. Receivables Pooling Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (the "PLS Facility Receivables Pooling Agreement"), by and between the PLS Facility Depositor and PLS Facility Issuer.

37. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (the "Depositor PLS Facility Assignment of Receivables"), by and between the PLS Facility Depositor and the PLS Facility Issuer.

38. Administration Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (the "PLS Facility Administration Agreement"), by and between the PLS Facility Issuer and the PLS Facility Administrator.

39. Acknowledgment Agreement with Respect to Servicing Advance Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Acknowledgment Agreement"), by and among the PLS Facility Issuer, the PLS Facility Depositor, the PLS Facility Servicer, the PLS Facility Indenture Trustee, Fannie Mae and the PLS Facility Administrative Agent.

40. Series 2019-VF1 Variable Funding Note Purchase Agreement, dated as of the Closing Date, and effective as of the Effective Date (the "PLS Facility Note Purchase Agreement"), by and among Ditech, as the PLS Facility Servicer, the PLS Facility Administrator and the PLS Facility Receivables Seller, the PLS Facility Depositor, the PLS Facility Issuer, the Administrative Agent, and Barclays, as a Purchaser Agent ("PLS Facility Purchaser").

41. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class A-VF1 Note Number 1 (the "PLS Facility Note, Class A"), dated as of the Closing Date, in the name of the PLS Facility Purchaser.

42. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class B-VF1 Note Number 1 (the "PLS Facility Note, Class B"), dated as of the Closing Date, in the name of the PLS Facility Purchaser.

43. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class C-VF1 Note Number 1 (the "PLS Facility Note, Class C"), dated as of the Closing Date, in the name of the PLS Facility Purchaser.

44. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class D-VF1 Note Number 1 (the "PLS Facility Note, Class D"), dated as of the Closing Date, in the name of the PLS Facility Purchaser.

45. Amended and Restated Trust Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Trust Agreement"), by and among the PLS Facility Depositor, Wilmington Trust, National Association, as the owner trustee (in such capacity, the "PLS Facility Owner Trustee"), and the PLS Facility Administrator.

46. Amendment No.1 to the PLS Facility Trust Agreement, dated as of the Closing Date, by and among the Agency Facility Depositor, the Agency Facility Owner Trustee and the Agency Facility Administrator.

47. Amended and Restated Limited Liability Company Agreement of the PLS Facility Depositor (the "PLS Facility Depositor LLC Agreement"), dated as of February 9, 2018 and effective as of February 12, 2018, by and among Ditech, as the sole economic member of the PLS Facility Depositor and Albert Fioravanti, as the Special Member and Independent Manager of the PLS Facility Depositor.

48. Amendment No. 1 to the PLS Facility Depositor LLC Agreement, dated as of the Closing Date, made by Ditech, as the sole economic member of the PLS Facility Depositor and consented to by Albert Fioravanti, as the Special Member and Independent Manager of the PLS Facility Depositor and Barclays, as sole noteholder.

49. Pledge Agreement, dated as of the Closing Date, made by the Ditech in favor of Barclays.

50. Master Repurchase Agreement, dated as of the Closing Date, by and among Barclays, as Administrative Agent on behalf of Buyers (as defined therein), Barclays and Nomura, as Buyers (as defined therein), other Buyers party thereto from time to time, and Ditech.

51. Pricing Side Letter, dated the Closing Date, among Barclays, as Administrative Agent for the benefit of Buyers (as defined therein), Barclays and Nomura, as Committed Buyers (as defined therein), and Ditech.

52. Power of Attorney, dated as of the Closing Date, to be entered into by Ditech.

53. Custodial and Disbursement Agreement, dated as of the Closing Date, by and among Barclays and Nomura, as Buyers (as defined therein), Ditech, Barclays, as agent of the Buyers, and Wells Fargo Bank, N.A.

54. Amended and Restated Deposit Account Control Agreement, dated as of the Closing Date, by and among Barclays, as Administrative Agent (as defined therein), Ditech and U.S. Bank National Association.

55. Second Amendment to the Master Securities Forward Transaction Agreement, dated as of the Closing Date, between Barclays Capital Inc. and Ditech.

56. Second Amendment to the Master Securities Forward Transaction Agreement, dated as of the Closing Date, between Nomura Securities International, Inc. and Ditech.

ACTION BY
WRITTEN CONSENT OF
THE GOVERNING BODIES OF

DF INSURANCE AGENCY LLC
DITECH FINANCIAL LLC
GREEN TREE CREDIT LLC
GREEN TREE CREDIT SOLUTIONS LLC
GREEN TREE INSURANCE AGENCY OF NEVADA, INC.
GREEN TREE INVESTMENT HOLDINGS III LLC
GREEN TREE SERVICING CORP.
MARIX SERVICING LLC
MORTGAGE ASSET SYSTEMS, LLC
REO MANAGEMENT SOLUTIONS, LLC
REVERSE MORTGAGE SOLUTIONS, INC.
WALTER MANAGEMENT HOLDING COMPANY LLC
WALTER REVERSE ACQUISITION LLC

February 10, 2019

The required members of the board of directors, the sole member, the managing member, the sole manager or the sole general partner, as the case may be (as applicable, the "Governing Body"), of each of the entities referenced above (each, a "Company" and collectively, the "Companies"), do hereby consent to, adopt, and approve, by written consent in accordance with applicable law, the following resolutions and every action effected thereby:

WHEREAS, each Company is a direct or indirect wholly-owned subsidiary of Ditech Holding Corporation (the "Parent");

WHEREAS, Reverse Mortgage Solutions, Inc. is the sole "member" (as such term is used in the Delaware Limited Liability Company Act, 6 Del.C. § 18-101, et seq. (the "DLLC Act")) (the "Sole Member") of RMS REO CS, LLC, RMS REO BRC, LLC, RMS REO BRC II, LLC and RMS 2018-09, LLC (each a "Single Member LLC" and, collectively, the "Single Member LLCs");

WHEREAS, the Board of Directors of the Parent and the Governing Body of the Company previously approved the form, terms and provisions of, and the execution, delivery, and performance of, and, on February 8, 2019, the Company entered into, the restructuring support agreement (the "RSA") with an ad hoc group of lenders (the "Term Loan Lenders") holding more than 75% of the aggregate total principal amount of the Parent's senior secured first lien term loan, borrowed pursuant to the Second Amended and Restated Credit Agreement, dated as of February 9, 2018 (as amended, supplemented or otherwise modified, the "Credit Agreement") establishing the Term Loan Lenders' support for a prearranged chapter 11 plan of reorganization;

WHEREAS, the Board of Directors of the Parent and, if applicable, the Governing Body of the Company, previously approved, and on February 8, 2019, the Parent and the applicable Companies entered into, the Commitment Letter (the "Commitment Letter"), by and among the Parent as Guarantor, its wholly-owned direct subsidiaries Reverse Mortgage Solutions, Inc. ("RMS") and Ditech Financial LLC ("Ditech") as Sellers, Barclays Bank PLC ("Barclays") as Administrative Agent

and as Buyer and Nomura Corporate Funding Americas, LLC ("Nomura") as Buyer (together with Barclays in its capacity as Buyer, the "Buyers"), pursuant to which the Buyers committed to provide new debtor-in-possession financing in an amount of up to $1.9 billion on terms and subject to conditions set forth in the Commitment Letter and the term sheet attached thereto;

WHEREAS, the Governing Body of the Company has reviewed and had the opportunity to ask questions about the materials attached hereto and the impact of the foregoing on the Company's business; and

WHEREAS, the Governing Body has considered and determined that taking the applicable actions set forth below are in the best interests of the Company and, therefore, desires to approve the following resolutions.

Commencement of Chapter 11 Cases

RESOLVED, that it is desirable and in the best interests of the Company, its creditors, and other parties in interest and the Governing Body approves and authorizes the filing of petitions by the Company seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"); and be it further

RESOLVED, that it is desirable and in the best interests of the Company, its creditors, and other parties in interest that the Company and its advisors prepare, finalize and file, as appropriate, the prearranged chapter 11 plan of reorganization (the "Plan") and related disclosure statement (the "Disclosure Statement") consistent with the terms of the RSA;

RESOLVED, that any officer of the Company (each, an "Authorized Officer"), in each case, acting singly or jointly, be, and each hereby is, authorized, empowered, and directed to execute and file in the name and on behalf of the Company all petitions, schedules, motions, lists, applications, pleadings, and other papers in the Bankruptcy Court, and, in connection therewith, to employ and retain all assistance by legal counsel, accountants, financial advisors, investment bankers and other professionals, and to take and perform any and all further acts and deeds which such Authorized Officer deems necessary, proper, or desirable in connection with the chapter 11 cases (the "Chapter 11 Cases"), the Plan and the Disclosure Statement, including, without limitation, negotiating, executing, delivering and performing any and all documents, agreements, certificates and/or instruments in connection with the transactions and professional retentions set forth in this resolution, with a view to the successful prosecution of the Chapter 11 Cases; and be it further

Retention of Advisors

RESOLVED, that in connection with the Chapter 11 Cases, any Authorized Officer, in each case, acting singly or jointly, be, and each hereby is, authorized, empowered, and directed, with full power of delegation, in the name and on behalf of the Company, to employ and retain all assistance by legal counsel, accountants, financial advisors, investment bankers and other professionals, on behalf of the Company, which such Authorized Officer deems necessary, appropriate or advisable in connection with, or in furtherance of, the Chapter 11 Cases, with a view to the successful prosecution of the Chapter

11 Cases (such acts to be conclusive evidence that such Authorized Officer deemed the same to meet such standard); and be it further

RESOLVED, that the firm of Houlihan Lokey Capital, Inc., located at 10250 Constellation Blvd., 5th Floor, Los Angeles, California 90067, is hereby retained as investment banker for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

RESOLVED, that the law firm of Weil, Gotshal & Manges LLP, located at 767 Fifth Avenue, New York, NY 10153, is hereby retained as counsel for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

RESOLVED, that the firm of AlixPartners, located at 909 Third Avenue, New York, New York 10022, is hereby retained as financial advisor for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval, and that the Company's prior engagement of AlixPartners is hereby ratified in all respects; and be it further

RESOLVED, that the firm of Epiq Corporate Restructuring, LLC, located at 777 Third Avenue, 12th Floor, New York, New York 10017, is hereby retained as claims, noticing, and solicitation agent and administrative advisor for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

Specified Consent with Respect to Sole Member

RESOLVED, that the written consent of the Sole Member provided herein to file a petition seeking relief under the Bankruptcy Code shall, to the maximum extent permitted by law, constitute a "written consent" for purposes of §18-304 of the DLLC Act; and be it further

RESOLVED, that it is desirable and in the best interests of the Sole Member, its creditors, and other parties in interest that the Sole Member shall not cease to be a "member" (as such term is used in the DLLC Act) of any Single Member LLC as a result of the Chapter 11 Cases or upon the happening of any other event specified in §18-304 of the DLLC Act; and be it further

General

RESOLVED, that any Authorized Officer is hereby authorized, empowered, and directed, in the name and on behalf of the Company, to cause the Company to enter into, execute, deliver, certify, file and/or record, perform, and approve any necessary public disclosures and filings related to, and such other documents, agreements, instruments and certificates as may be required by the Chapter 11 Cases or retention of advisors and to take such other actions that in the judgment of the Authorized Officer shall be or become necessary, proper or desirable in connection therewith; and be it further

RESOLVED, that any actions taken by any Authorized Officer, for or on behalf of the Company, prior to the date hereof that would have been authorized by these resolutions but for the fact that such actions were taken prior to the date hereof be, and they hereby are, authorized, adopted, approved, confirmed and ratified in all respects as the actions and deeds of the Company.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned, being the managing member of the entities listed under "Group 1" on Schedule I has executed this written consent as of the date first set forth above.

DITECH HOLDING CORPORATION

/s/ Kimberly Perez
Name: Kimberly Perez
Title: SVP & Chief Accounting Officer

IN WITNESS WHEREOF, the undersigned, being all of the members of the board of directors of the entity listed under "Group 2" on Schedule I have executed this unanimous written consent as of the date first set forth above.

/s/ Jeffrey Baker
Jeffrey Baker

/s/ Alan Clark
Alan Clark

IN WITNESS WHEREOF, the undersigned, being the sole member of the board of directors of the entity listed under "Group 3" on Schedule I has executed this unanimous written consent as of the date first set forth above.

/s/ Laura Reichel
Laura Reichel

IN WITNESS WHEREOF, the undersigned, being the sole member or managing member, as applicable, of the entities listed under "Group 4" on Schedule I, has executed this written consent as of the date first set forth above.

GREEN TREE CREDIT SOLUTIONS LLC,

_/s/ Kimberly Perez_____
Name: Kimberly Perez
Title: SVP & Chief Accounting Officer

IN WITNESS WHEREOF, the undersigned, being the managing member of each entity listed under "Group 5" on Schedule I, has executed this written consent as of the date first set forth above.

REVERSE MORTGAGE SOLUTIONS, INC.

/s/ Jeanetta Brown
Name: Jeanetta Brown
Title: Vice President

IN WITNESS WHEREOF, the undersigned, being the managing member of the entity listed under "Group 6" on Schedule I, has executed this written consent as of the date first set forth above.

WALTER MANAGEMENT HOLDING COMPANY LLC

_/s/ Kimberly Perez_____
Name: Kimberly Perez
Title: SVP & Chief Accounting Officer

IN WITNESS WHEREOF, the undersigned, being the managing member of the entity listed under "Group 7" on Schedule I, has executed this written consent as of the date first set forth above.

GREEN TREE SERVICING CORP.

/s/ Kimberly Perez
Name: Kimberly Perez
Title: SVP & Chief Accounting Officer

Schedule I

Group 1

Walter Reverse Acquisition LLC, a Delaware limited liability company

Green Tree Credit Solutions LLC, a Delaware limited liability company

Marix Servicing LLC, a Delaware limited liability company

Group 2

Reverse Mortgage Solutions, Inc., a Delaware corporation

Group 3

Green Tree Insurance Agency of Nevada, Inc., a Nevada corporation

Green Tree Servicing Corp., a Delaware corporation

Group 4

Walter Management Holding Company LLC, a Delaware limited liability company

DF Insurance Agency LLC, a Delaware limited liability company

Green Tree Investment Holdings III LLC, a Delaware limited liability company

Group 5

Mortgage Asset Systems, LLC, a Delaware limited liability company

REO Management Solutions, LLC, a Delaware limited liability company

Group 6

Green Tree Credit LLC, a New York limited liability company

Group 7

Ditech Financial LLC, a Delaware limited liability company

ACTION BY
WRITTEN CONSENT OF
THE GOVERNING BODIES OF

DITECH FINANCIAL LLC
REVERSE MORTGAGE SOLUTIONS, INC.
RMS REO CS, LLC
RMS REO BRC, LLC
RMS REO BRC II, LLC

February 10, 2019

The required members of the board of directors, the sole member, the managing member, the sole manager or the sole general partner, as the case may be (as applicable, the "Governing Body"), of each of the entities referenced above (each, a "Company" and collectively, the "Companies"), do hereby consent to, adopt, and approve, by written consent in accordance with applicable law, the following resolutions and every action effected thereby:

WHEREAS, the Company is a direct or indirect wholly-owned subsidiary of Ditech Holding Corporation (the "Parent");

WHEREAS, the Board of Directors of the Parent and the Governing Body of each of Reverse Mortgage Solutions, Inc. ("RMS") and Ditech Financial LLC ("Ditech") previously approved the form, terms and provisions of, and the execution, delivery, and performance of, and, on February 8, 2019, the Parent and certain of its subsidiaries, including RMS and Ditech, entered into, the restructuring support agreement (the "RSA") with an ad hoc group of lenders (the "Term Loan Lenders") holding more than 75% of the aggregate total principal amount of the Parent's senior secured first lien term loan, borrowed pursuant to the Second Amended and Restated Credit Agreement, dated as of February 9, 2018 (as amended, supplemented or otherwise modified, the "Credit Agreement") establishing the Term Loan Lenders' support for a prearranged chapter 11 plan of reorganization;

WHEREAS, the Board of Directors of the Parent and the Governing Body of each of RMS and Ditech previously approved, and on February 8, 2019, the Parent, RMS and Ditech entered into, the Commitment Letter (the "Commitment Letter"), by and among the Parent as Guarantor, its wholly-owned direct subsidiaries Reverse Mortgage Solutions, Inc. ("RMS") and Ditech Financial LLC ("Ditech") as Sellers, Barclays Bank PLC ("Barclays") as Administrative Agent and as Buyer and Nomura Corporate Funding Americas, LLC ("Nomura") as Buyer (together with Barclays in its capacity as Buyer, the "Buyers"), pursuant to which the Buyers committed to provide new debtor-in-possession financing in an amount of up to $1.9 billion on terms and subject to conditions set forth in the Commitment Letter and the term sheet attached thereto;

WHEREAS, the Governing Body of the Company has reviewed and had the opportunity to ask questions about the materials attached hereto and the impact of the foregoing on the Company's business; and

WHEREAS, the Governing Body has considered and determined that taking the applicable actions set forth below are in the best interests of the Company and, therefore, desires to approve the following resolutions.

Debtor-in-Possession Financing

RESOLVED, that as previously authorized and agreed to by Ditech and RMS in connection with the Commitment Letter, it is in the best interest of Ditech, RMS, RMS REO CS, LLC ("RMS REO CS"), RMS REO BRC, LLC ("RMS REO BRC") and RMS REO BRC II, LLC ("RMS REO BRC II") to engage in, and the Parent, Ditech, RMS, RMS REO CS, RMS REO BRC and RMS REO BRC II will obtain benefits from, the financing transactions contemplated by the agreements listed on Schedule A hereto and any and all of the other agreements, including, without limitation, any other guarantees, certificates, documents and instruments authorized, executed, delivered, reaffirmed, verified and/or filed in connection with the Debtor-in-Possession Financing (as defined below) (together with the transaction documents listed on Schedule A, collectively, the "DIP Financing Documents"), which, subject to the approval of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") in connection with the chapter 11 cases of the Parent, RMS, Ditech and certain other subsidiaries of the Parent, will provide the Parent, Ditech, RMS and RMS REO BRC II up to $1.9 billion in available warehouse financing, which is necessary and appropriate for the conduct, promotion and attainment of the business of the Parent and its subsidiaries, including Ditech, RMS and RMS REO BRC II (the "Debtor-in-Possession Financing") (capitalized terms used in this section with respect to Debtor-in-Possession Financing and not otherwise defined herein shall have the meanings ascribed to such terms in the Commitment Letter or the term sheet attached thereto); and be it further

RESOLVED, that the Company's performance of its obligations under the DIP Financing Documents, including the borrowings and guarantees contemplated thereunder, are hereby, in all respects confirmed, ratified and approved; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered and directed, in the name and on behalf of the Company, to cause the Company to negotiate and approve the terms, provisions of and performance of, and to prepare, execute and deliver the DIP Financing Documents, on substantially the same terms and conditions presented to the Company, in the name and on behalf of the Company under its corporate seal or otherwise, and such other documents, agreements, instruments and certificates as may be required by the Administrative Agent or required by the DIP Financing Documents; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, as part of the adequate protection to be provided to the lenders and administrative agent under the Credit Agreement, to grant replacement security interests in, and replacement liens on, any and all property of the Company as collateral pursuant to the Bankruptcy Court's orders to secure all of the obligations and liabilities of the Company thereunder, and to authorize, execute, verify, file and/or deliver to the administrative agent, on behalf of the Company, all agreements, documents and instruments required by the lenders or the administrative agent under the Credit Agreement in connection with the foregoing; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered, and directed, in the name and on behalf of the Company, to take all such further actions including, without limitation, to pay all fees and expenses, in accordance with the terms of the DIP Financing Documents,

which shall, in such Authorized Officer's judgment, be necessary, proper or advisable to perform the Company's obligations under or in connection with the DIP Financing Documents and the transactions contemplated therein and to carry out fully the intent of the foregoing resolutions; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered, and directed, in the name and on behalf of the Company, to execute and deliver any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions and extensions of any of the DIP Financing Documents which shall, in such Authorized Officer's sole judgment, be necessary, proper or advisable; and be it further

General

RESOLVED, that any Authorized Officer is hereby authorized, empowered and directed, in the name and on behalf of the Company, to cause the Company to enter into, execute, deliver, certify, file and/or record, perform and approve any necessary public disclosures and filings related to, such documents, agreements, instruments, motions, affidavits, applications for approvals or rulings of governmental or regulatory authorities and certificates as may be required in connection with the DIP Financing Documents and Debtor-in-Possession Financing, and to take such other actions that in the judgment of the Authorized Officer shall be or become necessary, proper or desirable in connection therewith; and be it further

RESOLVED, that any actions taken by any Authorized Officer, for or on behalf of the Company, prior to the date hereof that would have been authorized by these resolutions but for the fact that such actions were taken prior to the date hereof be, and they hereby are, authorized, adopted, approved, confirmed and ratified in all respects as the actions and deeds of the Company.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned, being all of the members of the board of directors of **Reverse Mortgage Solutions, Inc.**, a Delaware corporation, have executed this unanimous written consent as of the date first set forth above.

/s/ Jeffrey Baker
Jeffrey Baker

/s/ Alan Clark
Alan Clark

IN WITNESS WHEREOF, the undersigned, being the sole member of each entity listed below, has executed this written consent as of the date first set forth above.

RMS REO CS, LLC

RMS REO BRC, LLC

RMS REO BRC II, LLC

REVERSE MORTGAGE SOLUTIONS, INC.
as Member

/s/ Jeanetta Brown
Name: Jeanetta Brown
Title: Vice President

IN WITNESS WHEREOF, the undersigned, being the managing member of **Ditech Financial LLC**, a Delaware limited liability company, has executed this written consent as of the date first set forth above.

GREEN TREE SERVICING CORP.

/s/ Kimberly Perez
Name: Kimberly Perez
Title: SVP & Chief Accounting Officer

Schedule A

1. Master Refinancing Agreement, dated as of the Closing Date, by and among Barclays, as administrative agent for the Buyers (as defined therein) and other Secured Parties (as defined therein), Barclays and Nomura, each as a Buyer (as defined therein), Barclays Capital Inc. and Nomura Securities International, Inc., each as an MSFTA Counterparty (as defined therein), Ditech and Reverse Mortgage Solutions, Inc., each as a Seller (as defined therein) and RMS REO BRC II, LLC, as REO Subsidiary (as defined therein) (the "Omnibus Agreement").

2. Master DIP Fee Letter, dated as of the Closing Date, among Barclays, as administrative agent, Barclays and Nomura, as Committed Buyers (as defined therein), Ditech, RMS and Ditech Holding Corporation.

3. Master DIP Guaranty, dated as of the Closing Date, made by Guarantor in favor of Barclays, as Administrative Agent, for the benefit of Buyers and the other Buyer Parties (as defined therein).

4. Margin, Setoff and Netting Agreement, dated as of the Closing Date, among Barclays, as Administrative Agent, Barclays Capital, Inc., Nomura Securities International, Inc., Nomura, Ditech, RMS, and RMS REO BRC II, LLC and acknowledged and agreed to by Ditech Holding Corporation.

5. Master Administration Agreement, dated as of the Closing Date, among Barclays, as Administrative Agent for the Buyers and other Secured Parties (as defined therein), Barclays and Nomura, each as a Buyer (as defined therein), Barclays Capital Inc. and Nomura Securities International, Inc., each as a MSFTA Counterparty (as defined therein), Ditech and RMS, each as a Seller (as defined therein), and RMS REO BRC II, LLC as REO Subsidiary (as defined therein).

6. Amended and Restated Master Repurchase Agreement, dated as of the Closing Date, by and among Barclays and Nomura, as Purchasers (as defined therein), Barclays, as Agent (as defined therein), RMS and RMS REO BRC II, LLC.

7. Amended and Restated Pricing Side Letter, dated as of the Closing Date, among Barclays, as Purchaser and Agent, Nomura, as Purchaser, RMS and RMS REO BRC II, LLC.

8. Assignment Agreement, dated as of the Closing Date, between RMS REO CS, LLC and RMS.

9. Assignment Agreement, dated as of the Closing Date, between RMS REO BRC, LLC and RMS.

10. Assignment Agreement, dated as of the Closing Date, between RMS REO BRC II, LLC and RMS.

11. Amended and Restated Custodial Agreement, dated as of the Closing Date, by and among RMS REO BRC II, LLC (the "REO Subsidiary"), RMS, Deutsche Bank National Trust Company, as custodian for Purchasers (as defined therein) and for the REO Subsidiary, Barclays and Nomura, as Purchasers (as defined therein), and Barclays, as Agent (as defined therein).

12. Amended and Restated Deposit Account Control Agreement, dated as of the Closing Date, by and among RMS, Barclays, as Agent (as defined therein), and Wells Fargo Bank, National Association.

13. Amendment No. 1 to the Limited Liability Company Agreement of RMS REO BRC II, LLC, dated as of the Closing Date, entered into by RMS, as the sole member, RMS REO BRC II, LLC, and consented to by Barclays, as Agent.

14. Indenture, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Indenture"), by and among Ditech Agency Advance Trust, as issuer (the "Agency Facility Issuer"), Wells Fargo Bank, N.A. ("Wells Fargo"), as indenture trustee (in such capacity, the "Agency Facility Indenture Trustee"), calculation agent, paying agent and securities intermediary, Ditech, as administrator (in such capacity, the "Agency Facility Administrator") and as servicer (in such capacity, the "Agency Facility Servicer") and Barclays, as administrative agent (in such capacity, the "Agency Facility Administrative Agent") (successor to Credit Suisse First Boston Mortgage Capital LLC, as initial administrative agent).

15. Series 2019-VF1 Indenture Supplement to Agency Facility Indenture, dated as of the Closing Date, by and among the Agency Facility Issuer, the Agency Facility Indenture Trustee (as indenture trustee, calculation agent, paying agent and securities intermediary), the Agency Facility Administrator, the Agency Facility Servicer and the Agency Facility Administrative Agent.

16. Receivables Sale Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Receivables Sale Agreement"), by and among the Agency Facility Servicer, as servicer and as the receivables seller (in such capacity, the "Agency Facility Receivables Seller"), Ditech Agency Advance Depositor LLC, as depositor (the "Agency Facility Depositor") and the Company, as guarantor.

17. Amendment No.1 to the Agency Facility Receivables Sale Agreement, dated as of the Closing Date, by and among the Agency Facility Servicer, the Agency Facility Receivables Seller, the Agency Facility Depositor and the Company, as guarantor.

18. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Receivables Seller.

19. Receivables Pooling Agreement, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Issuer.

20. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Issuer.

21. Administration Agreement, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Issuer and the Agency Facility Administrator.

22. Acknowledgment Agreement with Respect to Servicing Advance Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Acknowledgment Agreement"), by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.

23. Amendment No. 1 to the Agency Facility Acknowledgment Agreement, dated as of April 20, 2018, by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.

24. Amendment No. 2 to the Agency Facility Acknowledgment Agreement, dated as of the Closing Date, by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.

25. Series 2019-VF1 Variable Funding Note Purchase Agreement, dated as of the Closing Date, (the "Agency Facility Note Purchase Agreement"), by and among Ditech, as the Agency Facility Servicer, the Agency Facility Administrator and the Agency Facility Receivables Seller, the Agency Facility Depositor, the Agency Facility Issuer, the Administrative Agent, and Barclays, as a Purchaser Agent ("Agency Facility Purchaser").

26. Ditech Agency Advance Trust Advance Receivables Backed Note, Series 2019-VF1 Note, Number 1 (the "Agency Facility Note"), dated as of the Closing Date, in the name of the Agency Facility Purchaser.

27. Amended and Restated Trust Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Trust Agreement"), by and among the Agency Facility Depositor, Wilmington Trust, National Association, as the owner trustee (in such capacity, the "Agency Facility Owner Trustee"), and the Agency Facility Administrator.

28. Amendment No.1 to the Agency Facility Trust Agreement, dated as of the Closing Date, by and among the Agency Facility Depositor, Wilmington Trust, National Association, the Agency Facility Owner Trustee and the Agency Facility Administrator.

29. Amended and Restated Limited Liability Company Agreement of the Agency Facility Depositor (the "Agency Facility Depositor LLC Agreement"), dated as of February 9, 2018 and effective as of February 12, 2018, by and among Ditech, as the sole economic member of the Agency Facility Depositor and Albert Fioravanti, as the Special Member and Independent Manager of the Agency Facility Depositor.

30. Amendment No. 1 to the Agency Facility Depositor LLC Agreement, dated as of the Closing Date, made by Ditech, as the sole economic member of the Agency Facility Depositor and consented to by Albert Fioravanti, as the Special Member and Independent Manager of the Agency Facility Depositor and Barclays, as sole noteholder.

31. Indenture, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Indenture"), by and among Ditech PLS Advance Trust II, as issuer (the "PLS Facility Issuer"), Wells Fargo Bank, as indenture trustee (in such capacity, the "PLS Facility Indenture Trustee"), calculation agent, paying agent and securities intermediary, Ditech, as administrator (in such capacity, the "PLS Facility Administrator") and as servicer (in such capacity, the "PLS Facility Servicer") and Barclays, as administrative agent (in such capacity, the "PLS Facility Administrative Agent") (successor to Credit Suisse First Boston Mortgage Capital LLC, as initial administrative agent).

32. Series 2019-VF1 Indenture Supplement to PLS Facility Indenture, dated as of the Closing Date (the "PLS Facility Indenture Supplement"), by and among the PLS Facility Issuer, the PLS Facility Indenture Trustee (as indenture trustee, calculation agent, paying agent and securities intermediary), the PLS Facility Administrator, the PLS Facility Servicer and the PLS Facility Administrative Agent.

33. Receivables Sale Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Receivables Sale Agreement"), by and among the PLS Facility Servicer, as servicer and as the receivables seller (in such capacity, the "PLS Facility Receivables Seller"), Ditech PLS Advance Depositor LLC, as depositor (the "PLS Facility Depositor") and the Company, as guarantor.

34. Amendment No.1 to the PLS Facility Receivables Sale Agreement, dated as of the Closing Date, by and among the PLS Facility Servicer, the PLS Facility Receivables Seller, the PLS Facility Depositor and the Company, as guarantor ("PLS Facility Receivables Sale Agreement Amendment").

35. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (the "PLS Facility Assignment of Receivables"), by and between the PLS Facility Depositor and the PLS Facility Receivables Seller.

36. Receivables Pooling Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (the "PLS Facility Receivables Pooling Agreement"), by and between the PLS Facility Depositor and PLS Facility Issuer.

37. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (the "Depositor PLS Facility Assignment of Receivables"), by and between the PLS Facility Depositor and the PLS Facility Issuer.

38. Administration Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (the "PLS Facility Administration Agreement"), by and between the PLS Facility Issuer and the PLS Facility Administrator.

39. Acknowledgment Agreement with Respect to Servicing Advance Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Acknowledgment Agreement"), by and among the PLS Facility Issuer, the PLS Facility Depositor, the PLS Facility Servicer, the PLS Facility Indenture Trustee, Fannie Mae and the PLS Facility Administrative Agent.

40. Series 2019-VF1 Variable Funding Note Purchase Agreement, dated as of the Closing Date, and effective as of the Effective Date (the "PLS Facility Note Purchase Agreement"), by and among Ditech, as the PLS Facility Servicer, the PLS Facility Administrator and the PLS Facility Receivables Seller, the PLS Facility Depositor, the PLS Facility Issuer, the Administrative Agent, and Barclays, as a Purchaser Agent ("PLS Facility Purchaser").

41. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class A-VF1 Note Number 1 (the "PLS Facility Note, Class A"), dated as of the Closing Date, in the name of the PLS Facility Purchaser.

42. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class B-VF1 Note Number 1 (the "PLS Facility Note, Class B"), dated as of the Closing Date, in the name of the PLS Facility Purchaser.

43. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class C-VF1 Note Number 1 (the "PLS Facility Note, Class C"), dated as of the Closing Date, in the name of the PLS Facility Purchaser.

44. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class D-VF1 Note Number 1 (the "PLS Facility Note, Class D"), dated as of the Closing Date, in the name of the PLS Facility Purchaser.

45. Amended and Restated Trust Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Trust Agreement"), by and among the PLS Facility Depositor, Wilmington Trust, National Association, as the owner trustee (in such capacity, the "PLS Facility Owner Trustee"), and the PLS Facility Administrator.

46. Amendment No.1 to the PLS Facility Trust Agreement, dated as of the Closing Date, by and among the Agency Facility Depositor, the Agency Facility Owner Trustee and the Agency Facility Administrator.

47. Amended and Restated Limited Liability Company Agreement of the PLS Facility Depositor (the "PLS Facility Depositor LLC Agreement"), dated as of February 9, 2018 and effective as of February 12, 2018, by and among Ditech, as the sole economic member of the PLS Facility Depositor and Albert Fioravanti, as the Special Member and Independent Manager of the PLS Facility Depositor.

48. Amendment No. 1 to the PLS Facility Depositor LLC Agreement, dated as of the Closing Date, made by Ditech, as the sole economic member of the PLS Facility Depositor and consented to by Albert Fioravanti, as the Special Member and Independent Manager of the PLS Facility Depositor and Barclays, as sole noteholder.

49. Pledge Agreement, dated as of the Closing Date, made by the Ditech in favor of Barclays.

50. Master Repurchase Agreement, dated as of the Closing Date, by and among Barclays, as Administrative Agent on behalf of Buyers (as defined therein), Barclays and Nomura, as Buyers (as defined therein), other Buyers party thereto from time to time, and Ditech.

51. Pricing Side Letter, dated the Closing Date, among Barclays, as Administrative Agent for the benefit of Buyers (as defined therein), Barclays and Nomura, as Committed Buyers (as defined therein), and Ditech.

52. Power of Attorney, dated as of the Closing Date, to be entered into by Ditech.

53. Custodial and Disbursement Agreement, dated as of the Closing Date, by and among Barclays and Nomura, as Buyers (as defined therein), Ditech, Barclays, as agent of the Buyers, and Wells Fargo Bank, N.A.

54. Amended and Restated Deposit Account Control Agreement, dated as of the Closing Date, by and among Barclays, as Administrative Agent (as defined therein), Ditech and U.S. Bank National Association.

55. Second Amendment to the Master Securities Forward Transaction Agreement, dated as of the Closing Date, between Barclays Capital Inc. and Ditech.

56. Second Amendment to the Master Securities Forward Transaction Agreement, dated as of the Closing Date, between Nomura Securities International, Inc. and Ditech.

Fill in this information to identify the case:

Debtor name: Ditech Financial LLC

United States Bankruptcy Court for the: Southern District of New York
(State)

Case number (*If known*): _____

☐ Check if this is an amended filing

Official Form 204

Chapter 11 or Chapter 9 Cases: Consolidated List of Creditors Who Have the 40 Largest Unsecured Claims and Are Not Insiders

12/15

A list of creditors holding the 40 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an insider, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 40 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	**Name, telephone number, and email address of creditor contact**	**Nature of the claim** (for example, trade debts, bank loans, professional services, and government contracts)	**Indicate if claim is contingent, unliquidated, or disputed**	**Amount of unsecured claim** If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	**Deduction for value of collateral or setoff**	**Unsecured claim**
1	ISGN Solutions Inc. Attn.: E. Rock Primas 2330 Commerce Park Drive, NE, Suite 2 Palm Bay, Florida 32905	Attn.: E. Rock Primas Phone: (609) 932-4712 Email: rock.primas@isgnsolutions.com	Trade Debt				$1,531,484.00
2	Black Knight Tech Solutions Attn.: Darlene Ledet 601 Riverside Avenue Jacksonville, FL 32204	Attn.: Darlene Ledet Phone: (904) 854-3153 Email: darlene.ledet@bkfs.com	Trade Debt				$1,458,204.00
3	Servicelink Attn.: Joe Greve 9600 Reserve Run Brecksville, Ohio 15108	Attn.: Joe Greve Phone: (216) 374-1888 Email: joe.greve@svclnk.com	Trade Debt				$1,222,945.00
4	Corelogic Tax Services LLC Attn.: Tom Blauvelt 4 First American Way Santa Ana, California 92707	Attn.: Tom Blauvelt Phone: (512) 977-3716 Email: tblauvelt@corelogic.com	Trade Debt				$1,155,282.00
5	Safeguard Properties Mgmt. LLC Attn.: Gregory Sharp 7887 Safeguard Cir. Valley View, Ohio 44125	Attn.: Gregory Sharp Phone: (216) 739-2900 Email: gregory.sharp@safeguardproperties.com	Trade Debt				$1,150,138.00
6	Tata Consultancy Services Ltd. Attn.: Prashant Panghal 379 Thornall Street Edison, New Jersey 08837	Attn.: Prashant Panghal Phone: (732) 986-6921 Email: prashant1.p@tcs.com	Trade Debt				$1,135,384.00
7	Cognizant Technology Solutions Attn.: Janine Lj Durham 2512 Dunlap Avenue Phoenix, Arizona 32905	Attn.: Janine Lj Durham Phone: (602) 315-0481 Email: janine.durham@cognizant.com	Trade Debt				$1,023,481.00

Name of creditor and complete mailing address, including zip code		Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
8	Corelogic Information Solutions Attn.: Tom Blauvelt 4 First American Way Santa Ana, California 92707	Attn.: Tom Blauvelt Phone: (512) 977-3716 Email: tblauvelt@corelogic.com	Trade Debt				$800,585.00
9	Black Knight Financial Services Attn.: Darlene Ledet 601 Riverside Avenue Jacksonville, Florida 32204	Attn.: Darlene Ledet Phone: (904) 854-3153 Email: darlene.ledet@bkfs.com	Trade Debt				$586,915.00
10	Verizon Business Attn.: Lona Gruebele 22001 Loudoun County Pkwy Ashburn, Virgina 20147	Attn.: Lona Gruebele Phone: (612) 805-1034 Email: lona.j.gruebele@verizon.com	Trade Debt				$555,663.00
11	Nationwide Title Clearing Inc. Attn.: Debbie Lastoria 2100 Alt 19 North Palm Harbor, Florida 34683	Attn.: Debbie Lastoria Phone: (727) 771-4000 Email: debbie_lastoria@nwtc.com	Trade Debt				$554,418.00
12	NCP Solutions LLC Attn.: Tom Hart 5200 East Lake Boulevard Birmingham, Alabama 35217	Attn.: Tom Hart Phone: (205) 421-7254 Email: thart@ncpsolutions.com	Trade Debt				$492,500.00
13	Pegasystems Inc. Attn.: Kirk Faustman One Rogers Street Cambridge, Massachusetts 02142	Attn.: Kirk Faustman Phone: (617) 777-3229 Email: kirk.faustman@pega.com	Trade Debt				$480,180.00
14	Padgett Law Group Attn.: Timothy D. Padgett 6267 Old Water Oak Road, Suite 203 Tallahassee, Florida 32312	Attn.: Timothy D. Padgett Phone: (850) 422-2520 Email: accounting@padgettlaw.net	Professional Services				$471,337.00
15	McCalla Raymer Leibert Pierce LLC Attn.: Michael Allgood 1544 Old Alabama Road Roswell, Georgia 30076	Attn.: Michael Allgood Phone: (770) 643-7202 Email: michael.allgood@mccalla.com	Trade Debt				$462,992.00
16	RAS Crane LLC Attn.: John Crane 10700 Abbott's Bridge Road; Suite 170 Duluth, Georgia 30097	Attn.: John Crane Phone: (972) 757-1486 Email: jcrane@rascrane.com	Professional Services				$446,268.00
17	Locke Lord LLP Attn.: Lori Barton 2200 Ross Avenue, Suite 2800 Dallas, Texas 75201	Attn.: Lori Barton Phone: (214) 740-8000 Email: lori.barton@lockelord.com	Professional Services				$443,666.00
18	Ellie Mae Inc. Attn.: John Coppa 4420 Rosewood Drive, Suite 500 Pleasanton, CA 94588	Attn.: John Coppa Phone: (925) 227-2060 Email: john.coppa@elliemae.com	Trade Debt				$347,728.00
19	Quattro Direct LLC Attn.: Dan Lawler 200 Berwyn Park, Suite 310 Berwyn, Pennsylvania 19312	Attn.: Dan Lawler Phone: (610) 993-0070 Email: dlawler@quattrodirect.com	Trade Debt				$342,006.00
20	KML Law Group PC Attn.: Lisa Lee 701 Market Street, Suite 5000 Philadelphia, Pennsylvania 19106	Attn.: Lisa Lee Phone: (215) 627-1322 Email: llee@kmllawgroup.com	Professional Services				$332,535.00
21	Phelan Hallinan LLP Attn.: Jay Jones 1617 JFK Blvd., Suite 1400 Philadelphia, Pennsylvania 19103-1814	Attn.: Jay Jones Phone: (215) 563-7000 Email: jay.jones@phelanhallinan.com	Professional Services				$305,245.00

Name of creditor and complete mailing address, including zip code		Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
22	Insight Direct/ Datalink Attn.: Michael Schmidt 6820 South Harl Avenue Tempe, Arizona 85283	Attn.: Michael Schmidt Phone: (651) 260-4017 Email: Michael.schmidt@insight.com	Trade Debt				$300,279.00
23	TCS America Attn.: Prashant Panghal 379 Thornall Street Edison, New Jersey 08837	Attn.: Prashant Panghal Phone: (732) 986-6921 Email: prashant1.p@tcs.com	Trade Debt				$297,383.00
24	Robertson Anschutz & Schneid PL Attn.: Eric L. Bronfeld 6409 Congress Avenue, Suite 100 Boca Raton, Florida 33487	Attn.: Eric L. Bronfeld Phone: (561) 241-6901 Email: arcollections@rasflaw.com	Professional Services				$290,502.00
25	American Bankers Insurance Attn.: Michelle Griffith 11222 Quail Roost Drive Miami, Florida 33157	Attn.: Michelle Griffith Phone: (305) 253-2244 Email: michelle.griffith@assurant.com	Trade Debt				$285,213.00
26	Indecomm Holdings Inc. Attn.: Teddi Horan 205 Regency Executive Park Drive, Suite 500 Charlotte, North Carolina 28217	Attn.: Teddi Horan Phone: (215) 962-7212 Email: teddi.horan@indecomm.net	Trade Debt				$284,830.00
27	Wells Fargo Bank N.A Attn.: Holly Monday 420 Montgomery Street San Francisco, California 94104	Attn.: Holly Monday Phone: (703) 865-7740 Email: holly.monday@wellsfargo.com	Trade Debt				$271,624.00
28	Newcourse Communications Inc. Attn.: Valerie Griffin 5010 Linbar Dr., Ste. 100 Nashville, Tennessee 37211	Attn.: Valerie Griffin Phone: (615) 921-6656 Email: valerie.griffin@newcoursecc.com	Trade Debt				$270,000.00
29	Xome Valuation Services Attn.: Allen Illgen 444 East Washington Street Indianapolis, Indiana 46204	Attn.: Allen Illgen Phone: (612) 207-4012 Email: allen.illgen@assurant.com	Trade Debt				$249,474.00
30	Rean Cloud LLC Attn.: Rupa Vasireddy 2201 Cooperative Way #250 Herndon, Virginia 20171	Attn.: Rupa Vasireddy Phone: (844) 377-7326 Email: rupa@reancloud.com	Trade Debt				$240,667.00
31	US Real Estate Services Inc. Attn.: Becca Nottberg 25520 Commerce Centre Drive; 1st Floor Lake Forest, California 92630	Attn.: Becca Nottberg Phone: (949) 206-5353 Email: becca.nottberg@res.net	Trade Debt				$233,284.00
32	Operational Excellence Attn.: Tony Galluzzo 19712 MacArthur Blvd., Suite 110 Irvine, California 92612	Attn.: Tony Galluzzo Phone: (949) 988-7229 Email: tgalluzzo@ca-usa.com	Trade Debt				$231,378.00
33	US Bank Trust NA Att.: Kirk Larson 300 East Delaware; 8th Floor Wilmington, Delaware 19809	Attn.: Kirk Larson Phone: (651) 466-5666 Email: kirk.larson1@usbank.com	Trade Debt				$230,809.00
34	Wolfe & Wyman LLP Attn.: Stuart B. Wolfe 11811 N. Tatum, Suite 3031 Phoenix, Arizona 85028-1621	Attn.: Stuart B. Wolfe Phone: (602) 953-0100 Email: sbwolfe@wolfewyman.com	Professional Services				$228,398.00

Name of creditor and complete mailing address, including zip code		Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
35	Five Brothers Mortgage Servs Attn.: Dawn Whiteaker 12220 E. 13 Mile Road; Suite 100 Warren, Missouri 48093	Attn.: Dawn Whiteaker Phone: (586) 354-2017 Email: dawnrw@fiveonline.com	Trade Debt				$224,947.00
36	Servicelink Default Title & Closing Attn.: Joe Greve 1355 Cherrington Parkway Moon Township, Pennsylvania 15108	Attn.: Joe Greve Phone: (216) 374-1888 Email: joe.greve@svclnk.com	Trade Debt				$218,298.00
37	Level 3 Communications LLC Attn.: Timothy McGraw 600 W. Chicago Avnue, Suite 325 Chicago, Illinois 60654	Attn.: Timothy McGraw Phone: (612) 392-7364 Email: timothy.mcgraw@level3.com	Trade Debt				$209,330.00
38	Xome Field Services LLC Attn.: Allen Illgen 444 East Washington Street Indianapolis, Indiana 46204	Attn.: Allen Illgen Phone: (612) 207-4012 Email: allen.illgen@assurant.com	Trade Debt				$206,077.00
39	RAS Boriskin LLC Attn.: Sara Borskin 900 Merchants Concourse Westbury, New York 11590	Attn.: Sara Boriskin Phone: (516) 280-7675 Email: sboriskin@rasboriskin.com	Trade Debt				$202,336.00
40	ISGN Corporation Attn.: E. Rock Primas 2330 Commerce Park Drive, NE, Suite 2 Palm Bay, Florida 32905	Attn.: E. Rock Primas Phone: (609) 932-4712 Email: rock.primas@isgnsolutions.com	Trade Debt				$200,850.00

Fill in this information to identify the case:

Debtor name: Ditech Financial LLC

United States Bankruptcy Court for the: Southern District of New York (State)

Case number (*If known*): _____

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors 12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING – Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.
I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ Schedule A/B: Assets–Real and Personal Property (Official Form 206A/B)
- ☐ Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- ☐ Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- ☐ Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- ☐ Schedule H: Codebtors (Official Form 206H)
- ☐ Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- ☐ Amended Schedule ____
- ☑ Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 40 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- ☐ Other document that requires a declaration _____

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

Executed on February 11, 2019
MM /DD /YYYY

X /s/ Kimberly Perez
Signature of individual signing on behalf of debtor

Kimberly Perez
Printed name

Senior Vice President and Chief Accounting Officer
Position or relationship to debtor

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11**
	:	
DITECH FINANCIAL LLC,	:	**Case No. 19– _____ ( )**
	:	
Debtor.	:	

LIST OF EQUITY HOLDERS[1]

Pursuant to Rule 1007(a)(3) of the Federal Rules of Bankruptcy Procedure, the following identifies all holders having a direct or indirect ownership interest of the above-captioned debtor in possession (the "**Debtor**").

Name and Last Known Address or Place of Business of Holder	Number of Securities/Kind of Interest
Walter Management Holding Company LLC 1100 Virginia Drive Suite 100A Fort Washington, PA 19034	100 % (Equity)

[1] This list serves as the required disclosure by the Debtor pursuant to Rule 1007 of the Federal Rules of Bankruptcy Procedure. All equity positions listed are as of the date of commencement of the chapter 11 case.

Fill in this information to identify the case:

Debtor name: Ditech Financial LLC

United States Bankruptcy Court for the: Southern District of New York (State)

Case number (*If known*): _____

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors 12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING – Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.
I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ Schedule A/B: Assets–Real and Personal Property (Official Form 206A/B)
- ☐ Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- ☐ Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- ☐ Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- ☐ Schedule H: Codebtors (Official Form 206H)
- ☐ Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- ☐ Amended Schedule ____
- ☐ Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 40 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- ☑ Other document that requires a declaration List of Equity Holders

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

Executed on February 11, 2019
MM / DD /YYYY

X /s/ Kimberly Perez
Signature of individual signing on behalf of debtor

Kimberly Perez
Printed name

Senior Vice President and Chief Accounting Officer
Position or relationship to debtor

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
DITECH FINANCIAL LLC,	:	**Case No. 19-[_____] (___)**
Debtor.	:	
Fed. Tax Id. No. 41-1795868	:	

CONSOLIDATED CORPORATE OWNERSHIP
STATEMENT PURSUANT TO FED. R. BANKR. P. 1007 AND 7007.1

Pursuant to Rules 1007(a)(1) and 7007.1 of the Federal Rules of Bankruptcy Procedure and Rule 1007-3 of the Local Bankruptcy Rules for the Southern District of New York, Ditech Holding Corporation (f/k/a Walter Investment Management Corp.) ("**Ditech**") and its debtor affiliates, as debtors and debtors in possession in the above captioned chapter 11 cases (collectively, the "**Debtors**"), respectfully represent:

1. To the best of the Debtors' knowledge and belief, as of the date hereof (the "**Commencement Date**"), based solely on publicly available information, no entity directly or indirectly owns 10% or more of Ditech's common stock.

2. To the best of the Debtors' knowledge and belief, as of the Commencement Date, based solely on publicly available information, Lion Point Master, LP owns approximately 38.1% of the convertible preferred shares of Ditech, First Pacific Advisors LLC owns approximately 11.1% of the convertible preferred shares of Ditech, and no other entity directly or indirectly owns 10% or more of Ditech's convertible preferred shares.

3. Ditech has a one hundred percent (100%) ownership interest in the following entities:

i. Walter Reverse Acquisition LLC

ii. Green Tree Credit Solutions LLC

iii. Marix Servicing LLC

iv. Mid-State Capital, LLC[1]

v. Hanover SPC-A, Inc.*

vi. WIMC Real Estate Investment LLC*

4. Walter Reverse Acquisition LLC has a one hundred percent (100%) ownership interest in Reverse Mortgage Solutions, Inc.

5. Reverse Mortgage Solutions, Inc. has a one hundred percent (100%) ownership interest in the following entities:

i. Mortgage Asset Systems, LLC

ii. REO Management Solutions, LLC

iii. RMS REO BRC, LLC*

iv. RMS REO CS, LLC*

v. RMS REO BRC II, LLC*

vi. RMS 2018-09, LLC*

6. Green Tree Credit Solutions LLC has a one hundred percent (100%) ownership interest in the following entities:

i. Green Tree Insurance Agency of Nevada, Inc.

ii. Walter Management Holding Company LLC

iii. DF Insurance Agency LLC

iv. Green Tree Investment Holdings III LLC

7. Walter Management Holding Company LLC has a one hundred percent

[1] Mid-State Capital, LLC and each other entity noted with a (*) are not debtors in these chapter 11 cases.

(100%) ownership interest in the following entities:

i. Green Tree Credit LLC

ii. Green Tree Servicing Corp.

iii. Ditech Financial LLC

8. Ditech Financial LLC has a one hundred percent (100%) ownership interest in the following entities:

i. Green Tree Advance Receivables III LLC*

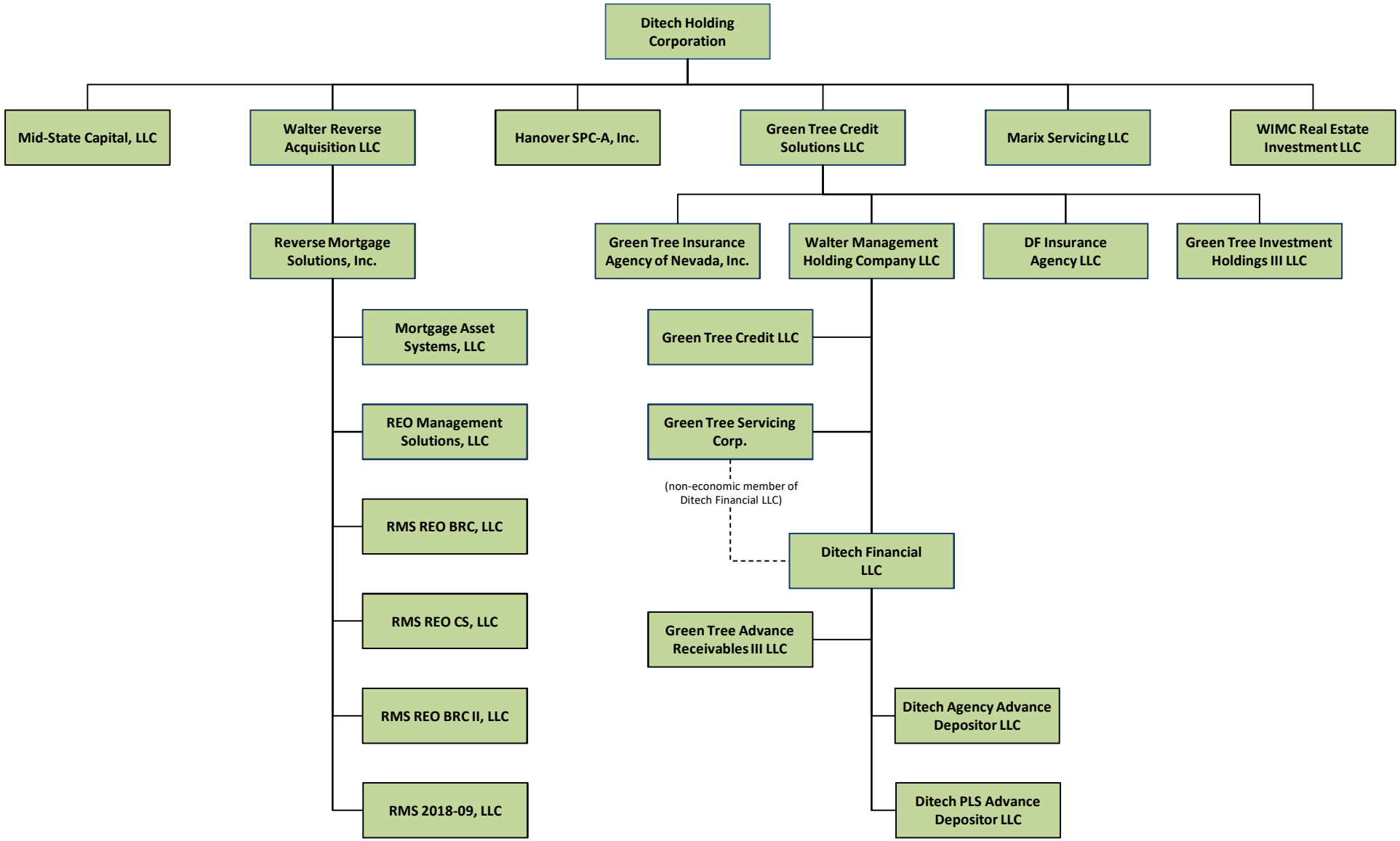
ii. Ditech Agency Advance Depositor LLC*

iii. Ditech PLS Advance Depositor LLC*

9. Attached hereto as **Exhibit A** is an organizational chart reflecting all of the ownership interests of the Debtors and their non-Debtor affiliates as of the Commencement Date.

Exhibit A

Organizational Chart


Ditech Holding Corporation
Mid-State Capital, LLC
Walter Reverse Acquisition LLC
Hanover SPC-A, Inc.
Green Tree Credit Solutions LLC
Marix Servicing LLC
WIMC Real Estate Investment LLC
Reverse Mortgage Solutions, Inc.
Green Tree Insurance Agency of Nevada, Inc.
Walter Management Holding Company LLC
DF Insurance Agency LLC
Green Tree Investment Holdings III LLC
Mortgage Asset Systems, LLC
REO Management Solutions, LLC
RMS REO BRC, LLC
RMS REO CS, LLC
RMS REO BRC II, LLC
RMS 2018-09, LLC
Green Tree Credit LLC
Green Tree Servicing Corp.
(non-economic member of Ditech Financial LLC)
Ditech Financial LLC
Green Tree Advance Receivables III LLC
Ditech Agency Advance Depositor LLC
Ditech PLS Advance Depositor LLC

Fill in this information to identify the case:

Debtor name: Ditech Financial LLC

United States Bankruptcy Court for the: Southern District of New York (State)

Case number (*If known*): _____

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors 12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING – Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.
I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ Schedule A/B: Assets–Real and Personal Property (Official Form 206A/B)
- ☐ Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- ☐ Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- ☐ Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- ☐ Schedule H: Codebtors (Official Form 206H)
- ☐ Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- ☐ Amended Schedule ____
- ☐ Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 40 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- ☑ Other document that requires a declaration Consolidated Corporate Ownership Statement

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

Executed on February 11, 2019
MM /DD /YYYY

X /s/ Kimberly Perez
Signature of individual signing on behalf of debtor

Kimberly Perez
Printed name

Senior Vice President and Chief Accounting Officer
Position or relationship to debtor

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
DITECH HOLDING CORPORATION, *et al.*,	:	**Case No. 19-10412 (JLG)**
Debtors.[1]	:	**(Jointly Administered)**
	:	**Related Docket No. 9, 55, 187**

FINAL ORDER (I) AUTHORIZING DEBTORS TO CONTINUE ORIGINATION AND SERVICING OF FORWARD MORTGAGE LOANS IN ORDINARY COURSE AND GRANTING RELATED RELIEF AND (II) MODIFYING AUTOMATIC STAY ON A LIMITED BASIS TO FACILITATE DEBTORS' ONGOING OPERATIONS

Upon the motion dated February 11, 2019 (the "**Motion**")[2] of Ditech Holding Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**" and, together with their non-debtor affiliates, the "**Company**"), pursuant to sections 105(a), 362, 363(c), 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rules 4001, 6003, and 6004, the Debtors request authority, but not direction, to continue in the ordinary course of business (a) to originate and purchase mortgage loans; (b) to sell and securitize loans, including by performing under certain agreements with Fannie Mae, Freddie Mac, Ginnie Mae, and private parties; (c) to service and subservice loans pursuant to terms and conditions set forth in certain agreements with Fannie Mae, Freddie Mac,

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are Ditech Holding Corporation (0486); DF Insurance Agency LLC (6918); Ditech Financial LLC (5868); Green Tree Credit LLC (5864); Green Tree Credit Solutions LLC (1565); Green Tree Insurance Agency of Nevada, Inc. (7331); Green Tree Investment Holdings III LLC (1008); Green Tree Servicing Corp. (3552); Marix Servicing LLC (6101); Mortgage Asset Systems, LLC (8148); REO Management Solutions, LLC (7787); Reverse Mortgage Solutions, Inc. (2274); Walter Management Holding Company LLC (9818); and Walter Reverse Acquisition LLC (8837). The Debtors' principal offices are located at 1100 Virginia Drive, Suite 100, Fort Washington, Pennsylvania 19034.

[2] Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion. As used herein, the term "mortgage" and similar formulations include both mortgages and deeds of trust.

Ginnie Mae, other applicable federal agencies, and private parties; (d) to make servicing advances; (e) to pay prepetition amounts owed to critical vendors; (f) to fulfill compliance and regulatory obligations; and (g) to provide assurances of future performance to Fannie Mae, Freddie Mac, and Ginnie Mae, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion and Final Hearing (defined below) having been provided to the Notice Parties as set forth in the affidavit of service filed with respect thereto [ECF No. 45]; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis on February 13, 2019 (the "**Interim Hearing**"); and the Court having entered an order granting the relief requested in the Motion on an interim basis [ECF No. 55] and scheduling a final hearing on the Motion for March 14, 2019 (the "**Final Hearing**"); and, if necessary, the Final Hearing having been held to consider the relief requested in the Motion on a final basis; and upon the Lombardo Declaration, filed contemporaneously with the Motion, and the record of the Interim Hearing and the Final Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the

proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis to the extent set forth herein.

Forward Mortgage Origination Business

2. The Debtors are authorized but not directed, to continue in the ordinary course of business:

(a) to fund their origination and purchase of mortgage loans and to pay related obligations, regardless of whether such obligations arose prepetition or postpetition;

(b) (i) to honor and perform under the GSE Sales Agreements, (ii) to pay the GSE Guaranty Fees, (iii) to honor and pay the GSE Repurchase Obligations, and (iv) to perform other activities and pay fees related to mortgage loan origination, including paying all obligations related to loans originated prepetition;

(c) (i) to honor and perform under the Ginnie Mae Agreements, (ii) to honor and pay the Ginnie Mae Buyout Obligations, (iii) to pay the Ginnie Mae Fees, and (iv) to pay the Ginnie Mae Administrative Fees, including, in each instance, all obligations related to loans originated prepetition; and

(d) (i) to sell mortgage loans to private investors and (ii) to enter into, and perform under, MLPAs, including, to pay all obligations related to loans originated prepetition.

Forward Mortgage Servicing Business

3. The Debtors are authorized but not directed, to continue in the ordinary course of business:

(a) to service and subservice GSE Loans in the ordinary course, including by continuing to perform under the GSE Servicing Agreements and by continuing to honor and pay the GSE Repurchase Obligations and all prepetition amounts arising under the GSE Servicing Agreements;

(b) to service Ginnie Securitized Loans in the ordinary course, including by continuing to perform under the Ginnie Mae Agreements and the applicable Government Loan Servicing Guidelines;

(c) to service and subservice Private Loans in the ordinary course, including by continuing to perform under the Private Servicing Agreements;

(d) (i) to sell MSRs and related reimbursement rights for Servicer Advances and (ii) the NRM Servicing Transition;

(e) to service and subservice loans;

(f) to make Servicer Advances, whether arising from prepetition or postpetition obligations, in accordance with the Agency Servicing Agreements and Private Servicing Agreements, as applicable;

(g) (i) to modify loans and to participate in loan modification programs, (ii) make and/or accept Loss Mitigation Payments, which payments, for the avoidance of doubt, may include payments or other concessions to or from borrowers, lienholders, mortgagors, the heirs, estates, and other successors in interest of the foregoing, tenants, title companies, title insurers, purchasers from a tax sale or a foreclosure sale, or other parties with a claimed interest in the subject property or loan (each, an "**Interested Party**") with respect to foreclosures, evictions, Title Disputes (as defined below), collection actions, insurance disputes, replevins, and similar servicing related actions, and (iii) to enter into, and perform under existing, Deferment and Forbearance Arrangements, which agreements, for the avoidance of doubt, may include agreements with Interested Parties to compromise or settle claims related to loans owned, serviced or subserviced by the Debtors, and including honoring all obligations related thereto that accrued in whole or part prior to the Commencement Date;

(h) to engage in nonperforming loan servicing activities with respect to Agency Loans, including (i) to conduct foreclosures, short sales, deeds in lieu of foreclosure, evictions, and similar actions, including to honor and to enter into settlements and other arrangements related thereto, including on behalf of investors in accordance with the Debtors' existing servicing and subservicing obligations, (ii) to pay any T&I Advances and Corporate Advances, including any prepetition amounts owed, with respect to (A) GSE Loans in accordance with the applicable GSE Servicing Agreements and (B) Ginnie Securitized Loans until such loans are conveyed to the FHA or transferred into the custody of the VA, in

each case as required pursuant to the applicable Government Loan Servicing Guidelines, (iii) to pay any P&I Advances, including any prepetition amounts owed, with respect to Ginnie Securitized Loans until such loans are conveyed to the FHA or transferred into the custody of the VA, in each case as required pursuant to the Ginnie Mae Agreements and the applicable Government Loan Servicing Guidelines, (iv) to distribute net sale proceeds to the appropriate parties in accordance with the applicable Agency Servicing Agreements, and (v) as necessary, to transfer or assign deeds to Agency REOs to the applicable owner of the Agency REO; and

(i) to engage in nonperforming loan servicing activities with respect to Private Loans, including to (i) pay any Servicer Advances—including any prepetition amounts owed—with respect to Private REOs and Private Loans in foreclosure, (ii) sell Private REOs, whether owned by the Debtors or on behalf of third parties in the Debtors' capacity as servicer or subservicer, on an "as is where is" basis and without any representation and warranties except for title, in their discretion and subject to their business judgment, and free and clear of any and all liens and encumbrances either pursuant to (A) section 363(f) of the Bankruptcy Code, to the extent that the Private REO is owned by the Debtors, or (B) applicable non-bankruptcy law, to the extent the Private REO is owned by third parties; *provided that*, should any lien, claim, or encumbrance exist on such Private REOs, such liens, claims, or encumbrances shall attach to the proceeds from the sales thereof, (iii) remit (A) overpayments to purchasers and (B) net sale proceeds to the appropriate parties, and (iv) conduct foreclosures, short sales, deeds in lieu of foreclosure, evictions, and similar actions, including to honor and to enter into settlements and other arrangements related thereto, including on behalf of investors in accordance with the Debtors' existing servicing and subservicing obligations, each of (i) through (iv) in accordance with the relevant Private Servicing Agreements.

4. As to mortgage loans not owned by Ditech, principal, interest, and funds for the payment of property taxes and insurance premiums collected by Ditech in connection with its performance of its Servicing Functions do not constitute property of the Debtors' estates under section 541 of the Bankruptcy Code, and no lien or other interest therein will be given by the Debtors to any party.

Additional Relief Related to Forward Mortgage Origination and Servicing Businesses

5. The Debtors are authorized but not directed, to continue in the ordinary course of business (a) to fulfill state licensing requirements and to pay related obligations, (b) to submit to, and comply with, state and federal regulatory exams and audits and to pay related obligations, costs, and expenses, and (c) to remediate errors and/or lack of compliance with laws or regulations, including by continuing (i) to make payments to borrowers (*e.g.*, in the form of reimbursements, refunds, and/or out-of-pocket expenses), (ii) to forgive past due amounts and/or assessed but unpaid fees or other charges, (iii) to pay fees, fines, and/or penalties, either directly to the applicable authority or through a Critical Vendor, (iv) to incur and pay certain expenses, (v) to pay the costs and expenses of state and federal regulatory examinations, (vi) to take such other measures as may be required by, or agreed to with, state and federal regulators, and (vii) to perform any other adjustments to borrowers' accounts as part of the Debtors' compliance obligations.

6. If, after the Commencement Date, a Specified Servicing Default (as defined below) under any Specified Agreement (as defined below) has occurred, then the Specified Counterparty (as defined below) under such Specified Agreement may, in accordance with the terms of such Specified Agreement and notwithstanding the automatic stay, issue a written notice declaring that such Specified Servicing Default has occurred and is continuing (a "**Specified Servicing Default Notice**"), to the Debtors and their counsel, the DIP Agent and its counsel, the U.S. Trustee, counsel to the official committee of unsecured creditors appointed in these chapter 11 cases (the "**Creditors' Committee**"), and counsel to the Consenting Term Lenders (collectively, the "**Specified Servicing Default Notice Parties**"). To be effective hereunder, any Specified Servicing Default Notice shall (i) specify that it is a "Specified Servicing Default Notice", (ii) identify and attach copies of the relevant Specified Agreement(s), and (iii) otherwise comply with the requirements for such notice

under the applicable Specified Agreement. If a Specified Servicing Default Notice has been delivered in accordance with this paragraph and the alleged Specified Servicing Default is not cured within the longer of (x) three (3) business days of the Specified Servicing Default Notice Parties' receipt of such Specified Servicing Default Notice and (y) the applicable cure, grace, or notice period set forth in the Specified Agreement, then, upon the running of such cure, grace or notice period, the Specified Counterparty may move for relief from the automatic stay in connection with such Specified Servicing Default, which such motion may be heard by this Court on an expedited basis (but in any event, no earlier than five (5) days after such motion is filed with this Court and served on the Specified Servicing Default Notice Parties) (a "**Lift Stay Motion**"). At any hearing on any Lift Stay Motion, the applicable standards and burdens of proof and persuasion for relief from the automatic stay shall apply. Notwithstanding the automatic stay, solely to the extent necessary to effectuate its rights pursuant to this paragraph, and subject to the express terms of the applicable Specified Agreement, a Specified Counterparty may give notice to a Debtor in its servicing or servicing-related role pursuant to a Specified Agreement of the occurrence of any event, condition or default that, with the giving of notice, the passage of time, or both, would become a Specified Servicing Default. For purposes of this paragraph:

(a) "**Specified Agreement**" means any Private Servicing Agreement, pooling and servicing agreement, or similar servicing agreement, in any such case, (x) permitting the securitization trustee, indenture trustee, or similar trustee party to such agreement (an "**MBS Trustee**") a right to terminate servicing for the Private Loans placed in the securitization trust subject to such agreement and (y) under which a Debtor is performing a servicing or servicing-related role postpetition in accordance with the relief granted in this Order with respect to Private Loans that have been securitized;

(b) "**Specified Counterparty**" means the MBS Trustee party to such Specified Agreement; and

(c) "**Specified Servicing Default**" means a failure by any Debtor to timely (i) make a Servicer Advance, or (ii) remit or make deposits of assets, in any such case of clause (i) or (ii), required to be made or remitted by such Debtor, in its servicing or servicing-related role,

> pursuant to any Specified Agreement, which failure has continued beyond any applicable cure, grace or notice period set forth in such Specified Agreement and as a result of which the Specified Counterparty under such Specified Agreement would otherwise have the current right (but for the effect of the automatic stay and the provisions of this paragraph) to terminate the applicable Debtor from such servicing or servicing related role pursuant to the terms of such Specified Agreement.

7. For the avoidance of doubt, nothing herein nor the performance of the Debtors hereunder shall convert a prepetition debt to a postpetition administrative expense claim.

Critical Vendors

8. Pursuant to sections 105(a) and 363(c) of the Bankruptcy Code, the Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay some or all of the prepetition claims of the Critical Vendors (each, a "**Critical Vendor Claim**"), upon such terms and in the manner provided in this Order and the Motion and subject to the Management Approval Process (as defined below); *provided*, that payments to Critical Vendors on account of prepetition claims shall not exceed $40 million during the chapter 11 cases; *provided, further*, that payments to Critical Vendors on account of such prepetition claims may not be accelerated and shall be made only in the ordinary course in accordance with Customary Trade Terms.

9. As used herein, the term "**Management Approval Process**" means the advance review and approval by the chief financial officer of the Company, following consultation with the Debtors' management and AlixPartners, LLP (collectively, with the chief financial officer, the "**Vendor Council**"), of payment of a Critical Vendor Claim. Twenty-four hours prior to any meeting of the Vendor Council to approve payment of any Critical Vendor Claim (the "**Review Period**"), the Debtors shall provide the Creditors' Committee's advisors with the following information:

(a) the summary schedules provided to the Vendor Council in connection with such proposed payments of Critical Vendor Claims; and

(b) a detailed listing of each such proposed payment of a Critical Vendor Claim, as well as supporting documentation, which listing and documentation shall be consistent with the form of information previously provided to the Creditors' Committee's advisors in connection with the previous payments of Critical Vendor Claims made by the Debtors.

During the Review Period, the Creditors' Committee may communicate with AlixPartners, LLP and the designated representatives of the Debtors in order to discuss the proposed payments of Critical Vendor Claims, it being understood, however, that the receipt of the above described information by the Creditors' Committee and its right to have communications with AlixPartners, LLP and the Debtors' representatives with respect thereto shall not (a) constitute grounds for the Creditors' Committee to object to the payment of any Critical Vendor Claim or (b) grant any consent right to the Creditors' Committee to the payment of any Critical Vendor Claim.

10. As soon as reasonably practicable following entry of this Order, the Debtors shall provide a list of potential Critical Vendors and potential Critical Vendor Claims to the Court and the U.S. Trustee (the "**Critical Vendors List**"). The Critical Vendors List shall not be publicly filed. The Debtors shall not pay a claim as a Critical Vendor Claim unless such claim is set forth on the Critical Vendors List; provided, that the Debtors may update the Critical Vendors List from time to time with two business days' written notice and opportunity to object to the U.S. Trustee and the advisors to the Creditors' Committee.

11. Promptly after entry of this Order and weekly thereafter, the Debtors shall provide counsel for the Creditors' Committee, counsel to the Term Loan Lender Ad Hoc Group, and the U.S. Trustee with a schedule of all payments made to the Critical Vendors on account of

the Critical Vendor Claims in accordance with the terms of this Order, which shall include the name and address of the Critical Vendor and the amount and date of the payment.

12. If a Critical Vendor refuses to supply products and/or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its prepetition claim, then the Debtors may, upon notice to the Creditors' Committee, and without further order of the Court:

(a) Declare that any payments made to the Critical Vendor on account of such claim be deemed to have been in payment of then-outstanding (or subsequently accruing) postpetition claims of the Critical Vendor without further order of the Court or action by any person or entity; and

(b) Take actions to recover or seek disgorgement of any payment made to the Critical Vendor on account of its prepetition claim to the extent that the payments exceeded the postpetition claims of the Critical Vendor, without giving effect to any rights of setoff, recoupment, claims, provision for payment of reclamation or trust fund claims, or other defense.

13. Under such circumstances, such Critical Vendor shall immediately repay to the Debtors any payment made to it on account of its prepetition claims to the extent that such payments exceed its postpetition claims, without giving effect to any rights of setoff, recoupment, claims, provision for payment of reclamation or trust fund claims, or other defense.

14. Nothing herein shall:

(a) Constitute a waiver of the Debtors' rights to seek damages, disgorgement or other appropriate remedies against any breaching Critical Vendor;

(b) Be construed to waive, limit, or in any way affect the Debtors' ability to dispute a claim of a Critical Vendor;

(c) Be deemed an admission to the validity of the underlying obligation, including any payment made pursuant to this Order;

(d) Be deemed to constitute an assumption or rejection of any executory contract or prepetition or postpetition agreement between the Debtors and a Critical Vendor; or

(e) Be deemed to require the Debtors to make any of the payments to the Critical Vendors authorized herein.

15. Notwithstanding entry of this Order, the Debtors' rights to enforce the automatic stay provision of section 362 of the Bankruptcy Code with respect to any creditor who demands payment of its prepetition claims as a condition to doing business with the Debtors postpetition are preserved.

Limited Relief from Automatic Stay

Borrower Foreclosure, Eviction, and Related Proceedings

16. The stay imposed by section 362(a) of the Bankruptcy Code is hereby modified to allow Interested Parties to assert and prosecute claims, cross-claims, third-party claims, and counter-claims related to judicial and non-judicial foreclosure, eviction, replevin, actions on the note, and collection actions (each a "**Default Action**") brought by the Debtors to the limited extent such claims, cross-claims, third-party claims, and counterclaims, including the appeal and settlement of such, (a) have the sole purpose of defending, unwinding, or otherwise enjoining or precluding the relief sought by the Debtors in the Default Action, (b) are necessary for the resolution of such Default Action, (c) do not result in any order, judgment, or decree against the Debtors entitling any party to an award of money damages, including, without limitation, Interested Parties' attorneys' fees or costs, and (d) do not result in a claim against property of any Debtor's estate, other than as expressly allowed in Paragraph 20 below (collectively, the "**Permitted Default Actions**").

17. Absent further order of this Court, the automatic stay shall remain in full force and effect with respect to any and all pending or future claims, cross-claims, third-party

claims, and counterclaims by Interested Parties other than the Permitted Default Actions, including those with respect to (a) monetary relief of any kind or any nature against the Debtors, including, without limitation, Interested Parties' attorneys' fees or costs, (b) claims of recoupment or setoff, and (c) actions asserted in the form of a class action or collective action.

18. For convenience, to avoid prejudice, or to expedite and economize, the claims described in Paragraph 16 above may proceed separately from any other claim that is stayed by the Bankruptcy Code. Should there be any disagreements between or among any Interested Parties and/or the Debtors regarding whether any claims, cross-claims, third-party claims, or counterclaims fall within the exception to the automatic stay approved by this Court, this Court shall have exclusive jurisdiction to hear and resolve such disputes.

Borrower Bankruptcy Proceedings

19. The automatic stay imposed by section 362(a) of the Bankruptcy Code applicable against a borrower who has sought, or may seek during the pendency of these cases, bankruptcy protection under chapters 7, 11, 12, or 13 of the Bankruptcy Code (each, a "**Bankrupt Borrower**"), is hereby modified pursuant to the following terms and conditions:

(a) except as set forth herein, a Bankrupt Borrower, a Bankruptcy Trustee, or a United States Trustee shall be entitled:

(i) to assert or continue to assert an objection to a proof of claim, notice of payment change, notice of postpetition fee, expense, or charge, or response to notice of final cure (collectively, the "**Required Bankruptcy Documents**") filed by the Debtors in the Bankrupt Borrower's bankruptcy case;

(ii) to assert or continue to assert an objection to a motion to lift the automatic stay filed by the Debtors in the Bankrupt Borrower's bankruptcy case;

(iii) to assert appeals with respect to items (i) and (ii); and

(iv) to seek an accounting from the Debtors with respect to the Bankrupt Borrower's loan;

(b) except as set forth herein, a Bankrupt Borrower shall be entitled:

(i) to engage in court-supervised or court-authorized loss-mitigation programs regarding the Bankrupt Borrower's loan; and

(ii) to engage in discussion with the Debtors and execute a modification of the Bankrupt Borrower's loan or otherwise discuss, enter into, and consummate settlements of claims and liens in accordance with the ordinary course of the Debtors' business and applicable law;

(c) absent further order of this Court, the automatic stay shall remain in full force and effect with respect to all the Bankrupt Borrower's, the Bankruptcy Trustee's, and the United States Trustee's direct claims, counterclaims, motions, or adversary proceedings: [3]

(i) for monetary relief of any kind and of any nature against the Debtors, including, without limitation, attorneys' fees or costs, with the exception of adjustments resulting from objections permitted pursuant to Paragraph 19(a)(i) above;

(ii) for violation of any local, state, or federal statute or other law in connection with the origination of the Bankrupt Borrower's loan; or

(iii) asserted in the form of a class action;

(d) absent further order of this Court, the automatic stay shall remain in full force and effect with respect to (a) any party seeking to intervene in a Bankrupt Borrower's bankruptcy case to assert claims against the Debtors on behalf of itself or others (including, without limitation, a class of borrowers) and (b) any class action or collective action brought by any Bankrupt Borrower on behalf of any class;

(e) with the sole exception of objections to Debtors' proofs of claim permitted by subsection (a)(i) above, and solely for purposes of reducing any such claim and not for the purpose of obtaining an affirmative recovery or award, under no circumstances shall a Bankrupt Borrower, a Bankruptcy Trustee, or a United States Trustee be entitled to recoup, setoff, or collect from the Debtors any judgment or award related to any direct claim or counterclaim for which the automatic stay has been lifted by the terms of this Order;

[3] United States Trustees have been included in this provision out of an abundance of caution. However, as referenced in Paragraph 31 of this Order, nothing herein shall be construed to limit the rights of the Office of the United States Trustee to take any action in these chapter 11 cases not subject to the automatic stay.

(f) the Debtors shall retain the right, upon appropriate motion and notice to any Bankrupt Borrower, Bankruptcy Trustee, or United States Trustee, to seek to impose any provision of section 362(a) of the Bankruptcy Code modified by this Order, and to the extent such relief is sought, the Debtors will not object to such party's telephonic participation at any hearing on such motion;

(g) nothing set forth herein shall preclude or limit any Bankrupt Borrower, Bankruptcy Trustee, or United States Trustee from seeking relief from the automatic stay under section 362(a) of the Bankruptcy Code on appropriate motion and notice to the Debtors and parties in interest; and

(h) should there be any disagreements between the Debtors, a Bankrupt Borrower, a Bankruptcy Trustee, or a United States Trustee regarding whether any actions, claims, or counterclaims fall within the exception to the automatic stay approved by this Court, this Court shall have exclusive jurisdiction to hear and resolve such dispute.

Actions Involving Amount, Validity, or Priority of Liens

20. The automatic stay imposed by section 362(a) of the Bankruptcy Code applicable to actions involving the amount, validity, and/or priority of liens with respect to properties subject to mortgages owned or serviced by the Debtors (such actions, "**Title Disputes**")[4] is hereby modified to allow Interested Parties to defend and assert and prosecute claims, cross-claims, third-party claims, and counter-claims, including the appeal or settlement of such, in Title Disputes, to the limited extent such claims, cross-claims, third-party claims, and counterclaims (a) are necessary for the resolution of such Title Dispute and (b) do not result in any order, judgment, or decree against the Debtors entitling any party to an award of money damages including, without limitation, Interested Parties' attorneys' fees or costs (collectively, the "**Permitted Title Disputes**").

21. Absent further order of this Court, the automatic stay shall remain in full force and effect with respect to any and all pending or future claims, cross-claims, third-party

[4] These actions include quiet title suits, efforts by third parties to foreclose their liens, eminent domain and condemnation suits, corrective and reformation actions, disputes with home owners associations or common interest associations, code violation actions, tax sales, and other analogous causes of action.

claims, and counterclaims against the Debtors other than the Permitted Title Disputes, including those with respect to (a) monetary relief of any kind or any nature against the Debtors, including, without limitation, Interested Parties' attorneys' fees or costs, (b) actions for partition or criminal forfeiture or seizure of the property securing lien(s) held by the Debtors, (c) relief that is not necessary for the resolution of the Title Dispute, or (d) actions asserted in the form of a class action or collective action.

22. For convenience, to avoid prejudice, or to expedite and economize, the claims described in Paragraph 20 above may proceed separately from any other claim that is stayed by the Bankruptcy Code. Should there be any disagreements between or among any Interested Parties and/or the Debtors regarding whether any claims, cross-claims, third-party claims, or counterclaims fall within the exception to the automatic stay approved by this Court, this Court shall have exclusive jurisdiction to hear and resolve such disputes.

Additional Relief Related to Fannie Mae, Freddie Mac, and Ginnie Mae

23. The Debtors are authorized to provide to Fannie Mae, Freddie Mac, and Ginnie Mae assurances of future performance under the applicable Agency Agreements on the terms and conditions set forth in **Schedules 1**, **2**, and **3** to this Order and to comply therewith; *provided*, *that*, nothing herein, including the provision of such assurances, shall be deemed to constitute an assumption or rejection of any executory contract or prepetition or postpetition agreement between the Debtors and Fannie Mae, Freddie Mac, or Ginnie Mae, as applicable. The acceptance by Fannie Mae, Freddie Mac, and Ginnie Mae of the assurances and related relief granted pursuant to this Order shall not be deemed to constitute consent by Fannie Mae, Freddie Mac, and Ginnie Mae of the assumption and assignment of the applicable Agency Agreements or to the release of any Debtor from any obligations under the Ginnie Mae Agreements. Notwithstanding anything herein or in any order to the contrary, Fannie Mae, Freddie Mac, and

Ginnie Mae may seek additional assurances or modification to its grant of assurances provided herein so as to provide different or additional assurance, without prejudice to the right of the Debtors or any other party in interest to contest any such addition or modification.

24. For the avoidance of doubt, all payments by the Debtors to Fannie Mae, Freddie Mac, Ginnie Mae, and Ginnie Mae guaranteed RMBS investors under the Agency Agreements (including, without limitation, repurchase or repurchase-related requests and requests for payments of principal and interest, Servicer Advances, and other origination-related, servicing-related, and with respect to Ginnie Securitized Loans, securitization-related escrows, fees and claims) shall be made free and clear of any lien, security interest, or other interest of any party, including, without limitation, any prepetition or postpetition lenders.

25. Nothing in this Order constitutes a determination of the applicability, if any, of the automatic stay under Bankruptcy Code section 362(a) to requests by Fannie Mae, Freddie Mac, or Ginnie Mae to the Debtors to honor their origination-related, servicing-related, and with respect to Ginnie Securitized Loans, securitization-related, commitments and obligations, including, without limitation, repurchase or repurchase-related requests and requests for payment of principal and interest, Servicer Advances, and other origination-related, servicing-related, and with respect to Ginnie Securitized Loans, securitization-related, fees and claims, in each case to the extent provided under the relevant Agency Agreements, and the rights of all parties are reserved with respect thereto. Without limiting the foregoing, in the event of a failure by any Debtor to timely (i) make a Servicer Advance, or (ii) remit or deposit receipts of the relevant mortgagee's assets, in any such case, required to be made or remitted by such Debtor, in its servicing or servicing-related role, pursuant to any Fannie Agreement or any Freddie Agreement, which failure has continued beyond any applicable cure, grace or notice

period set forth in such Fannie Agreement or Freddie Agreement and as a result of which Fannie Mae or Freddie Mac, as applicable, under such Fannie Agreement or Freddie Agreement would otherwise have the current right (but for the effect of the automatic stay, to the extent applicable) to terminate the applicable Debtor from such servicing or servicing related role pursuant to the terms of such Fannie Agreement or Freddie Agreement, then Fannie Mae or Freddie Mac, as applicable, may elect to avail itself of procedures set forth in Paragraph 6 above, with respect to such failure.

26. To the extent that the automatic stay under Bankruptcy Code section 362(a) applies to requests by Fannie Mae, Freddie Mac, and Ginnie Mae that the Debtors honor their origination-related, servicing-related, and with respect to Ginnie Securitized Loans, securitization-related, commitments and obligations, the automatic stay is hereby modified to the limited extent necessary to allow Fannie Mae, Freddie Mac, and Ginnie Mae to make such requests to the Debtors, including, without limitation, repurchase or repurchase-related requests and requests for payment of principal and interest, Servicer Advances, and other origination-related, servicing-related, and with respect to Ginnie Securitized Loans, securitization-related, fees and claims, in each case to the extent provided under the relevant Agency Agreements; *provided, that*, Fannie Mae, Freddie Mac, and Ginnie Mae reserve all rights to assert that they may exercise any and all rights available to them under their respective agreements notwithstanding the automatic stay.

Other Relief

27. Nothing contained in the Motion or this Order, nor any payment made pursuant to the authority granted by this Order, shall constitute or be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim

against the Debtors; (c) a waiver of any claims or causes of action which may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

28. Notwithstanding anything to the contrary contained herein or in the Motion, any payment, obligation or other relief authorized by this Order shall be subject to and limited by the requirements imposed on the Debtors under the terms of any interim and/or final order approving the *Debtors' Motion for Interim and Final Orders (A) Authorizing Debtors to Enter Into Repurchase Agreement Facilities, Servicer Advance Facilities and Related Documents; (B) Authorizing Debtors to Sell Mortgage Loans and Servicer Advance Receivables in the Ordinary Course of Business; (C) Granting Back-Up Liens and Superpriority Administrative Expense Claims; (D) Authorizing Use of Cash Collateral and Granting Adequate Protection (E) Modifying the Automatic Stay; (F) Scheduling a Final Hearing; and (G) Granting Related Relief* [ECF No. 26], as may be amended or superseded from time to time, or any budget in connection therewith, entered by this Court in these chapter 11 cases.

29. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

30. Nothing herein shall be construed to limit the right of any governmental unit (as such term is defined in section 101(27) of the Bankruptcy Code) to take any action not subject to the automatic stay.

31. Nothing herein shall be construed to narrow or limit any exception to the automatic stay under section 362(b) of the Bankruptcy Code applicable to the United States Trustee Program or any other governmental unit pursuant to any police and regulatory power.

32. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

33. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

34. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order.

35. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: March 20, 2019
New York, New York

/s/ *James L. Garrity, Jr.*
HONORABLE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Fannie Mae Assurances of Future Performance

Fannie Mae Assurances of Future Performance[1]

1. Ditech shall provide Fannie Mae staff with regular access to Ditech facilities, including reasonable access to its books, records, and accounts, so as to allow Fannie Mae to oversee Ditech's performance of its servicing duties.

2. Ditech shall at all times maintain its servicing performance to the standards set forth in certain Fannie Mae Mortgage Selling and Servicing Contract dated as of March 23, 2005 (together with all supplements, addendums, amendments, and related agreements, the "**Fannie Mae Mortgage Selling and Servicing Contract**"), which includes that certain Selling Guide: Fannie Mae Single Family (together with all supplements, addendums, amendments, and related agreements, the "**Fannie Selling Guide**") and that certain Servicing Guide: Fannie Mae Single Family (together with all supplements, addendums, amendments, and related agreements, the "**Fannie Servicing Guide**" and, together with the Fannie Selling Guide, the "**Fannie Guides**"), that certain Subservicing Agreement effective as of December 22, 2010 (together with all supplements, addendums, amendments, and related agreements, the "**Fannie Subservicing Agreement**"), and that certain Pledge and Security Agreement effective as of December 19, 2014 (together with all supplements, addendums, amendments, and related agreements, the "**Fannie Pledge Agreement**" and, together further with the Fannie Mae Mortgage Selling and Servicing Contract, the Fannie Subservicing Agreement, and the Fannie Guides, the "**Fannie Agreements**"), as well as to the following supplemental standards:

   (a) As to each separate portfolio of Fannie Mae loans serviced or subserviced by Ditech, Ditech shall maintain monthly STAR Scorecard metrics as good as or better than such metrics for such portfolio as of the month ending November 30, 2018;

   (b) No STAR overall operational assessment can result in a rating of "red";

   (c) Any formal servicing compliance review must not return an overall risk rating of 'high';

   (d) As applicable, Ditech shall comply with the High Touch Servicing Protocols previously agreed to by Fannie Mae and Ditech;

   (e) Ditech shall use best efforts to reduce the net population of seriously delinquent loans;

   (f) Ditech shall timely comply with all servicing action plans;

   (g) Ditech shall deliver custodial account reconciliations of all P&I and T&I accounts relating to Fannie Mae Loans via tapes to Fannie Mae on or before the fifteenth day of the month immediately following the reconciliation period;

   (h) Ditech shall provide Fannie Mae with a copy of its key employee retention program and key employee incentive program;

[1] Capitalized terms used but not otherwise defined herein or in the Motion shall have the meaning ascribed to such term in the Fannie Agreements (as defined below).

(i) Ditech shall at all times maintain staffing levels commensurate with the servicing portfolio, including maintaining adequate staffing within the requisite servicing departments;

(j) Ditech shall provide notice to Fannie Mae, within two (2) business days, of (i) senior management departures and/or (ii) the number of loans per employee falling below the level as of the date of the bankruptcy filing;

(k) Ditech shall provide all reporting and other servicing information as reasonably requested by Fannie Mae, including such additional reports that may be requested, as currently permitted under the Fannie Servicing Guide;

(l) Ditech shall continue regularly scheduled engagements with Fannie Mae, such as the monthly performance reviews at the current participation level, including Ditech senior management;

(m) Ditech shall keep Fannie Mae apprised of its ongoing compliance efforts, and will be entitled to apply for and obtain any extensions as it deems appropriate, which extensions will not be withheld solely on the basis of Ditech's bankruptcy proceedings;

(n) Ditech shall deliver to Fannie Mae the following information: (i) on a quarterly basis, a completed Mortgage Bank Financial Reporting Form, (ii) monthly financial statements, and (iii) weekly liquidity reporting, in each case, on the same timeframe as such reports were delivered immediately prior to the Commencement Date;

(o) Ditech shall continue to meet margin requirements as may be required under the Fannie Agreements in connection with the sale of loans; and

(p) Ditech agrees to comply with the Fannie Servicing Guide to facilitate the orderly transfer of servicing rights to any new servicer where applicable.

3. Ditech shall maintain response times to file requests (for both origination and servicing files) timely (within 30 days) as is current practice and Ditech will comply with Fannie Mae timelines for appeal letters, identifying "impasse loans", and for supplying missing documents as well as timely addressing aged repurchase issues.

4. Ditech shall not grant a lien or security interest (including any adequate protection liens) in (a) any cash, accounts, or other collateral (or any proceeds of the foregoing) that has been pledged to Fannie Mae pursuant to any collateral pledge agreement or other security agreement between Ditech and Fannie Mae (including, without limitation, the Fannie Pledge Agreement), or (b) any mortgage servicing rights with respect to mortgages which are now or hereafter serviced or subserviced by Ditech for Fannie Mae, except as otherwise expressly authorized by, that certain Acknowledgment Agreement With Respect to Servicing Advance Receivables, dated as of February 9, 2018 and effective as of February 12, 2018, and amended as of April 20, 2018 (as further amended, restated, supplemented or otherwise modified from time to time), among Fannie Mae, Ditech, Ditech Agency Advance Depositor LLC, Ditech Agency Advance Trust, Wells Fargo Bank, N.A, in its capacity as Indenture Trustee, and Barclays Bank PLC, in its capacity as Administrative Agent; or by that certain

First Amended and Restated Acknowledgment Agreement dated as of February 9, 2018 (as amended, restated, supplemented or otherwise modified from time to time), among Fannie Mae, Ditech, Credit Suisse AG, Cayman Islands Brach, in its capacity as collateral agent for the First Lien Secured Party, and Wilmington Savings Fund Society, FSB, in its capacity as Collateral Agent for the Second Lien Secured Party. In addition, Ditech shall not seek to modify or otherwise affect Fannie Mae's rights under the Fannie Mae Pledge Agreement.

Schedule 2

Freddie Mac Assurances of Future Performance

Freddie Mac Assurances of Future Performance[1]

1. Ditech shall provide Freddie Mac staff with regular access to Ditech facilities, including reasonable access to its books, records, and accounts, so as to allow Freddie Mac to oversee Ditech's performance of its servicing duties.

2. Ditech shall at all times maintain its servicing performance consistent with the standards set forth in the that certain Master Agreement dated as of August 1, 2014, as amended and restated on October 6, 2017 (together with all supplements, addendums, amendments, and related agreements, the "**Freddie Master Agreement**"), that certain Purchase Agreement dated as of November 7, 2018 (together with all supplements, addendums, amendments, and related agreements, the "**Freddie Purchase Agreement**"), and the Freddie Mac Single-Family Seller/Servicer Guide (the "**Freddie Selling and Servicing Guide**" and, together with the Freddie Master Agreement and the Freddie Purchase Agreement, the "**Freddie Agreements**"), as well as with the following supplemental standards (*provided that*, nothing herein is intended to waive or release any of Ditech's current obligations under the Freddie Agreements):

   (a) In connection with any operation assessment by Freddie Mac's Counterparty Operations Risk Evaluation group ("**CORE**"), Ditech must maintain an operational assessment that is above "critical" or "major" for each finding in connection with such assessment. If there is a finding by CORE of "critical," "major" or "other" for any matter that is within the scope of any CORE review, Ditech must remediate and address each such finding;

   (b) Ditech shall deliver custodial account reconciliations of all P&I and T&I accounts relating to Freddie Mac Loans via tapes to Freddie Mac on or before the fifth day of the month immediately following the reconciliation period;

   (c) Ditech shall provide Freddie Mac with a copy of its key employee retention program and key employee incentive program;

   (d) Ditech shall at all times maintain staffing levels commensurate with the servicing portfolio, including maintaining adequate staffing within the requisite servicing departments;

   (e) Ditech shall provide notice to Freddie Mac, within five business days, of senior management departures or larger-than-average departures of non-management personnel;

   (f) Ditech shall provide all reporting and other servicing information as reasonably requested by Freddie Mac, including (without limitation) fraud reports and such additional reports that may be requested by Freddie Mac, in accordance with the Freddie Selling and Servicing Guide;

[1] Capitalized terms used but not otherwise defined herein or in the Motion shall have the meaning ascribed to such term in the Freddie Agreements (as defined below).

(g) Ditech shall confer and consult with Freddie Mac in good faith with respect to the implementation of any new programs/directives, and policy changes and Ditech will (i) comply with such changes if compliance is required pursuant to applicable law or regulation, or if noncompliance would itself constitute grounds for termination of Ditech as a seller/servicer under the Freddie Agreements, and (ii) use commercially reasonable efforts to comply with such changes in all other cases, notwithstanding possible additional costs to implement those changes;

(h) Ditech shall keep Freddie Mac apprised of its ongoing compliance efforts, and will be entitled to apply for and obtain any extensions as it deems appropriate, which extensions will not be withheld solely on the basis of Ditech's bankruptcy proceedings. As with other lenders, Freddie Mac will acknowledge, but not approve, extension requests and will not assert a breach based solely on such non-compliance for up to 90 days of non-compliance;

(i) Ditech shall continue (post-filing) its regularly scheduled meetings and engagements with Freddie Mac, including (without limitation) monthly executive meetings and any and all reviews relating to the servicing of the Freddie Mac servicing portfolio;

(j) Ditech shall maintain response times to file requests (for both origination and servicing files) timely (within 30 days), as is current practice, and Ditech will comply with Freddie Mac timelines for appeal letters, and for supplying missing documents, as well as timely addressing aged repurchase issues; and

(k) Ditech agrees to comply with the Freddie Selling and Servicing Guide, and specifically Chapter 7101 thereof, to facilitate the orderly transfer of servicing rights to any new servicing agent where applicable.

3. Ditech shall not grant a lien or security interest (including any adequate protection liens) in (a) any cash, accounts, or other collateral (or any proceeds of the foregoing) that has been pledged to Freddie Mac pursuant to any collateral pledge agreement or other security agreement between Ditech and Freddie Mac (including, without limitation, the Amended and Restated Collateral Account Control Agreement, dated as of January 17, 2014, and the Amended and Restated Collateral Pledge Agreement, dated as of January 17, 2014) (collectively, the "**Freddie Mac Pledge Agreements**"), (b) any mortgage servicing rights with respect to mortgages which are now or hereafter serviced by Ditech for Freddie Mac, or (c) the "Servicing Collateral" as defined and referenced in, and except as otherwise expressly authorized by, that certain Second Amended and Restated Acknowledgement Agreement, dated as of October 30, 2015, among Freddie Mac, Ditech, and Credit Suisse AG, Cayman Islands Branch. In addition, Ditech shall not seek to modify or otherwise affect Freddie Mac's rights under the Freddie Mac Pledge Agreements.

Schedule 3

Ginnie Mae Assurances of Future Performance

Ginnie Mae Assurances of Future Performance[1]

1. Ditech shall provide Ginnie Mae staff and its designees with regular access to Ditech facilities, including reasonable access to its books, records, and accounts, so as to allow Ginnie Mae to oversee Ditech's performance of its securitization duties.

2. Ditech shall at all times maintain its securitization performance to the standards set forth in that certain Master Servicing Agreement dated as of October 9, 2015 (collectively with the Cross-Default Agreement, that certain Escrow Tri-Party Agreement dated as of January 30, 2019, all guaranty agreements, RMBS prospectus documents, escrow agreements, acknowledgment agreements, supplements, addendums, amendments, and related agreements, the "**Ginnie Mae Master Servicing Agreements**") and the Ginnie Mae Mortgage-Backed Securities Guide (the "**Ginnie Mae Guide**" and, together with the Ginnie Mae Master Servicing Agreements, the "**Ginnie Mae Agreements**") as well as to the following supplemental or existing standards:

   (a) Ditech shall deliver custodial account reconciliations of all P&I and T&I accounts relating to Ginnie Securitized Loans via tapes to Ginnie Mae on or before the 15th day of the month immediately following the reconciliation period;

   (b) Ditech shall provide Ginnie Mae with a copy of its key employee retention program and key employee incentive program and updates to form HUD 11702, as applicable;

   (c) Ditech shall provide notice to Ginnie Mae of senior management departures and updates to form HUD 11702, as applicable, as required under the Ginnie Mae Agreements;

   (d) Ditech shall provide Ginnie Mae with a report identifying the Critical Vendors for the Ginnie Mae guaranteed RMBS portfolio and a contact list of parties (other than document custodians) to whom loan collateral documents have been or are delivered, including ancillary systems and location of any origination, credit, and servicing files, imaging, and records stored in hard copy format;

   (e) Ditech shall provide all reporting and other securitization information requested by Ginnie Mae, including such additional reports that may be reasonably requested, as currently permitted under the Ginnie Mae Agreements; and

   (f) Ditech shall keep Ginnie Mae apprised of its ongoing compliance efforts, and will be entitled to apply for and obtain any extensions from Ginnie Mae, in Ginnie Mae's sole discretion, which extensions will not be withheld solely on the basis of Ditech's bankruptcy proceedings. Ditech may not seek extensions of the statutory requirement to obtain mortgage insurance or guaranty for pooled loans or extensions of regulatory requirements. A request to approve a transfer of issuer responsibility is not an extension request.

[1] Capitalized terms used but not otherwise defined in the Motion shall have the meaning ascribed to such term in the Ginnie Mae Agreements (as defined below).

3. Ditech shall maintain response times to file requests timely as is current practice and Ditech will comply with the requisite timelines pursuant to the Ginnie Mae Agreements.

4. Ditech shall timely comply with the Ginnie Mae Buyout Obligations set forth in the Ginnie Mae Agreements.

5. Ditech shall maintain delinquency rates on outstanding pools and loan packages below the threshold levels described in the Ginnie Mae Guide.

6. Ditech shall comply with all the terms and conditions outlined in the Ginnie Mae Notice of Violation dated as of February 8, 2019.

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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.	Case No. : A-12-669570-C Consolidated with: A-13-682055-C Dept. No.: XIII **BANK OF AMERICA, N.A. AND DITECH FINANCIAL LLC F/K/A GREEN TREE SERVICING LLC'S MOTION FOR SUMMARY JUDGMENT** **HEARING REQUESTED**
AND ALL RELATED CLAIMS.	

Defendants Ditech Financial LLC f/k/a Green Tree Servicing LLC (**Ditech**) and Bank of America, N.A. (**Bank of America**, and together with Ditech, **Defendants**) hereby file their motion for summary judgment on LN Management LLC Series 3111 Bel Air 24G's (**LN Management**) quiet title and declaratory relief claims, as well as Defendants' claim for judicial reformation. This

Motion relies upon the Memorandum of Points and Authorities and exhibits attached hereto, and oral argument at hearing.[1]

INTRODUCTION

First, Defendants are entitled to summary judgment because the homeowners' association foreclosure sale through which LN Management purports to have acquired title free and clear of the Deed of Trust was a sub-priority sale. Collections of America, Inc. (**Collections**), on behalf of Las Vegas International Country Club Estates (the **HOA**) confirmed this in written correspondence with Bank of America exchanged following Bank of America's offer to pay the entire statutory super-priority amount. A sub-priority foreclosure sale by a homeowners' association does not extinguish a first lien. Therefore, the Deed of Trust survived the HOA Sale and Defendants' are entitled to summary judgment. Alternatively, any super-priority tender would have been excused as futile because Collections made clear that neither it nor the HOA believed it had a super-priority lien or intended to conduct a super-priority sale. *See Bank of America, N.A. v. Thomas Jessup, LLC Series VII*, 135 Nev. 42, 435 P.3d 1217 (2019) (*en banc* reconsideration granted).[2]

Second, LN Management alleges that it purchased property originally sold at a homeowners' association foreclosure sale (**HOA Sale**), which it contends extinguished a deed of trust then encumbering the property. LN Management relies on NRS 116.3116(2) (the **State Foreclosure Statute**), which allows properly conducted HOA foreclosure sales to extinguish all junior interests. But at the time of the HOA Sale, Bank of America was record beneficiary of that deed of trust as a contractually authorized servicer for the Federal National Mortgage Association (**Fannie Mae**), which owned the deed of trust and therefore had a property interest in the collateral. A federal statute provides that while Fannie Mae is in conservatorship of the Federal Housing Finance Agency

[1] Defendants filed a notice of bankruptcy filing and imposition of automatic stay on March 27, 2019. As a result, the Court entered an order to statistically close the case on August 14, 2019. Ditech later assigned its interest in the property to NewRez. All bankruptcy issues are now resolved and this case may proceed. Accordingly, Defendants request the Court reopen the statistically closed case.

[2] Several months after the district court's judgment, the Supreme Court of Nevada vacated *Jessup I*. Eventually, on May 7, 2020, a new unpublished opinion was issued that upheld the holding of the trial court. 462 P.3d 255 (Table), 2020 WL 2306320 (unpublished) ("*Jessup II*").

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(**FHFA**), none of its property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the **Federal Foreclosure Bar**).

The Nevada Supreme Court has confirmed, in numerous decisions, that the Federal Foreclosure Bar preempts the State Foreclosure Statute, and further concluded that the Federal Foreclosure Bar protects Fannie Mae's property interests under circumstances where, as here, Fannie Mae's contractually authorized representative appeared as record beneficiary of a deed of trust that Fannie Mae owns. *See, e.g.*, *Daisy Trust v. Wells Fargo Bank, N.A.*, 445 P.3d 846, 947-49 (Nev. 2019); *Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417 P.3d 363, 367 (Nev. 2018); *Collegium Fund LLC Series 7 v. Ditech Fin., LLC*, No. 76168, 2020 WL 3469189, at *1 (Nev. June 24, 2020) (unpublished disposition); *Nationstar Mortg., LLC v. Archambault*, No. 78566, 2020 WL 3469882, at *1 (Nev. June 24, 2020) (unpublished disposition); *DMVH, LLC v. JPMorgan Chase Bank, N.A.*, No. 76928, 2020 WL 403671, at *1 (Nev. Jan. 23, 2020) (unpublished disposition).

The Ninth Circuit and many state and federal trial courts have held the same. *See, e.g.*, *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d 1136 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 1618 (2019); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *M&T Bank v. SFR Invs. Pool 1, LLC*, 963 F.3d 854, 856 n.1 (9th Cir. 2020); *Ditech Fin. LLC v. Saticoy Bay LLC Series 8829 Cornwall Glen*, 794 F. App'x 667, 668-69 (9th Cir. Feb. 20, 2020) (unpublished memorandum). Here, Fannie Mae has been in FHFA conservatorship at all relevant times, and FHFA did not consent to extinguish Fannie Mae's property interest. Under the Supremacy Clause, the Federal Foreclosure Bar preempts the State Foreclosure Statute, and the HOA Sale did not extinguish Fannie Mae's interest.

Third, the HOA sale is void as to the super-priority amount because it was unfair and oppressive. The Nevada Supreme Court recently made clear that association foreclosure sales do not extinguish senior deeds of trust if the inadequacy of the foreclosure-sale price is "palpable and great," and there is "very slight additional evidence of unfairness," in *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*. Here, additional evidence of unfairness is shown by the fact that the HOA's trustee explicitly told Bank of America it was not conducting a super-priority foreclosure sale.

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Finally, Defendants are entitled to a judicial reformation of the first Deed of Trust, which listed the wrong legal description in the document. Defendants also seek judicial reformation of the 2013 assignment from Bank of America to Ditech, which was inadvertently recorded against an incorrect parcel number. *Wainwright v. Dunseath*, 46 Nev. 361, 366–67, 211 P. 1104, 1106 (1923) ("[C]ourts of equity have the power to order the reformation of deeds, contracts, and other instruments, when, through mistake of the parties thereto ... such instrument does not contain the real terms of the contract between them."). While the Deed of Trust lists the correct property address and assessor's parcel number, the legal description is incorrect in that it lists the wrong unit number. As a result of this inadvertent error, an assignment of the Deed of Trust was recorded under the wrong assessor's parcel number in 2013. Defendants request that the Court reform the Deed of Trust to include the correct legal description and the Assignment to include the correct assessor's parcel number.

STATEMENT OF UNDISPUTED FACTS

The Subject Property, Note, and Deed of Trust

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

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

3. At the time of the HOA Sale, Bank of America was the servicer of the Loan for Fannie Mae. *See* **Exhibit B** ¶ 11.

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

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5. On July 30, 2013, Bank of America recorded an assignment of the Deed of Trust to Ditech. **Exhibit C**.

6. On December 20, 2019, Ditech recorded an assignment of the Deed of Trust to New Residential Mortgage, LLC. **Exhibit D**.

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

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

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

9. The Guide provides that:

> The servicer ordinarily appears in the land records as the mortgagee to facilitate performance of the servicer's contractual responsibilities, including (but not limited to) the receipt of legal notices that may impact Fannie Mae's lien, such as notices of foreclosure, tax, and other liens. However, *Fannie Mae may take any and all action with respect to the mortgage loan it deems necessary to protect its … ownership of the mortgage loan, including recordation of a mortgage assignment, or its legal equivalent, from the servicer to Fannie Mae or its designee.* In the event that Fannie Mae determines it necessary to record such an instrument, the servicer must assist Fannie Mae by
>
> - preparing and recording any required documentation, such as mortgage assignments, powers of attorney, or affidavits; and

[3] The Guide is publicly available on Fannie Mae's website. While the sections of the Guide have been amended over the course of Fannie Mae's ownership of the Loan, none of these amendments have changed these sections in a way material to this case. A static, PDF copy of the most recent version of the Guide is available at https://www.fanniemae.com/content/guide/svc091119.pdf. The Court may take judicial notice of the Guide. *See, e.g., Daisy Tr.*, 445 P.3d at 849 n.3 (taking judicial notice of Freddie Mac's servicing guide); *Charest v. Fannie Mae*, 9 F. Supp. 3d 114, 118 & n.1 (D. Mass. 2014); *Cirino v. Bank of Am., N.A.*, No. CV 13-8829 PSG MRWX, 2014 WL 9894432, at *7 (C.D. Cal. Oct. 1, 2014).

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- providing recordation information for the affected mortgage loans.

Id., Guide at A2-1-03 (emphasis added).

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

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

Id., 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. *See id.*, 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." *Id.*, 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." *Id.*, Guide at A2-4-01.

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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." *Id.*, 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. **Exhibit F**.

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

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. **Exhibit H-1**.

19. Collections responded on or about November 27, 2012, and provided a Statement of Account. **Exhibit H-2**.

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

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

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

23. Collections, on behalf of the HOA, then recorded a Notice of Trustee Sale on November 15, 2012. **Exhibit I**.

24. On December 17, 2012, a foreclosure deed was recorded against the Property. **Exhibit J**. The foreclosure deed states that the Property was sold in an HOA foreclosure sale on December 12, 2012, to 3111 Bel Air Drive 24G Trust for $7,001.00. *See id.*

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

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

27. The fair market value of the Property at the time of the HOA Sale was $360,000. **Exhibit M**. The purchase price at the HOA Sale was less than 2% of the fair market value. *Id.*

LEGAL STANDARD

"Summary judgment is appropriate . . . when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Id.* at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Accordingly, Nevada courts follow the federal summary judgment standard, not the "slightest doubt" standard previously applicable before *Wood*. *Id.* at 1031, 1037.

LEGAL ARGUMENT

I. The HOA Did Not Foreclose on the Super-Priority Portion of its Statutory Lien.

"In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself." *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996). The parties' intent "determine[s] the nature and extent of the estate conveyed" by a deed. *City Motel, Inc. v. State ex rel. State Dept. of Highways*, 75 Nev. 137, 141, 336 P.2d 375, 377 (1959). The deed at issue in this case resulted from an HOA foreclosure sale conducted pursuant to NRS 116. Under

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NRS 116.3116(1), an HOA has a statutory lien for unpaid assessments. Also by statute, only nine-months of HOA assessments are entitled to this "super-priority" status. NRS 116.3116(2)(b)-(c).

The Nevada Supreme Court in *SFR Investments*, applying the plain language of the statute, explained that "[a]s to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two pieces, a superpriority piece and a subpriority piece." *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 411 (Nev. 2014). Only "[t]he superpriority piece" is "prior to a first deed of trust." *Id.* "The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed of trust." *Id.* An association can choose to foreclose on either the sub-priority or super-priority portion of its lien. *See Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1116 (2016) ("And **if** the association forecloses on its superpriority lien portion, the sale also would extinguish other subordinate interests in the property."). *See also River Glider Ave. Tr. v. The Bank of N.Y. Mellon*, No. 79808 (Nev. Sup. Ct. Sept. 18, 2020) (unpublished disposition) (finding representations of purchaser in judicial proceeding determinative for whether a sale was a subpriority or super-priority sale).

Here, Bank of America reached out to the HOA through counsel at Miles Bauer and requested the super-priority amount so that it could satisfy the same ahead of the HOA Sale. **Exhibit H-1**. In response to Bank of America's letter, a representative from Collections of America and Miles Bauer had a telephone conversation. Following the call, Miles Bauer recounted the telephone call in an email to Collections of America. **Exhibit H-4**. Collections of America then responded and confirmed it was not "foreclosing on a super-priority lien pursuant to NRS 116.3116" and that the HOA did not claim "to have a super-priority lien since the first mortgage [had] not [been] foreclosed." *Id.*

"Because the HOA foreclosed on only its sub-priority lien, [LN Management] cannot meet its burden of showing it has title superior to [the Deed of Trust]." *7912 Limbwood Court Trust v. Wells Fargo Bank, N.A.*, 2015 WL 5123317 at *4 (D. Nev. Aug. 31, 2015); *see also MacDonald v. Krause*, 77 Nev. 312, 315, 362 P.2d 724, 727 (1961) ("In a quiet title action, the only issue is whether plaintiff has an interest or estate in the property superior to the adverse claim."). Accordingly, Defendants are entitled to summary judgment.

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In the event this Court finds that the intent of the HOA and Collections with respect to the legal effect of the HOA Sale is irrelevant, the Deed of Trust was nonetheless preserved because Bank of America's super-priority was excused in light of Collections' statements. *Jessup*, 135 Nev. at 44, 435 P.3d at 1218. "The law is clear . . . that any affirmative tender of performance is excused when performance has in effect been prevented by [another] party." *Cladianos v. Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) (cited in *Jessup*). Authority from across the country, which is also cited in *Jessup*, is in accord. *Guthrie v. Curnutt*, 417 F.2d 764, 765-66 (10th Cir. 1969) ("when a party, able and willing to do so, offers to pay another a sum of money and is told that it will not be accepted, the offer is a tender without the money being produced."); *In re Pickel*, 493 B.R. 258, 271 (Bankr. D.N.M. 2013) ("Tender is unnecessary if the other party has stated that the amount due would not be accepted."); *Mark Turner Props., Inc. v. Evans*, 554 S.E.2d 492, 495 (Ga. 2001) ("Tender of an amount due is waived when the party entitled to payment, by declaration or by conduct, proclaims that, if tender of the amount due is made, an acceptance of it will be refused." (internal marks omitted)).

The treatises cited in *Jessup* also explain the exception. 74 Am. Jur. 2d Tender § 4 (2012) ("A tender of an amount due is waived when the party entitled to payment, by declaration or by conduct, proclaims that, if tender of the amount due is made, it will not be accepted."); 86 C.J.S. Tender § 5 (2017) (Tender "is waived when the party entitled to payment, by declaration or conduct . . . makes clear that they will not perform, or they have evaded tender, or in any other way obstructs or prevents a tender); *see* 15 Williston on Contracts § 47:4 (4th ed.) ("The necessity of a formal tender or demand may be waived or excused by the acts of the other party as by that party's express refusal in advance to comply . . .").

Bank of America attempted to satisfy the superpriority lien amount and Collections made clear to Miles Bauer, through emails and verbal communications, that neither Collections nor the HOA took the position that the HOA had a super-priority lien and the forthcoming sale was not a super-priority sale. **Exhibit H-4**. Miles Bauer even urged Collections to notify them immediately if Collections' position changed because Bank of America stood ready, willing, and able to tender the full statutory super-priority amount to protect the Deed of Trust. *Id.* Accordingly, the HOA sale still

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did not extinguish the Deed of Trust because Bank of America was excused from tendering the superpriority portion of the HOA's lien due to Collections' comments and obstruction.

II. The Federal Foreclosure Bar Defeats LN Management's Claims to an Interest in the Property Free and Clear of the Deed of Trust

The law is settled: the Federal Foreclosure Bar preempts the State Foreclosure Statute. As the Nevada Supreme Court has held, "the [State Foreclosure Statute] is in direct conflict with Congress's clear and manifest goal to protect Fannie Mae's property interest while under the FHFA's conservatorship from threats arising from state foreclosure law. As the two statutes conflict, the Federal Foreclosure Bar implicitly preempts [the State Foreclosure Statute] to the extent that a foreclosure sale extinguishes the deed of trust." *Christine View*, 417 P.3d at 367; *see also Daisy Trust*, 445 P.3d at 847. The Federal Foreclosure Bar necessarily protects the Deed of Trust because the Conservator has succeeded by law to all of Fannie Mae's "rights, titles, powers, and privileges," 12 U.S.C. § 4617(b)(2)(A)(i). Accordingly, "Fannie Mae's property interest effectively becomes the FHFA's while the conservatorship exists." *Christine View*, 417 P.3d at 367 (citing 12 U.S.C. § 4617(b)(2)(A)(i)).

The Ninth Circuit has held the same. *See, e.g., Berezovsky*, 869 F.3d at 930 ("[T]he Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the State Foreclosure Statute]."); *FHFA v. SFR*, 893 F.3d at 1146-47 (following *Berezovsky*); *M&T Bank v. SFR*, 963 F.3d at 856. Moreover, numerous courts in the U.S. District Court of Nevada[4] and Nevada state courts[5] have

[4] *See, e.g., Skylights v. Byron*, 112 F. Supp. 3d 1145, 1153 (D. Nev. 2015); *Opportunity Homes, LLC v. Freddie Mac*, 169 F. Supp. 3d 1073 (D. Nev. 2016); *My Glob. Vill., LLC v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *FHFA v. SFR Investments Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2, 2016); *FHFA v. Nevada New Builds, LLC*, No. 2:16-cv-1188-GMN-CWH, 2017 WL 888480 (D. Nev. Mar. 6, 2017); *Springland Vill. Homeowners Ass'n v. Pearman*, No. 3:16-cv-00423-MMD-WGC, 2018 WL 357853 (D. Nev. Jan. 10, 2018); *MRT Assets LLC v. Nationstar Mortg., LLC*, No. 2:17-cv-0070-JCM-CWH, 2018 WL 1245501 (D. Nev. Mar. 9, 2018); *Nationstar Mortg., LLC v. Tow Props. LLC II*, No. 2:17-cv-01770-APG-VCF, 2018 WL 2014064 (D. Nev. Apr. 27, 2018); *Fannie Mae v. Kree, LLC*; No. 3:17-cv-730-LRH-WGC, 2018 WL 2697406 (D. Nev. June 5, 2018); *Ditech Fin. LLC v. Paradise Springs One Homeowners Ass'n*, No. 2:16-cv-2900-APG-GWF, 2018 WL 3429676 (D. Nev. July 16, 2018); *Pengilly v. Ke Aloha Holdings*, No. 2;14-cv-01463-RFB-NJK, 2019 WL 5624751 (D. Nev. Oct. 31, 2019); *Thunder Props., Inc. v. Arellano*, No. 3:19-cv-00191-MMD-WGC (D. Nev. Feb. 13, 2020).

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followed the Ninth Circuit and Nevada Supreme Court precedent to resolve claims legally identical and factually similar to those in this case in favor of the Enterprises and their servicers.

Given the weight of authority, LN Management cannot challenge either the preemptive effect of the Federal Foreclosure Bar or that Fannie Mae's loan ownership is a property interest the Federal Foreclosure Bar protects. Thus, the only issues for the Court to decide are whether (1) Fannie Mae had a property interest at the time of the HOA Sale, (2) FHFA consented to extinguish Fannie Mae's property interest, and (3) Defendants can assert the protections of the Federal Foreclosure Bar in this case. As explained below, Fannie Mae had a protected property interest that FHFA did not consent to extinguish, and Defendants can raise the Federal Foreclosure Bar here because they are Fannie Mae's contractually authorized representatives. The Federal Foreclosure Bar thus protected Fannie Mae's property interest from extinguishment by the HOA Sale.

A. Fannie Mae Had a Property Interest at the Time of the HOA Sale

1. Uncontradicted Evidence Confirms Fannie Mae's Property Interest

The Nevada Supreme Court issued a published decision confirming that a proffer of similar evidence to that submitted here—database records, an employee declaration, and relevant Guide provisions—"sufficiently demonstrate[] that [the Enterprise] owned the loan on the date of the foreclosure sale." *Daisy Trust*, 445 P.3d at 849-50; *see also Collegium Fund v. Ditech*, 2020 WL 3469189, at *1 & n.4 (finding Enterprise business records and declaration "sufficien[t] and

[5] *See, e.g.*, Order, *RJRN Holdings, LLC v. Green Tree Servicing LLC,* A-14-704682-C (Nev. Dist. Ct. July 21, 2017); *Hampton & Hampton Collections, LLC v. Pan,* No. 14-A-706519-C, 2017 WL 5660707 (Nev. Dist. Ct. Oct. 6, 2017); *Nationstar Mortg., LLC v. Kincer*, No. 14-A-698443-C, 2017 WL 6940444 (Nev. Dist. Ct. Nov. 27, 2017); *Nevada New Builds, LLC v. JPMorgan Chase Bank*, No. 13-A-690954, 2017 WL 7058170 (Nev. Dist. Ct. Dec. 14, 2017); *J&K USA, Inc. v. BAC Home Loans Servicing, LP*, No. 14-A-702573, 2018 WL 1612075 (Nev. Dist. Ct. Feb. 27, 2018); *Saticoy Bay 10021 Via Toro v. Chase*, A-14-694140-C, 2018 WL 1995672 (Nev. Dist. Ct. March 15, 2018); *NV Eagles, LLC v. BAC Home Loan Servicing*, No. A-16-733337, 2018 WL 1989741 (Nev. Dist. Ct. Mar. 15, 2018); *Renfroe v. Bank of America*, N.A., No. 14-A-701932, 2018 WL 1995668 (Nev. Dist. Ct. Mar. 21, 2018); *Gutierrez v. SFR Investments Pool 1*, LLC, No. 13-A-684715-C, 2018 WL 2336188 (Nev. Dist. Ct. Apr. 11, 2018); *TRP Fund IV, LLC v. Fannie Mae*, No. A-16-735893, 2018 WL 2338239 (Nev. Dist. Ct. Apr. 13, 2018); *SFR v. First Horizon Home Loans*, No. A-13-685826-C, 2018 WL 3702059 (Nev. Dist. Ct. Jun. 14, 2018); *Alessi & Koenig, LLC v. Storm*, No. A-14-699883-C, 2018 WL 3702051 (Nev. Dist. Ct. Jun. 27, 2018); *Emieli Inv., LLC v. Green Tree Servicing, Inc.*, Nos. A-14-703336-C, A-14-706647-C, 2019 WL 6523045 (Nev. Dist. Ct. Oct. 28, 2019). Defendants do not cite these cases as precedential authority but rather, consistent with Nev. R. App. P. 36(c)(3), cites them for their persuasive value.

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admissib[le]" and rejecting all evidentiary arguments raised by HOA sale purchaser); *Nationstar v. Archambault*, 2020 WL 3469882, at *1 (reversing district court decision awarding judgment to HOA sale purchaser and finding that evidence at trial, including Enterprise business records and testimony by Enterprise employee, was sufficient to establish Enterprise property interest); *JPMorgan Chase Bank, N.A. v. Guberland LLC-Series 2* ("*Guberland II*"), No. 73196, 2019 WL 2339537, at *1-2 (Nev. May 31, 2019) (unpublished disposition) (finding Freddie Mac's business records and declaration admissible under NRS 51.135 and sufficient to establish Freddie Mac's property interest); *CitiMortgage, Inc. v. SFR Invs. Pool 1, LLC*, No. 70237, 2019 WL 289690, at *1 n.1 (Nev. Jan. 18, 2019) (unpublished disposition) (holding that Fannie Mae's business records, supported by employee testimony, "establish[ed] that Fannie Mae owned the loan at the time of the HOA foreclosure sale"); *M&T Bank v. Wild Calla Street Tr.*, No. 74715, 2019 WL 1423107, at *2 (Nev. Mar. 28, 2019) (unpublished disposition) (reversing a district court decision awarding summary judgment to HOA sale purchaser and holding that the Federal Foreclosure Bar applied to protect Freddie Mac's property interest, which had been proven by an employee declaration, internal database business records, and provisions of the Enterprise's Guide); *SFR Invs. Pool 1, LLC v. Green Tree Servicing, LLC*, No. 72010, 2018 WL 6721370, at *1 (Nev. Dec. 17, 2018) (unpublished disposition) (holding that "business records and testimony from employees" constitute "ample evidence" to "demonstrate Fannie Mae's ownership" of a loan).

Similarly, the Ninth Circuit has repeatedly confirmed that an Enterprise's property interest may be established by the Enterprise's business records and a declaration from an Enterprise employee explaining that the records show when the Enterprise owned the loan at issue. *See, e.g.*, *FHFA v. SFR*, 893 F.3d 1136; *Berezovsky*, 869 F.3d at 933; *Cornwall Glen*, 794 F. App'x at 492; *Bourne Valley Ct. Trust v. Wells Fargo Bank, NA*, 810 F. App'x 492, 493 (9th Cir. 2020).[6]

Here, BANA and Ditech have submitted materially identical evidence to that which the Nevada Supreme Court and the Ninth Circuit have ruled was sufficient to prove the Enterprises'

[6] This Ninth Circuit precedent should be highly persuasive here, as federal courts and Nevada courts have adopted the same standard for what evidence is sufficient for summary judgment. *See Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) for Nevada's standard for summary judgment).

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ownership interest. These business records and employee declaration support the fact that Fannie Mae acquired the Loan in November 2004 and continued to own the Loan at the time of the HOA Sale in December 2012. *See* **Exhibit B**. As explained in Graham Babin's declaration, Fannie Mae maintains its business records in its Servicer and Investor Reporting ("SIR") platform, which Fannie Mae uses in the course of its everyday business to manage and record information about the mortgage loans it owns. *Id.* The loan activity history, among other elements in Fannie Mae's records, shows that the servicer continued to report monthly to Fannie Mae about the Loan in December 2012 and that no event ending Fannie Mae's ownership of the Loan had occurred prior to that date. *Id.*

The business records and declarations also show that BANA was Fannie Mae's servicer for the Loan at the time of the HOA Sale. The declaration explains how the business records identify the servicer for the Loan and how one can determine that BANA was the servicer at the time of the HOA Sale in December 2012, and that Ditech was the servicer of the Loan for Fannie Mae when Mr. Babin's declaration was prepared. *Id.* Under the applicable rules of evidence, business records are, by their nature, admissible to prove the truth of their contents when introduced by a qualified witness, as they are here. *See* NRS 51.135; Fed. R. Evid. 803 (advisory committee's note to 1972 proposed rules) (noting that business records, including electronic database records, have "unusual reliability"). The Nevada Supreme Court and the Ninth Circuit have held that Enterprise business records are admissible and sufficient to support the Enterprises' property interests on summary judgment. *E.g.*, *Daisy Trust*, 445 P.3d at 850; *Collegium Fund v. Ditech*, 2020 WL 3469189, at *1 & n.4; *Nationstar v. Archambault*, 2020 WL 3469882, at *1; *Berezovsky*, 869 F.3d at 932 & n.8 (holding that Freddie Mac "database printouts" were sufficient to support a "valid and enforceable" property interest under Nevada law); *Cornwall Glen*, 794 F. App'x at 668 (finding that "business records and an employee declaration authenticating those records" was "enough to establish [Enterprise] ownership over the property"); *Bourne Valley*, 810 F. App'x at 493 (Enterprise business records supported by an employee declaration and relevant Guide provisions "made plain that [the Enterprise] possessed a valid and enforceable interest" in the property at the time of the HOA sale). The same analysis applies to the evidence Defendants have submitted here.

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

Under Nevada law, when Fannie Mae purchased the Loan in November 2004, Fannie Mae acquired ownership of the note and Deed of Trust and owned both at the time of the HOA Sale. BANA's status as record beneficiary of the Deed of Trust at the time of the HOA Sale does not undermine Fannie Mae's Loan ownership.

Indeed, in *Montierth*, the Nevada Supreme Court explained that where the record beneficiary of the deed of trust has contractual or agency authority to foreclose on the note owner's behalf, the note owner maintains a property interest in the collateral. *Montierth*, 354 P.3d at 650-51. In that case, MERS (as nominee for the original lender and its successors and assigns) served as record beneficiary of a deed of trust, while Deutsche Bank had acquired the related promissory note from the original lender. *Id.* at 649. The Nevada Supreme Court concluded that the relationship between MERS and Deutsche Bank, wherein MERS had authority to foreclose on Deutsche Bank's behalf, ensured that Deutsche Bank remained a "secured creditor" with a "fully-secured, first priority deed" that could be enforced. *Id.* at 650-51. Deutsche Bank, like Fannie Mae here, accordingly retained a property interest while another entity was beneficiary of record of the deed of trust.

The Nevada Supreme Court has since reaffirmed *Montierth*'s holding and applied it in the context of loan owners and their servicers in numerous cases involving materially the same facts and legal issues as here. In *Daisy Trust*, the en banc Nevada Supreme Court held in a published decision that Freddie Mac had a property interest where its contractually authorized servicer, Wells Fargo, appeared as record beneficiary of the deed of trust on the date of an HOA foreclosure sale. 445 P.3d at 849. The Nevada Supreme Court reaffirmed *Montierth* and explicitly rejected any notion that an Enterprise must appear in the land records for it to have a property interest under Nevada law. *Id.*

In *Guberland II*, the Nevada Supreme Court acknowledged that it had previously recognized that when there is a contractual relationship between the note holder and the mortgage holder, "the loan holder maintains secured status under the deed of trust even when not named as the deed's record beneficiary." 2019 WL 2339537, at *1. And in *CitiMortgage v. SFR*, the Nevada Supreme Court held that "[a servicer's] status as the recorded deed of trust beneficiary does not create a question of material fact regarding whether Fannie Mae owns the subject loan, as this court has

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recognized that such an arrangement is acceptable and common." 2019 WL 289690, at *2. Indeed, under Nevada law, "the record beneficiary need not be the actual owner of the loan." *CitiMortgage v. TRP*, 2019 WL 1245886, at *1; *see also Collegium Fund v. Ditech*, 2020 WL 3469189, at *1 & n.3; *Nationstar v. Archambault*, 2020 WL 3469882, at *1; *Nationstar Mortg., LLC v. Guberland LLC-Series 3* ("*Guberland I*"), No. 70546, 2018 WL 3025919, at *2 (Nev. June 15, 2018) (unpublished disposition).

The Ninth Circuit, in addition to various state and federal trial courts, has also recognized that under the approach articulated by *Montierth*, Fannie Mae need not have been beneficiary of record of a deed of trust in order to have a protected property interest. *See, e.g., FHFA v. SFR*, 893 F.3d at 1149-50; *Berezovsky*, 869 F.3d at 932; *M&T Bank v. SFR*, 963 F.3d at 856 n.1; *Cornwall Glen*, 794 F. App'x at 668. The Ninth Circuit rejected any argument that, under Nevada law, a loan owner's property interest depends on its name appearing in the public property records: "[a]lthough the recorded deed of trust here omitted [Fannie Mae]'s name, [Fannie Mae]'s property interest is valid and enforceable under Nevada law" because Fannie Mae owned the note and its servicer was beneficiary of record of the deed of trust. *Berezovsky*, 869 F.3d at 932. This Court should do the same here.

3. The Guide Confirms That Fannie Mae Retains Ownership of the Deed of Trust While Its Servicer Is Record Beneficiary

The Guide serves as a central document governing the contractual relationship between Fannie Mae and its servicers nationwide, including BANA, Ditech, and NewRez. *See* Selling Guide at A2-1-01. The provisions of the Guide demonstrate that Fannie Mae and its loan servicers maintain the type of relationship described in *Montierth* that secures Fannie Mae's ownership interest in the Deed of Trust. *Montierth*, 354 P.3d at 651 (looking to whether a loan owner can "compel an assignment of the deed of trust"); *Daisy Trust*, 445 P.3d at 849 & n.3 ("[C]onsistent with *Montierth*, we note that the Freddie Mac [servicing guide], which governs Freddie Mac's relationship with its loan servicers, contemplates Freddie Mac being the note holder while its loan servicer remains the recorded deed of trust beneficiary"); *Guberland I*, 2018 WL 3025919, at *2

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(recognizing Fannie Mae's relationship with its servicers as dictated by the Guide); *see also Berezovsky*, 869 F.3d at 932-33.

For example, the Guide provides that: "Fannie Mae may take any and all action with respect to the mortgage loan it deems necessary to protect its . . . ownership of the mortgage loan, including recording an assignment of mortgage, or its legal equivalent, from the servicer to Fannie Mae." Guide at A2-1-03 (emphasis added).[7] Furthermore, the Guide provides that Fannie Mae's servicers "represent the interests of Fannie Mae in a foreclosure [action]," *id.* at A2-1-04, and includes an entire chapter regarding how and when servicers should pursue foreclosure, *id.* at E-3 ("Managing Foreclosure Proceedings"). Thus, the provisions of the Guide demonstrate that Fannie Mae and its loan servicers maintain the type of relationship described in the Restatement and *Montierth*.

The Guide confirms that ownership always lies with Fannie Mae. For example, it provides 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. 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." *Id.* at A2-5.1-02. Indeed, "[e]ach of the loan originator, seller, servicer, and any service bureau or any other party providing services in connection with selling or servicing a Fannie Mae loan . . . must hold these documents solely for the benefit of Fannie Mae." *Id.*; *see also* A2-4-01.

As the Guide confirms, the fact that BANA was the record beneficiary of the Deed of Trust at the time of the HOA Sale does not negate the fact that Fannie Mae owned both the note and the Deed of Trust. Accordingly, the Federal Foreclosure Bar protected the Deed of Trust from extinguishment, and Fannie Mae retained its property interest after the HOA Sale.

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[7] Relatedly, the Guide also discusses transfers of servicing rights and requires servicers to complete assignments of deeds of trust depending on the circumstances of those transfers. If the transferor servicer is the beneficiary of record, the transferor servicer must prepare and record an assignment to the transferee servicer. *See* Guide at F-1-11. This occurred when BANA assigned the Deed of Trust to Ditech, and when Ditech assigned the Deed of Trust to NewRez while Fannie Mae maintained its ownership interest.

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B. FHFA Did Not Consent to the Extinguishment of the Deed of Trust

While it is not Defendants' burden to establish this fact, it is undisputed that FHFA has not consented to extinguish Fannie Mae's property interest in this case. Because Fannie Mae had a protected property interest at the time of the HOA foreclosure sale, the Federal Foreclosure Bar precluded LN Management from acquiring free-and-clear title unless FHFA's consent to extinguish Fannie Mae's interest was obtained. Indeed, "[t]he Federal Foreclosure Bar cloaks the FHFA's 'property with Congressional protection unless or until the Agency affirmatively relinquishes it.'" *Christine View*, 417 P.3d at 368 (quoting *Berezovsky*, 869 F.3d at 929).

LN Management cannot show that such consent was received. To the contrary, the Conservator has publicly announced that it "has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens." *See* **Ex. L**.[8] Thus, "it is clear that FHFA did not consent to the extinguishment of [the Enterprise's] property interest through the HOA's foreclosure sale." *Alessi & Koenig, LLC v. Dolan*, No. 2:15-cv-00805, 2017 WL 773872, at *3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which FHFA's statement was sufficient to show FHFA's lack of consent).

C. Defendants May Assert the Federal Foreclosure Bar

The Nevada Supreme Court has held that "the servicer of a loan owned by [an Enterprise] may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [the Enterprise] nor the FHFA need be joined as a party." *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754, 758 (2017). It recently confirmed that holding in *Daisy Trust*. 445 P.3d at 847 (citing *Nationstar v. SFR* and confirming that "a loan servicer has standing to assert the Federal Foreclosure Bar on behalf of Freddie Mac or Fannie Mae"). Furthermore, the Nevada Supreme Court held that "evidence that [the servicer] was Freddie Mac's loan servicer, combined with the authorizations in the Guide that are generally applicable to Freddie Mac's loan servicers . . . [is] sufficient to show that [the servicer] was in fact Freddie Mac's loan servicer with authority to

[8] This public statement on a government website is subject to judicial notice. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

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assert the Federal Foreclosure Bar on Freddie Mac's behalf." 445 P.3d at 850. Additional evidence, such as "the actual servicing contract," is not necessary. *Id.* The Ninth Circuit found *Nationstar* persuasive and similarly held that servicers may raise the Federal Foreclosure Bar to defend property interests of Fannie Mae and Freddie Mac in litigation. *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658, 658-59 (9th Cir. 2017) (unpublished disposition).

The evidence in this case confirms that Fannie Mae is the owner of the Loan, and BANA was Fannie Mae's servicer at the time of the HOA Sale,. Pursuant to their servicing contracts with Fannie Mae, Defendants have the authority to represent Fannie Mae's interests in litigation with respect to the loans they service or have serviced on Fannie Mae's behalf. *See, e.g.*, Guide at A2-1-04, E-1, E-1.3-01. LN Management can present no contrary evidence to create a genuine dispute about these facts. Accordingly, Defendants may invoke the Federal Foreclosure Bar in this litigation without joining Fannie Mae or FHFA as a party.

III. The HOA Sale is Invalid Because it was Oppressive and Unfair.

The HOA Sale is invalid because the grossly inadequate sales price, combined with the statements made by Collections prior to the HOA Sale, made the HOA sale oppressive and unfair. The Nevada Supreme Court has confirmed that, to set aside an association's foreclosure sale or hold that the sale did not extinguish a senior deed of trust, there "must [ ] be a showing of fraud, unfairness, or oppression." *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641 (Nev. 2017). But the Supreme Court made clear that the foreclosure-sale price is a highly relevant factor, explaining that only "slight" evidence of unfairness is needed to overturn a sale where the price "inadequacy is palpable and great":

> It is universally recognized that inadequacy of price is a circumstance of greater or lesser weight to be considered in connection with other circumstances impeaching the fairness of the transaction as a cause of vacating it, and that, **where the inadequacy is palpable and great, very slight additional evidence of unfairness or irregularity is sufficient** to authorize the granting of the relief sought.

Id. at 648 (emphasis added).

The Court then provided a non-exhaustive list of "irregularities that may rise to the level of fraud, unfairness, or oppression" required to set aside an association sale or hold that it did not

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extinguish a senior deed of trust, including: (1) "failure to mail a deed of trust beneficiary the statutorily required notices"; (2) "***an HOA's representation that the foreclosure sale will not extinguish the first deed of trust***"; (3) "collusion between the winning bidder and the entity selling the property"; (4) "a foreclosure trustee's refusal to accept a higher bid"; and (5) "a foreclosure trustee's misrepresentation of the sale date." *Id.* at n.11 (emphasis added).

Here, the HOA sold the Property for less than 2% of its fair market value. **Exhibit M**. In light of this "palpabl[y] and great[ly]" inadequate sales price, only slight evidence of unfairness is needed to set aside the foreclosure sale. *See Nationstar*, 405 P.3d at 648. Prior to the HOA Sale, Bank of America contacted Collections to offer to pay the full statutory super-priority amount, as it has done in hundreds – if not thousands – of other cases. **Exhibit H-1**. Collections subsequently assured Bank of America that it was not foreclosing on a "super-priority lien pursuant to NRS 116.3116" and that the HOA did not claim to "have a super-priority lien." **Exhibit H-2**. Miles Bauer, on behalf of Bank of America, asked Collections to let them know if the circumstances of the HOA Sale changed, as "Bank of America would like to payoff any potential senior lien, should one exist, to protect [the Deed of Trust]." *Id.* Again, in response to Bank of America's willingness to tender the full statutory super-priority amount, Collections advised that no such lien existed, and it would notify Bank of America if anything changed. *Id.*

Having made those assurances to Bank of America, on behalf of the HOA, proceeded to conduct a foreclosure sale December 12, 2012. LN Management, who acquired the Property via Quitclaim Deed in April 2013, now maintains that the HOA Sale was, in fact, a super-priority sale. If this Court agrees, the HOA Sale should be invalidated on equitable grounds because the statements made by Collections of America prevented Bank of America from tendering the full super-priority amount prior to the HOA Sale. In other words, the first lien holder was deprived of the opportunity to protect its property interest. This is more than slight evidence of unfairness.

IV. The Deed of Trust and Subsequent Assignment Should be Reformed.

Deeds and other instruments, like an assignment, can be "reformed in accordance with the intention of parties when that intention is frustrated by a mutual mistake." *Grappo v. Mauch*, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994). Reformation should be utilized "when a written

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instrument fails to conform to the parties' previous understanding or agreement." *Id.* Here, Borrower purchased two units in the same condominium development. First, as set forth above, Borrower obtained a loan in the amount of $322,100.00 to purchase the Property (3111 Bel Air Dr., Unit 24G), repayment of which was secured by a Deed of Trust recorded on October 20, 2004. *See* **Exhibit A**. The Property was conveyed to Borrower by the previous owner through a Grant Deed recorded on October 16, 2003 as instrument number 20031016-01640. **Exhibit N**. The Deed of Trust lists the APN as 162-10-812-185.

Borrower subsequently obtained a second loan to purchase another unit in the same condominium complex. Specifically, Borrower obtained a loan in the amount of $149,000 to purchase real property commonly known as 3111 Bel Air Dr. #216, Las Vegas, NV 89109 (**216 Property**), repayment of which was secured by a Deed of Trust recorded on December 31, 2007 (**216 Deed of Trust**). **Exhibit O**. The 216 Deed of Trust, like the Deed of Trust, lists Bank of America as the Lender. *Id.* The 216 Property's APN number as 162-10-812-003. *Id.*

While the property address and the APN on the Deed of Trust are correct, the legal description is incorrect. The Grant Deed conveying the Property to Borrower specifies that Unit 24G is designated Unit 185 in the original Regency Towers plat. *See* **Exhibit N**. Due to a mutual mistake, however, the legal description in the Deed of Trust states that Unit 24G is designated as Unit 3 in the Regency Towers plat. **Exhibit A**. In reality, Unit 3 is the correct legal description for the 216 Property. *See* **Exhibit O**. The property records, the Regency Towers plat, and Defendants' expert report make clear that the Property's legal description should list Unit 185, as opposed to Unit 3.

First, as set forth above, the Grant Deed conveying title of the Property to Borrower lists Unit 185 in the legal description. **Exhibit N**. Additionally, Defendants' expert report describes the Property as being located on the corner of the twenty-fourth (24) floor. **Exhibit M**, p. 3. As the Regency Tower's original plat confirms, the corner unit on the twenty-fourth (24) is designated Unit 185. **Exhibit P**, p. 4. Accordingly, this Court should reform the legal description in the Deed of Trust to list Unit 185, as opposed to Unit 3.

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The second instrument requiring reformation is an Assignment of the Deed of Trust recorded on July 30, 2013. **Exhibit C**. Due to the confusion between the two properties, the Assignment was inadvertently recorded against APN #162-10-812-003, which is the 216 Property. The Assignment correctly states that it is assigning the Deed of Trust (not the 216 Deed of Trust), but does not appear in the property records for the Property when conducting an assessor's parcel no. search on account of the incorrect APN. The language in the Assignment makes it clear that the Assignment should have been recorded against APN 162-10-812-185. Therefore, Defendants respectfully request that this Court reform the Assignment to reflect the correct APN and order that the Assignment's effective date as to the subject property was the date it was recorded against the incorrect parcel number

CONCLUSION

For these reasons, the Court should grant Defendants' motion for summary judgment and enter a declaration that the interest LN Management acquired at the HOA Sale is subject to the Deed of Trust. Defendants also respectfully request the Court reform the Deed of Trust and Assignment as requested above.

DATED: September 29, 2020.

Respectfully submitted,

/s/ Natalie L. Winslow

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 29th day of September, 2020, I caused to be served a true and correct copy of the foregoing **BANK OF AMERICA, N.A. AND DITECH FINANCIAL LLC F/K/A GREEN TREE SERVICING LLC'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

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/ Patricia Larsen
An employee of AKERMAN LLP

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EXHIBIT A

20041020-0001569

Fee: $42.00
N/C Fee: $0.00

10/20/2004 10:32:56
T20040116980
Requestor:
BANK OF AMERICA

Frances Deane SUO
Clark County Recorder Pgs 29

Assessor's Parcel Number: 162108121B5

Return To: FL9-7CO-05-22
JACKSONVILLE POST CLOSING
9OCO 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

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

[Space Above This Line For Recording Data]

LOAN # [redacted]

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 M CHAEL T. ELLIOTT, AN UNMARRIED PERSON

Borrower is the trustor under this Security Instrument.

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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 901 GEORGE WASHINGTON, WICHITA, KS 6/2113901

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]:

[X] Adjustable Rate Rider	[X] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[X] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] 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: 162-10-812-185 which currently has the address of

3111 BEL AIR DR UNIT 24G [Street]

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

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

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

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

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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

GTS(Elliott)2006

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

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

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

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

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

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

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

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

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

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

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

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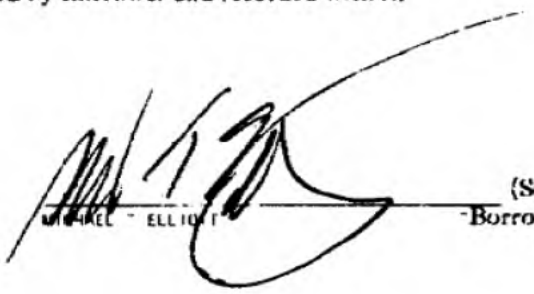
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:



_____ (Seal)
MICHAEL ELLIOTT -Borrower

_____ (Seal)
-Borrower

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-Borrower

GTS(Elliott)2024

STATE OF NEVADA
COUNTY OF San Diego California

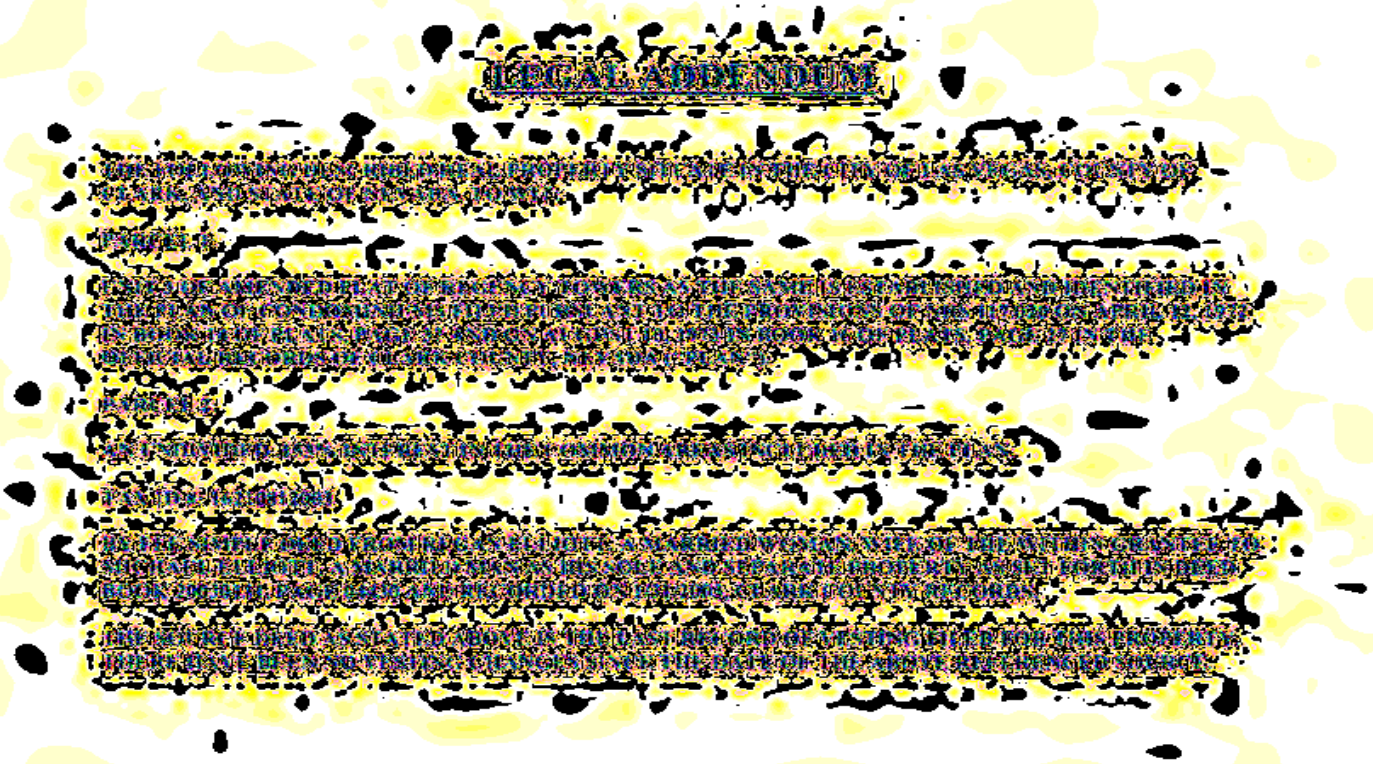
October 6th 2004

This instrument was acknowledged before me on Jason Woodward

by

Michael T Elliott

Mail Tax Statements To: MICHAEL T ELLIOTT
3111 BEL AIR DR UNIT 24G
LAS VEGAS, NV 89109



LOAN # [redacted]

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:

GTS(Ellipse)2017

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 percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the [ ] Nearest [X] 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.

GTS(Elliott)2015

(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.

GTS(Ellipse)2012

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.

GTS(Bid)2029

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.

GTS(Bid)2004

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

MICHAEL ELLIOTT _____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

LOAN # [redacted]

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

GTS(Eliott)2020

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.

MBC 10/05/04 7:53 AM [redacted]

GTS(Eliot)2004

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

GTS(Ellicott)0005

LOAN # [redacted]

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 AMER CA, 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)

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."

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

GTS(Eliot)2027

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.

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.

GTS(Elliott)2025

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

MICHAEL T ELLIOTT _____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

GTS(Elliott)2024

EXHIBIT B

DECL

DARREN T. BRENNER, ESQ.
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JARED SECHRIST, ESQ.
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Attorneys for Bank of America, N.A.

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 I through 10, inclusive,

Defendants.

Case No.: A-13-682055-C

Dept. No.: XIII

DECLARATION OF GRAHAM BABIN

I, Graham Babin, declare as follows:

1. My name is Graham Babin. I have personal knowledge of and am competent to testify as to the matters stated herein by virtue of my position as Assistant Vice President for Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States.

2. As Assistant Vice President for Fannie Mae, I am familiar with certain Fannie Mae systems that contain data regarding mortgage loans acquired and owned by Fannie Mae. I am also familiar with the Selling and Servicing Guidelines applicable to entities that service mortgage loans on behalf of Fannie Mae.

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

3. This declaration is submitted in support of the loan servicer's motion regarding federal preemption.

4. Attached hereto as Exhibit "A" are true and correct copies of printouts from Fannie Mae's Servicer & Investor Reporting platform ("SIR"). SIR is an electronic system of record that contains information regarding mortgage loans acquired and owned by Fannie Mae. Entries in SIR are made at or near the time of the events recorded by, or from information transmitted by, persons with knowledge. SIR is kept in the course of Fannie Mae's regularly conducted business activity, and it is the regular practice of Fannie Mae to keep and maintain information regarding mortgage loans owned by Fannie Mae. Exhibit "A" consists of records that were made and kept by Fannie Mae in the course of its regularly conducted activities pursuant to its regular business practice of creating such records. The printouts in Exhibit "A" are Fannie Mae business records.

5. Exhibit "A" reflects that in November 2004, Fannie Mae acquired ownership of a mortgage loan, which includes both the note and its associated deed of trust, secured by real property located at 3111 Bel Air Dr. #24G, Las Vegas, NV 89109 (the "Loan"). Exhibit "A" also reflects that Fannie Mae remains the owner of the Loan.

6. The first page of Exhibit "A" is a printout of the SIR "Acquisition" tab relating to the Loan. The acquisition date referenced above is shown in the Acquisition tab.

7. The second page of Exhibit "A" is a printout of the SIR "Property" tab relating to the Loan. The property address referenced above is shown in the Property tab.

8. Beginning at the third page of Exhibit "A" is the SIR Loan Activity History for this Loan. The Loan Activity History reflects that Fannie Mae owned the Loan before and during the month of December 2012 and remains the owner of the Loan. The Loan Activity History shows that the Loan servicer reported certain information to Fannie Mae regarding the Loan (such as the unpaid principal balance) on a monthly basis. This information was reported to Fannie Mae because Fannie Mae owns this Loan. If Fannie Mae did not own this Loan, this loan activity information would not have been reported to Fannie Mae.

9. Additionally, had Fannie Mae ceased to own this Loan (if, for example, the Loan had been paid off, foreclosed, or sold to another entity), information reflecting that would appear under

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

the "Action Code – Action Description" column on the Loan Activity History. There is no such information under the "Action Code – Action Description" column on the attached Loan Activity History, which means that the Loan is still owned by Fannie Mae as of the last reporting shown in Exhibit "A."

10. Following the Loan Activity History are printouts of the SIR LAM Transaction Details and Audit Trail regarding the reclassification of the Loan. These reports show that on December 21, 2010, the Loan was reclassified to Fannie Mae's cash portfolio of mortgage loans, which means it was no longer securitized – that is, it no longer backed a mortgage-backed security ("MBS"), as of that date. These records would not exist if the loan had not been disassociated from the securitization trust. SIR reflects that the Loan was not securitized by Fannie Mae at any time after December 21, 2010, including in December 2012.

11. The final page of Exhibit "A" is a printout of entries in the SIR Servicing Transfer Request Detail showing that the rights to service the Loan for Fannie Mae were transferred from Bank of America, N.A. ("BANA") to Ditech Financial LLC ("Ditech") on or about April 30, 2013. SIR reflects that BANA was the servicer of the Loan for Fannie Mae in December 2012.

12. The banner appearing above the Acquisition Tab, Property Tab, Loan Activity History, and LAM Transaction Details reflects that the current servicer of the Loan for Fannie Mae is Ditech.

13. The Fannie Mae Single-Family Selling and Servicing Guides ("Guides") are publicly accessible documents which serve as central documents governing the contractual relationship between Fannie Mae and its loan sellers and servicers nationwide, including BANA and Ditech. A true and correct copy of the current Guides and archived prior versions of the Guide can be found at https://www.fanniemae.com/content/guide/selling/index.html and https://www.fanniemae.com/content/guide/servicing/index.html. Prior versions of the Guides are available at that URL by clicking "Show All" in the left hand column of those sites.

14. True and correct copies of applicable Selling and Servicing Guide sections are attached here to as Exhibit "B."

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

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

Executed on November 29th, 2018.

Graham Babin, AVP

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

Loan Detail

Servicer Name	Ditech Financial LLC	**Fannie Mae Loan No.**	[redacted]3984	**Converted Loan**	Yes	Loan Activity History
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**		Comments

Select one of the follow ing... submit

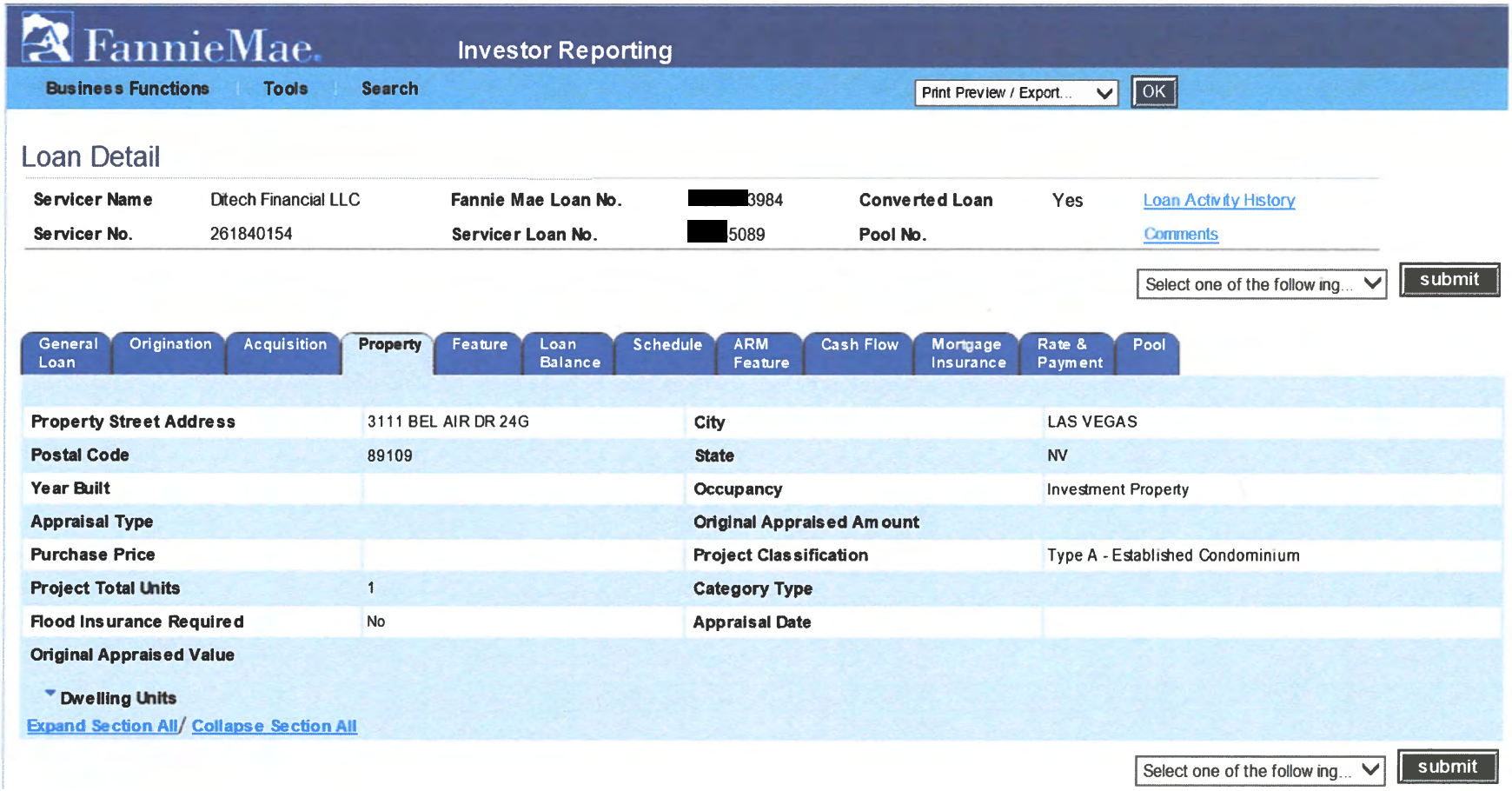
General Loan | Origination | Acquisition | Property | Feature | Loan Balance | Schedule | ARM Feature | Cash Flow | Mortgage Insurance | Rate & Payment | Pool

Acquisition Snapshot | Pricing

Seller No	243830001	**Seller Name**	Bank of America, N.A.
Acquisition Date	11/01/2004	**Seller Loan No.**	
LPI Date	11/01/2004	**Actual UPB**	$322,099.00
Interest Rate	4.5000%	**P&I Amt**	$1,632.04
LPTR	3.9150%	**Acquisition LTV Ratio**	61.0000%
Excess Yield Rate	0.0000%	**GFee Rate After Buyup/Buydown**	0.2100%
GFee Rate after APM	0.2100%	**Contract GFee Rate**	0.2100%
Scheduled LPI	11/01/2004	**Scheduled UPB**	$322,099.00
Acquisition Loan Margin	2.2500%	**Next Interest Rate Adj Date**	
Next P&I Adj Date		**Remaining Term**	360
Acquisition Maturity Date	11/01/2034	**Periods Delinquent**	
No. Days Delinquent		**Skipped Payment No.**	
Payee ID		**Submission Type Code**	Whole First Mortgage
Doc Custodian Code	Document Custodian	**Home Improvement Product Type**	
Original Purchase Discount Book Amount	$0.00	**Original Purchase Discount Tax Amount**	$0.00
Original Other Yield Adjustment Book Amount	$0.00	**Purchase Deduction Tax Amort Method**	
Purchase Premium Tax Amort Method		**Purchase Premium Book Amort Method**	
Other Yield Adjustment Tax Amort Method		**Financial Index Rate**	
Extensions Exercised at Acquistions		**Acquisition Amortization Term**	360
Price Required Net Yield Rate	0.0000%		

Select one of the follow ing... submit

Printed by: Yolanda Holloway Date Printed: 11/27/13



3PA643

Printed by: Yolanda Holloway

Date Printed: 11/27/18

Loan Transaction History - Loan Activity History

Servicer Name	Ditech Financial LLC	**Fannie Mae Loan No.**	[redacted]3984	**Converted Loan**	Yes
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**	

Records Found: 121 Current Set: 121 Show 10 Per Page **Pages** 1 2 3 4 5 Next »

Transaction ID	Reversal Transaction ID	Effective Date	Process Date	Activity Period	Reported UPB ($)	Action Code - Action Description	Action Date	Other Fees Collected ($)
Filter								
5254862927		11/01/2018	11/21/2018	11/30/2018	$290,983.17	0 - No Servicer Action Taken	11/20/2018	$0.00
5206487637		10/01/2018	10/20/2018	10/31/2018	$290,983.17	0 - No Servicer Action Taken	10/19/2018	$0.00
5156502893		09/01/2018	09/20/2018	09/30/2018	$290,983.17	0 - No Servicer Action Taken	09/19/2018	$0.00
5106114287		08/01/2018	08/21/2018	08/31/2018	$290,983.17	0 - No Servicer Action Taken	08/20/2018	$0.00
5056239208		07/01/2018	07/20/2018	07/31/2018	$290,983.17	0 - No Servicer Action Taken	07/19/2018	$0.00
5006575545		06/01/2018	06/21/2018	06/30/2018	$290,983.17	0 - No Servicer Action Taken	06/20/2018	$0.00
4956601140		05/01/2018	05/19/2018	05/31/2018	$290,983.17	0 - No Servicer Action Taken	05/18/2018	$0.00
4908717886		04/01/2018	04/20/2018	04/30/2018	$290,983.17	0 - No Servicer Action Taken	04/19/2018	$0.00
4858754448		03/01/2018	03/21/2018	03/31/2018	$290,983.17	0 - No Servicer Action Taken	03/20/2018	$0.00
4810537346		02/01/2018	02/21/2018	02/28/2018	$290,983.17	0 - No Servicer Action Taken	02/20/2018	$0.00

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Loan Transaction History - Loan Activity History

Servicer Name	Ditech Financial LLC	**Fannie Mae Loan No.**	[redacted]3984	**Converted Loan**	Yes
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**	

Records Found: 121 Current Set: 121 Show 10 Per Page **Pages** « Prev 1 **2** 3 4 5 Next »

Transaction ID	Reversal Transaction ID	Effective Date	Process Date	Activity Period	Reported UPB ($)	Action Code - Action Description	Action Date	Other Fees Collected ($)
Filter								
4761619569		01/01/2018	01/20/2018	01/31/2018	$290,983.17	0 - No Servicer Action Taken	01/19/2018	$0.00
4712232531		12/01/2017	12/21/2017	12/31/2017	$290,983.17	0 - No Servicer Action Taken	12/20/2017	$0.00
4664316320		11/01/2017	11/21/2017	11/30/2017	$290,983.17	0 - No Servicer Action Taken	11/20/2017	$0.00
4611578535		10/01/2017	10/20/2017	10/31/2017	$290,983.17	0 - No Servicer Action Taken	10/19/2017	$0.00
4560238203		09/01/2017	09/20/2017	09/30/2017	$290,983.17	0 - No Servicer Action Taken	09/19/2017	$0.00
4512753803		08/01/2017	08/19/2017	08/31/2017	$290,983.17	0 - No Servicer Action Taken	08/18/2017	$0.00
4464226855		07/01/2017	07/21/2017	07/31/2017	$290,983.17	0 - No Servicer Action Taken	07/20/2017	$0.00
4412801323		06/01/2017	06/21/2017	06/30/2017	$290,983.17	0 - No Servicer Action Taken	06/20/2017	$0.00
4364878576		05/01/2017	05/20/2017	05/31/2017	$290,983.17	0 - No Servicer Action Taken	05/19/2017	$0.00
4315678308		04/01/2017	04/21/2017	04/30/2017	$290,983.17	0 - No Servicer Action Taken	04/20/2017	$0.00

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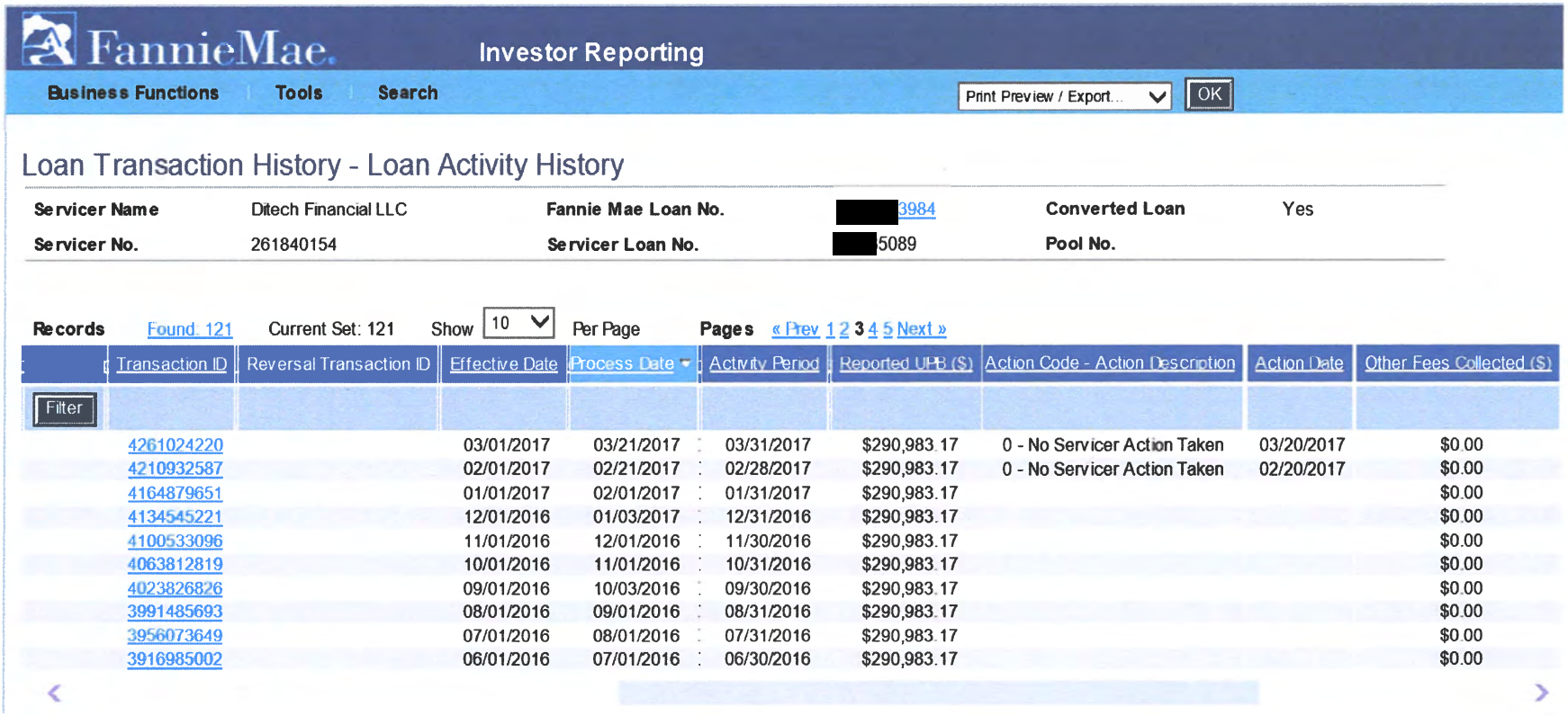

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Loan Transaction History - Loan Activity History

Servicer Name	Ditech Financial LLC	**Fannie Mae Loan No.**	[redacted]3984	**Converted Loan**	Yes
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**	

Records Found: 121 Current Set: 121 Show 10 Per Page **Pages** « Prev 2 3 **4** 5 6 Next »

Transaction ID	Reversal Transaction ID	Effective Date	Process Date	Activity Period	Reported UPB ($)	Action Code - Action Description	Action Date	Other Fees Collected ($)
Filter								
3883623925		05/01/2016	06/01/2016	05/31/2016	$290,983.17			$0.00
3845869274		04/01/2016	05/02/2016	04/30/2016	$290,983.17			$0.00
3806233991		03/01/2016	04/01/2016	03/31/2016	$290,983.17			$0.00
3771588036		02/01/2016	03/01/2016	02/29/2016	$290,983.17			$0.00
3733268390		01/01/2016	02/01/2016	01/31/2016	$290,983.17			$0.00
3695914609		12/01/2015	01/04/2016	12/31/2015	$290,983.17			$0.00
3663157262		11/01/2015	12/01/2015	11/30/2015	$290,983.17			$0.00
3626056547		10/01/2015	11/02/2015	10/31/2015	$290,983.17			$0.00
3589496024		09/01/2015	10/01/2015	09/30/2015	$290,983.17			$0.00
3555595685		08/01/2015	09/01/2015	08/31/2015	$290,983.17			$0.00

3PA647

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Loan Transaction History - Loan Activity History

Servicer Name	Ditech Financial LLC	**Fannie Mae Loan No.**	[redacted]3984	**Converted Loan**	Yes
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**	

Records Found: 121 Current Set: 121 Show 10 Per Page **Pages** « Prev 3 4 **5** 6 7 Next »

Transaction ID	Reversal Transaction ID	Effective Date	Process Date	Activity Period	Reported UPB ($)	Action Code - Action Description	Action Date	Other Fees Collected ($)
Filter								
3518802204		07/01/2015	08/03/2015	07/31/2015	$290,983.17			$0.00
3482789969		06/01/2015	07/01/2015	06/30/2015	$290,983.17			$0.00
3445300558		05/01/2015	06/01/2015	05/31/2015	$290,983.17			$0.00
3407354028		04/01/2015	05/01/2015	04/30/2015	$290,983.17			$0.00
3370824824		03/01/2015	04/02/2015	03/31/2015	$290,983.17			$0.00
3334558516		02/01/2015	03/02/2015	02/28/2015	$290,983.17			$0.00
3292954335		01/01/2015	02/02/2015	01/31/2015	$290,983.17			$0.00
3259149820		12/01/2014	01/02/2015	12/31/2014	$290,983.17			$0.00
3222374621		11/01/2014	12/01/2014	11/30/2014	$290,983.17			$0.00
3187000305		10/01/2014	11/03/2014	10/31/2014	$290,983.17			$0.00

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Loan Transaction History - Loan Activity History

Servicer Name	Ditech Financial LLC	**Fannie Mae Loan No.**	[redacted]3984	**Converted Loan**	Yes
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**	

Records Found: 121 Current Set: 121 Show 10 Per Page **Pages** « Prev 4 5 **6** 7 8 Next »

Transaction ID	Reversal Transaction ID	Effective Date	Process Date	Activity Period	Reported UPB ($)	Action Code - Action Description	Action Date	Other Fees Collected ($)
Filter								
3149822320		09/01/2014	10/01/2014	09/30/2014	$290,983.17			$0.00
3116824305		08/01/2014	09/03/2014	08/31/2014	$290,983.17			$0.00
3080339894		07/01/2014	08/04/2014	07/31/2014	$290,983.17			$0.00
3039077097		06/01/2014	07/02/2014	06/30/2014	$290,983.17			$0.00
2994836621		05/01/2014	06/02/2014	05/31/2014	$290,983.17			$0.00
2962436745		04/01/2014	05/01/2014	04/30/2014	$290,983.17			$0.00
2925101293		03/01/2014	04/01/2014	03/31/2014	$290,983.17			$0.00
2890224120		02/01/2014	03/03/2014	02/28/2014	$290,983.17			$0.00
2851315318		01/01/2014	02/03/2014	01/31/2014	$290,983.17			$0.00
2810097090		12/01/2013	01/02/2014	12/31/2013	$290,983.17			$0.00

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Loan Transaction History - Loan Activity History

Servicer Name	Ditech Financial LLC	**Fannie Mae Loan No.**	[redacted]3984	**Converted Loan**	Yes
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**	

Records Found: 121 Current Set: 121 Show 10 Per Page **Pages** « Prev 5 6 7 8 9 Next »

	Transaction ID	Reversal Transaction ID	Effective Date	Process Date	Activity Period	Reported UPB ($)	Action Code - Action Description	Action Date	Other Fees Collected ($)
Filter									
	2773037233		11/01/2013	12/02/2013	11/30/2013	$290,983.17			$0.00
	2742390925		10/01/2013	11/01/2013	10/31/2013	$290,983.17			$0.00
	2708689518		09/01/2013	10/02/2013	09/30/2013	$290,983.17			$0.00
	2661611378		08/01/2013	09/03/2013	08/31/2013	$290,983.17			$0.00
	2635515606		07/01/2013	08/02/2013	07/31/2013	$290,983.17			$0.00
	2584117591		06/01/2013	07/01/2013	06/30/2013	$290,983.17			$0.00
	2549740515		05/01/2013	06/03/2013	05/31/2013	$290,983.17			$0.00
	2521745252		04/01/2013	05/02/2013	04/30/2013	$290,983.17			$0.00
	2483384021		03/01/2013	04/02/2013	03/31/2013	$290,983.17			$0.00
	2446410779		02/01/2013	03/04/2013	02/28/2013	$290,983.17			$0.00

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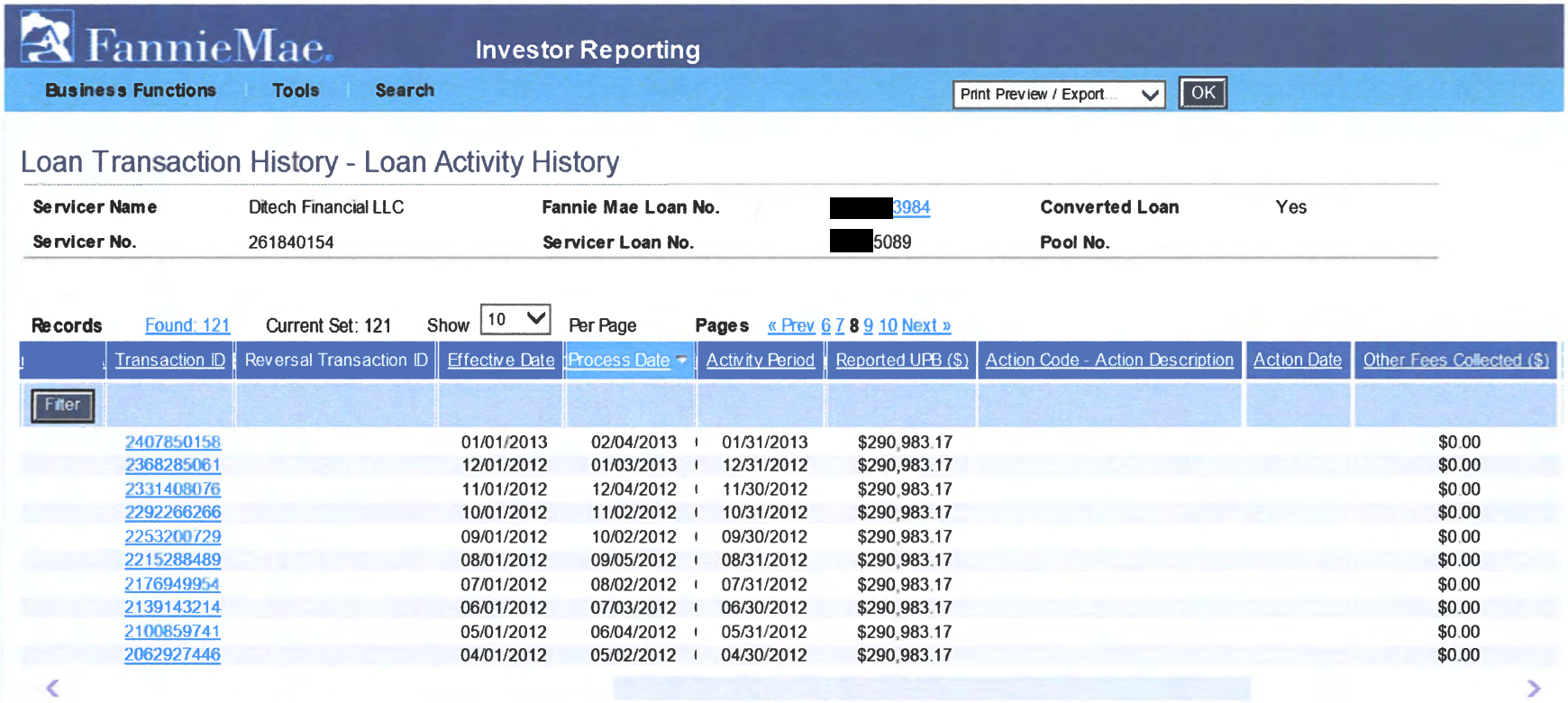

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Loan Transaction History - Loan Activity History

Servicer Name	Ditech Financial LLC	**Fannie Mae Loan No.**	[redacted]3984	**Converted Loan**	Yes
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**	

Records Found: 121 Current Set: 121 Show 10 Per Page **Pages** « Prev 7 8 **9** 10 11 Next »

Transaction ID	Reversal Transaction ID	Effective Date	Process Date	Activity Period	Reported UPB ($)	Action Code - Action Description	Action Date	Other Fees Collected ($)
Filter								
2025027853		03/01/2012	04/03/2012	03/31/2012	$290,983.17			$0.00
1986231298		02/01/2012	03/02/2012	02/29/2012	$290,983.17			$0.00
1948441074		01/01/2012	02/02/2012	01/31/2012	$290,983.17			$0.00
1910066860		12/01/2011	01/04/2012	12/31/2011	$290,983.17			$0.00
1871885062		11/01/2011	12/02/2011	11/30/2011	$290,983.17			$0.00
1833915253		10/01/2011	11/02/2011	10/31/2011	$290,983.17			$0.00
1795815618		09/01/2011	10/04/2011	09/30/2011	$290,983.17			$0.00
1756872301		08/01/2011	09/02/2011	08/31/2011	$290,983.17			$0.00
1719086991		07/01/2011	08/02/2011	07/31/2011	$290,983.17			$0.00
1680505058		06/01/2011	07/05/2011	06/30/2011	$290,983.17			$0.00

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Loan Transaction History - Loan Activity History

Servicer Name	Ditech Financial LLC	**Fannie Mae Loan No.**	[redacted]3984	**Converted Loan**	Yes
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**	

Records Found 121 Current Set: 121 Show 10 Per Page **Pages** « Prev 8 9 **10** 11 12 Next »

Transaction ID	Reversal Transaction ID	Effective Date	Process Date	Activity Period	Reported UPB ($)	Action Code - Action Description	Action Date	Other Fees Collected ($)
Filter								
1647717783		05/01/2011	06/02/2011	05/31/2011	$290,983.17			$0.00
1603502256		04/01/2011	05/03/2011	04/30/2011	$290,983.17			$0.00
1565458862		03/01/2011	04/04/2011	03/31/2011	$290,983.17			$0.00
1526958816		02/01/2011	03/02/2011	02/28/2011	$290,983.17			$0.00
1488604969		01/01/2011	02/02/2011	01/31/2011	$290,983.17			$0.00
1449507769		12/01/2010	01/04/2011	12/31/2010	$290,983.17			$0.00
1408473790		11/01/2010	12/02/2010	11/30/2010	$290,983.17			$0.00
1369405377		10/01/2010	11/02/2010	10/31/2010	$290,983.17			$0.00
1329282497		09/01/2010	10/02/2010	09/30/2010	$290,983.17			$0.00
1291536936		08/01/2010	09/02/2010	08/31/2010	$290,983.17			$0.00

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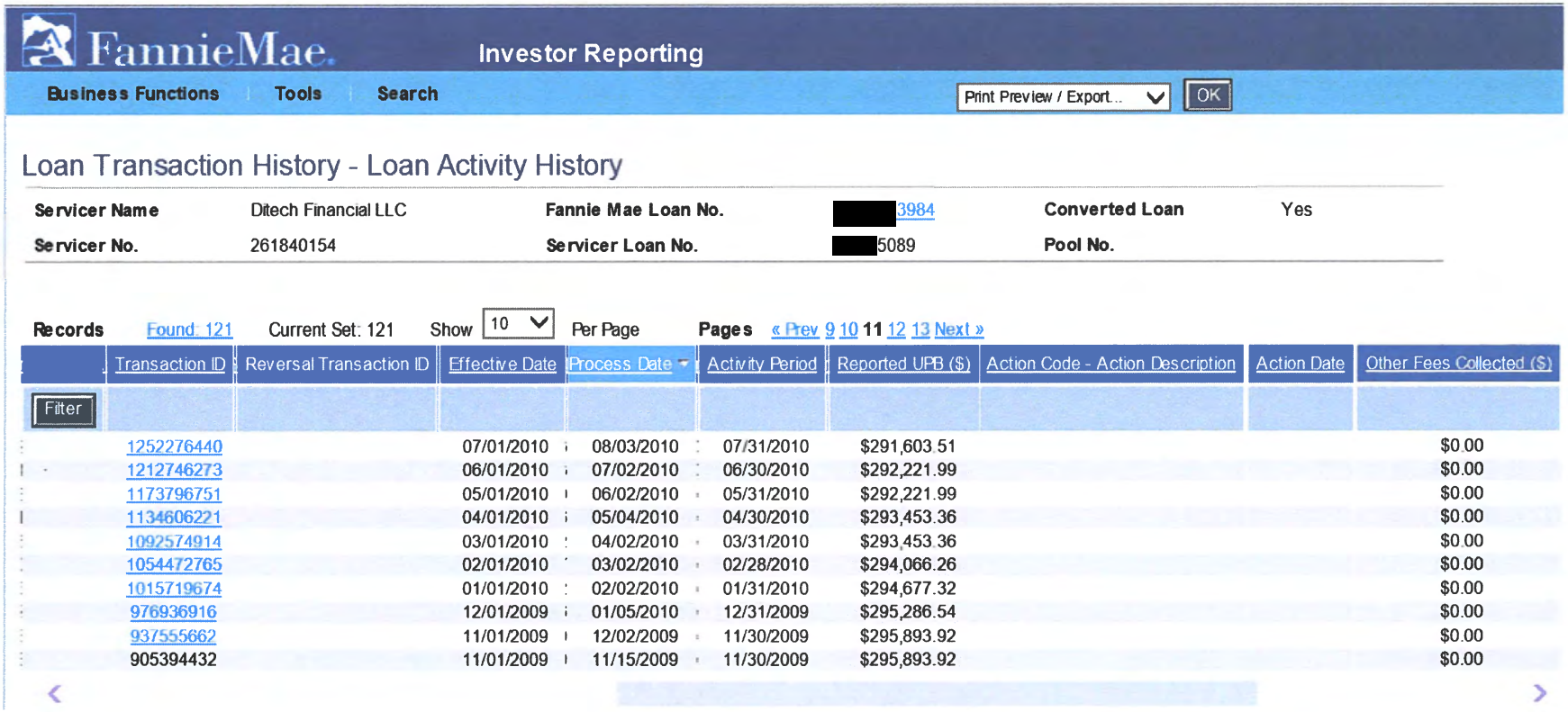

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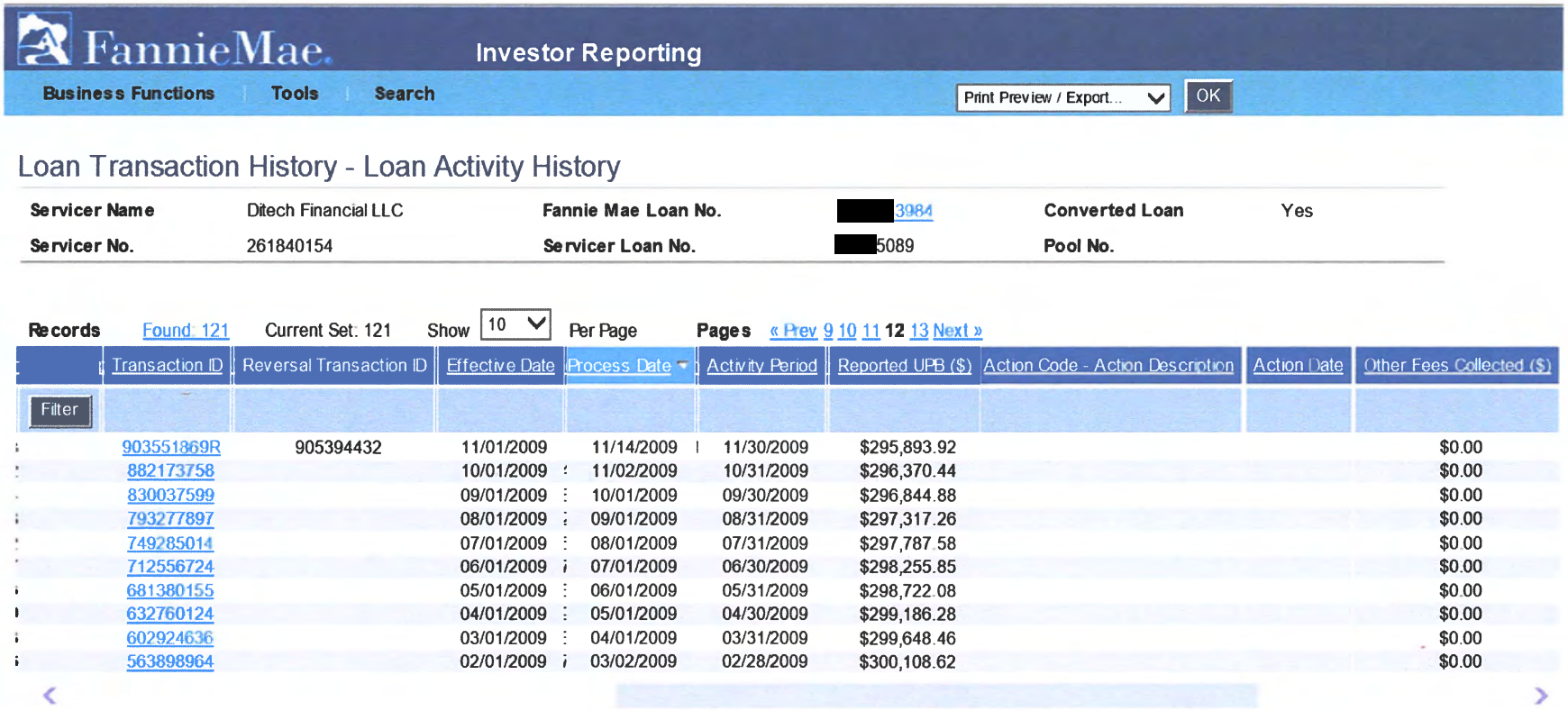

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LAM Transaction Details

Fannie Mae Loan No.	[redacted]3984	**Servicer Name**	Ditech Financial LLC	**Location**	East
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**	
Activity Type	Loan Reclassification	**Submitted Date**	12/21/2010	**Last Updated By**	
Status	Completed	**Effective Date**	12/01/2010	**Transaction Id**	354535296
Cancelled	No				

Attribute Name	Initial	New
Principal Remittance Date Type	6	99
Principal Remittance Day	18	
Principal Remittance Payment Method	4	1
Principal Def Effective Date	12/01/2008	12/01/2010
Principal Advance	1	0
Unscheduled Principal Remittance Date Type	6	99
Unscheduled Principal Remittance Day	18	
Unscheduled Principal Remittance Payment Method	4	1
Unscheduled Principal Def Effective Date	12/01/2008	12/01/2010
LPTR Remittance Date Type	6	99
LPTR Remittance Day	18	
LPTR Remittance Payment Method	4	1
LPTR Def Effective Date	12/01/2008	08/01/2010
LPTR Advance	1	0

Rule Name	Severity	Description

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Business Functions | Tools | Search

LAM Transaction Details

Fannie Mae Loan No.	[redacted]3984	**Servicer Name**	Ditech Financial LLC	**Location**	East
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**	
Activity Type	Loan Reclassification	**Submitted Date**	12/21/2010	**Last Updated By**	
Status	Completed	**Effective Date**	12/01/2010	**Transaction Id**	354535296
Cancelled	No				

Attribute Name	Initial	New
Unscheduled Principal Def Effective Date	12/01/2008	12/01/2010
LPTR Remittance Date Type	6	99
LPTR Remittance Day	18	
LPTR Remittance Payment Method	4	1
LPTR Def Effective Date	12/01/2008	08/01/2010
LPTR Advance	1	0
Investor Pass Through Def Expiration Date		12/01/2010
Gross Servicing Fee Def Effective Date	12/01/2008	08/01/2010
Guaranty Fee Def Expiration Date		12/01/2010
Reclassification Allowed	Y	N
Pool Consolidation Type Code	1	3
Remittance Type	3	1
Delinquent Acquisition Method		1
Loan Feature Effective Date	12/01/2008	12/01/2010

Rule Name	Severity	Description

Printed by: Yolanda Holloway

Date Printed: 11/27/18

LAM Transaction Details

Fannie Mae Loan No.	[redacted]3984	**Servicer Name**	Ditech Financial LLC	**Location**	East
Servicer No.	261840154	**Servicer Loan No.**	[redacted]5089	**Pool No.**	
Activity Type	Loan Reclassification	**Submitted Date**	12/21/2010	**Last Updated By**	
Status	Completed	**Effective Date**	12/01/2010	**Transaction Id**	354535296
Cancelled	No				

Attribute Name	Initial	New
Investor Pass Through Def Expiration Date		12/01/2010
Gross Servicing Fee Def Effective Date	12/01/2008	08/01/2010
Guaranty Fee Def Expiration Date		12/01/2010
Reclassification Allowed	Y	N
Pool Consolidation Type Code	1	3
Remittance Type	3	1
Delinquent Acquisition Method		1
Loan Feature Effective Date	12/01/2008	12/01/2010
Fannie Mae Ownership Percent	0	1
Loan Sold Code	3	0
Servicer No.	244090001	
Reclassification Date		12/01/2010
Reclassification Source		CLM Initiated
Pool Identifier	801939	

Rule Name	Severity	Description

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Return To Previous Page

Servicing Transfer Request (STR) Detail

Transferor No	24409				
STR No.	1962222	**Transferor**	Bank of America, N.A.	**Transferee**	Ditech Financial LLC
STR Status	Completed	**Transferor Contact Name**		**Transferee Contact Name**	
STR Type	Inter-Servicer	**Transferor Contact No.**		**Transferee Contact No.**	
Effective Date	04/30/2013	Audit Trail		Activity Checks	
No. of Loans to Transfer	4514	**No. of Loans Approved**	0	**No. of Loans Transferred**	4514
UPB	$258,328,644.85	**UPB**	$0.00	**UPB**	$733,039,362.32
Delinquency Ratio	3,451.4843%	**Delinquency Ratio**	0.0000%	**Delinquency Ratio**	3,451.4843%
No. of Loans Passed Validation	4514				
No. of Loans Failed Validation	0				

View All Loans

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Chapter 2. Contractual Relationship (01/31/03)

Once Fannie Mae approves a servicer to do business with it, both parties execute the Lender Contract to establish the terms and conditions of their contractual relationship. The continuation of that relationship depends on both parties honoring the mutual promises in the Lender Contract and on the lender's satisfying the requirements of the *Selling Guide*, the *Servicing Guide*, the *Guide to Delivering eMortgage Loans to Fannie Mae*, and the *Multifamily Guide(s)* (the "Guides").

Section 201 Mortgage Selling and Servicing Contract (06/01/07)

The MSSC establishes the basic legal relationship between a lender/servicer and Fannie Mae. Details regarding contractual obligations for lenders are set forth in the *Selling Guide*. Specifically as to servicing, the MSSC:

- establishes the lender as an approved servicer of applicable mortgage loans;
- provides the general terms and conditions for servicing;
- incorporates by reference the terms of the Guides and other lender or servicing announcements, letters, and Guide changes, as well as Master Agreements, technology licensing agreements, and any other agreement entered into by Fannie Mae and the lender; and
- states the types of mortgage loans the lender may sell and service.

All types of agreements between a servicer and Fannie Mae are incorporated into the Lender Contract (the lender's and servicer's obligations under all of these agreements are referred to in the Guides in their entirety as the "Lender Contract") and form a single integrated MSSC and not a separate contract or agreement.

Notwithstanding any other provisions in the Guides, or any assignment or transfer of servicing by a lender to another entity:

- A lender/servicer's benefits and obligations with respect to its contractual rights to service mortgage loans are, and were at the time of execution of the Lender Contract, fully integrated and non-divisible

from the lender's benefits and obligations with respect to its contractual rights and obligations to sell mortgage loans under the Lender Contract.

- Absent such integration, Fannie Mae would not have entered into, or continued to be bound by, the Lender Contract and would not have entered into, or continued to be bound by, separate agreements with a lender/servicer providing for the contractual right to sell or to service mortgage loans for Fannie Mae.

- When Fannie Mae consents to a transfer of servicing by a lender or servicer, it relies on the integration and non-divisibility of the Lender Contract. Fannie Mae requires that the transferor or lender remain obligated for all selling and servicing representations and warranties and recourse obligations upon the transfer of servicing, and requires that the transferee servicer, whether the original seller or a transferee servicer, undertake and assume joint and several liability for all selling and servicing representations and warranties and recourse obligations related to the mortgage loans it services unless explicitly agreed to the contrary in writing by Fannie Mae.

All of Fannie Mae's communications—such as Guides, announcements, lender letters, and notices (regardless of the medium through which they are issued)—are incorporated into the Guides by reference, and are instructions Fannie Mae provides to enable a servicer to perform its obligations to Fannie Mae under the terms of the MSSC. No borrower or other third party is intended to be a legal beneficiary of the MSSC or to obtain any such rights or enttitlements through our lender communications.

Certain information and requirements are posted on eFannieMae.com (or successor Web site), and such information is incorporated by reference into the Guides.

Section 201.01 Contractual Representations and Warranties (06/10/11)

In order to sell mortgage loans to Fannie Mae or deliver pools of mortgage loans to Fannie Mae for mortgage-backed securities (MBS), the lender makes certain representations and warranties concerning both the lender itself as well as the mortgage loans it is selling or delivering. These representations and warranties are set forth in the *Selling Guide*. Provisions that are specific to servicing are contained herein. A lender that acquires the servicing of a mortgage loan, either concurrently with or subsequent to Fannie Mae's purchase of the mortgage loan, assumes and is responsible for the same selling warranties that the mortgage loan seller

made when the mortgage loan was sold to Fannie Mae. Lenders that acquire the servicing of Fannie Mae mortgage loans are required to service the mortgage loans in accordance with the servicing obligations of the lender that assigned or transferred the servicing of the mortgage loan.

Section 201.02 Representation and Warranty Requirements for the Servicing of All Mortgage Loans (06/10/11)

By submitting any mortgage loan to Fannie Mae under any execution, including MBS, whole mortgage loan, or a participation pool mortgage loan to Fannie Mae as a whole mortgage loan, the lender represents and warrants that there is no agreement with any other party providing for servicing the mortgage loans that continues after such date unless there is full compliance with all the Fannie Mae Guide requirements for subservicing (including but not limited to the *Selling Guide, A3-3-03*, *Subservicing*) or any prior servicing agreement is made expressly to Fannie Mae's rights as owner of the mortgage loans.

The party that was servicing for the lender prior to such date may become a servicer for Fannie Mae, if there is full compliance with all the Guide requirements that provide for assignment of servicing from the lender concurrent with conveyance of the mortgage loan to Fannie Mae. (For more information, refer to the *Selling Guide*, *A3-3-02*, *Concurrent Servicing Transfers.)*

Section 201.03 Mortgage Insurance Representation and Warranty Requirements (10/01/11)

The servicer represents and warrants that each mortgage loan it delivers is insurable and that no fraud or material misrepresentation has been committed (by any servicer employee, any agent of the servicer, or any third party including, without limitation, the borrower), by act or omission, in connection with the origination of the mortgage loan or servicing prior to the sale, regardless of the level or type of documentation, verification, or corroboration of information that may be required by the *Selling Guide* and *Servicing Guide* or any other contract with a particular servicer. A mortgage loan is insurable if a mortgage insurer would not decline to insure it by reason of any fraud, misrepresentation, negligence, or dishonest, criminal, or knowingly wrongful act in origination or servicing, and would not be entitled to deny a claim by reason of any of the foregoing.

Section 201.03.01 Rescission, Cancellation, and Claim Denial (10/01/11)

Rescission

Rescission of mortgage insurance coverage is defined as notification by the mortgage insurer that it has made the determination to rescind coverage in

other liabilities that arise in connection with the mortgage loans or the servicing of them prior to the delivery of the mortgage loans to Fannie Mae. Similarly, Fannie Mae requires a servicer to make the same indemnification for all losses, damages, judgments, claims, legal actions, and legal fees that are based on, or result from, the lender's failure or alleged failure to satisfy its duties and responsibilities for mortgage loans or MBS pools it services for Fannie Mae under the provisions of the Lender Contract, the Guides, any additional requirements that may have been imposed, or any additional obligations the lender has assumed with respect to such mortgage loans or MBS pools.

If a claim is made or a suit or other proceeding that is based on a lender's or servicer's alleged acts or omissions in originating, selling, or servicing mortgage loans or MBS pools; in trading MBS; or in disposing of acquired properties is started against Fannie Mae (or if Fannie Mae subsequently becomes a party to such a claim, suit, or proceeding or is served a subpoena for any purpose in connection with a suit to which Fannie Mae is not a party), the lender's or servicer's responsibility to indemnify Fannie Mae from losses and to hold Fannie Mae harmless must be met regardless of whether the claim, suit, or proceeding has merit. However, the lender's or servicer's obligation does not apply if Fannie Mae gives the lender or servicer written instructions during a claim, suit, or proceeding and Fannie Mae suffers a loss because the lender or servicer follows its instructions.

Fannie Mae will manage its defense for any claim, suit, or proceeding in accordance with its own judgment, keeping the option to decide whether (or when) to retain its own separate counsel. If Fannie Mae chooses its own counsel, the lender or servicer will still be obligated to pay Fannie Mae's legal fees and costs. If Fannie Mae decides that its interests and the lender's or servicer's coincide, Fannie Mae may decide to cooperate with the lender or servicer in a joint defense. (Refer to the *Selling Guide*, *A2-1-03*, *Indemnification for Losses*.)

Section 201.06 Concurrent Servicing Transfers (07/20/06)

In a concurrent servicing transfer, the servicing lender is under the same contractual obligations under the MSSC as the selling lender. (Also see *Section 205*, *Post-Delivery Transfers of Servicing (09/30/06)*.)

A concurrent servicing transfer (also known as a transfer of servicing concurrent with delivery) occurs when a selling lender transfers the servicing rights for a mortgage loan to a Fannie Mae–approved servicer at

the same time it sells the mortgage loan to Fannie Mae. This is an "automatic" transfer because Fannie Mae's prior approval of the transaction is not required.

If the selling lender is servicing the mortgage loans prior to delivery and will not be servicing the mortgage loans after delivery, the selling lender may automatically transfer servicing to a lender that is eligible to service them for Fannie Mae, and has agreed to do so, effective concurrently with delivery of the mortgage loans to Fannie Mae. The lender must notify Fannie Mae at the time of mortgage loan delivery that servicing has been transferred.

Additionally, if:

- the selling lender is not servicing the mortgage loans prior to delivery because it has contracted with another lender (the "servicing lender") to service the mortgage loans for the selling lender;
- the selling lender will not be servicing the mortgage loans after delivery;
- the servicing lender is eligible to service the mortgage loans for Fannie Mae; and
- the servicing lender agrees to service the mortgage loans for Fannie Mae, which requires the contractual servicing relationship be with Fannie Mae instead of with the seller,

the selling lender may designate the servicing lender as Fannie Mae's servicer for the mortgage loans by notifying Fannie Mae at the time of delivery.

If the servicing lender wants the contractual servicing relationship to be with the selling lender instead of with Fannie Mae, even after delivery of the mortgage loans to Fannie Mae, the selling lender must become Fannie Mae's servicer (as "master servicer"), and the servicing lender must become a "subservicer." (See *Section 206*, *Subservicing (06/24/04)*.)

After Fannie Mae has purchased or securitized a mortgage loan, it must approve all subsequent assignments of servicing related to that mortgage loan before the servicing can be transferred.

Section 201.06.01 Notification of Concurrent Servicing Transfers (06/10/11)

The lender must notify Fannie Mae of the transferee servicer by entering the nine-digit seller/servicer number that Fannie Mae has assigned to the transferee servicer on one of the following forms:

- *FRM/GEM Loan Schedule* (Form 1068)
- *ARM/GPARM Loan Schedule* (Form 1069)
- *Schedule of Mortgages* (Form 2005)

If required, the lender must also include in its delivery package mortgage loan assignments prepared in accordance with the *Selling Guide*, *B8-6-02*, *Mortgage Assignment to Fannie Mae*.

Section 201.06.02 Termination of Concurrent Servicing Transfers (06/10/11)

If a concurrent servicing transfer does not meet Fannie Mae's eligibility standards as stated in this Guide and in the *Selling Guide*, Fannie Mae is entitled to terminate the transferee's servicing with respect to the affected mortgage loans in order to transfer servicing of the mortgage loans to another servicer. The lender is obligated for all costs, expenses, and/or losses resulting from its designation of an ineligible servicer.

Section 201.07 Pledge of Servicing Rights (03/29/10)

As provided in the *Selling Guide*, *A3-3-01*, *Outsourcing of Mortgage Processing and Third-Party Originations*, a lender or servicer may pledge the servicing rights to all or part of its Fannie Mae one- to four-unit mortgage loan servicing portfolio, including mortgage loans in MBS pools, for the following purposes:

- to fund the purchase of additional servicing portfolios;
- to provide collateral for warehouse lines of credit; or
- to effect the purchase of a mortgage banking company, including a management buyout of its existing company.

The lender or servicer must request Fannie Mae's prior approval of a specific pledging transaction at least 30 days in advance of the proposed

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- to fund the purchase of additional servicing portfolios;
- to provide collateral for warehouse lines of credit; or
- to effect the purchase of a mortgage banking company, including a management buyout of its existing company.

The lender or servicer must request Fannie Mae's prior approval of a specific pledging transaction at least 30 days in advance of the proposed

effective date. The transaction between the lender or servicer and the secured creditor must be documented by a security agreement in a form determined by the lender or servicer. Both the lender or servicer and the secured creditor also must execute an acknowledgment agreement in a form approved by Fannie Mae, which sets forth the rights and responsibilities of the lender or servicer, the secured party, and Fannie Mae.

A. Security agreement. The lender or servicer pledging its servicing rights and the secured party to whom the rights are pledged must enter into a legally binding security agreement. Fannie Mae does not specify precise terms or provisions that must be included in the agreement. However, since the terms and provisions of the acknowledgment agreement (which is executed by the lender or servicer, the secured creditor, and Fannie Mae) will prevail if there are any conflicts or inconsistencies between the security agreement and the acknowledgment agreement, both parties executing the security agreement should make every effort to ensure that there are no conflicts or inconsistencies between the two agreements. Each request for approval of a proposed pledging transaction must include a copy of the related proposed security agreement. The security agreement may be amended after Fannie Mae approves the transaction (without obtaining Fannie Mae's prior consent), as long as all representations and warranties made by the lender or servicer and the secured party (or parties) will apply to such amendment.

The secured creditor must insert the following language in any financing statement it files for recordation in connection with the security agreement:

> The security interest created by this financing statement is subject and subordinate to all rights, powers, and prerogatives of Fannie Mae under, and in connection with, the Lender Contract and all applicable Pool Purchase Contracts between Fannie Mae and (**insert name of lender or servicer named in acknowledgment agreement*) and the *Selling Guide*, *Servicing Guide*, and other Guides, as each of such Guides is amended from time to time (collectively, the "Fannie Mae Contract"), which rights, powers, and prerogatives include, without limitation, the right of Fannie Mae to terminate the Fannie Mae Contract with or without cause

and the right to sell, or have transferred, the Servicing Rights as therein provided.

The secured creditor must provide a copy of any recorded financing statement to the lender's or servicer's appropriate Fannie Mae regional office. If the security interest is released or extinguished or if the servicing rights are transferred to the secured creditor as the result of the lender or servicer's default under the security agreement (or in accordance with the terms of the acknowledgment agreement), the secured creditor must file for recording a proper release of the recorded security interest within five working days after the effective date of the termination, transfer, or extinguishment, notifying the appropriate Fannie Mae regional office of the filing.

B. Acknowledgment agreement. Fannie Mae will not approve any request for the pledging of a lender or servicer's servicing rights unless the lender or servicer and the secured creditor execute a standard Fannie Mae acknowledgment agreement. (Two separate agreements—one for use when there is a single secured party and one for use when there are multiple secured parties—are available through Fannie Mae's regional offices.) Under the terms of the acknowledgment agreement, the secured creditor's security interest is subordinate to all of Fannie Mae's rights, powers, and prerogatives under the MSSC, individual commitment or pool purchase contracts, and the *Selling Guide* and *Servicing Guide*. The secured creditor has no claim or entitlement as a secured creditor against Fannie Mae, and Fannie Mae has no duty or obligation to the secured creditor, except for those specified in the acknowledgment agreement. The acknowledgment agreement does recognize that the secured party may sell one or more participation interests in portfolio mortgage loans that are subject to the security agreement and provides for the purchasers of the participation interests to be entitled to the benefits of both the security agreement and the acknowledgment agreement. Both the secured creditor and the lender and/or servicer must indemnify and hold Fannie Mae harmless against all losses, claims, lawsuits, actions, damages, judgments, costs, and expenses arising or resulting from any action they take (or do not take) in compliance with the terms of either the security agreement or the acknowledgment agreement. The secured creditor also must agree to indemnify and hold Fannie Mae harmless against all losses, claims, lawsuits, actions, damages, judgments, costs, and expenses arising from or connected with the security agreement or the secured creditor's

foreclosure, transfer, or sale of the servicing rights under the terms of the security agreement.

The secured creditor has the right to request Fannie Mae to transfer the servicing of the mortgage loans for which servicing rights have been pledged if it elects to enforce its security interest or any remedy for the lender or servicer's default under the security agreement. The secured creditor may request that the servicing be transferred to it (if it is an approved Fannie Mae servicer) or it may request that the servicing be transferred to another lender or servicer that is a Fannie Mae–approved servicer, if it has a valid power of attorney authorizing it to make the transfer request on the lender or servicer's behalf. The secured creditor must present the power of attorney to the Fannie Mae regional office with its request that Fannie Mae transfer the servicing to another lender or servicer. The transfer-of-servicing request will be evaluated, processed, and documented under Fannie Mae's general procedures for servicing transfers, unless Fannie Mae agrees to modify a specific requirement or amend a particular document. Fannie Mae will not unreasonably withhold its consent to a transfer that is proposed by the secured party. If Fannie Mae finds the proposed transferee servicer unacceptable, it will work with the secured party to find another servicer that is acceptable.

Fannie Mae has the right, under the terms of its contracts with the lender or servicer, to terminate, sell, or transfer the servicing that has been pledged and, if Fannie Mae exercises that right, it has the further right to receive all proceeds from the termination, sale, or transfer of the servicing. Under the terms of the acknowledgment agreement, the servicing rights that have been pledged can be terminated, sold, or transferred free and clear of the secured creditor's security interest when the termination, sale, or transfer takes place in accordance with Fannie Mae's contractual provisions with the lender or servicer.

When Fannie Mae exercises its right to terminate, sell, or transfer servicing that has been pledged, it may select the secured creditor or its designee to act as the new servicer (or subservicer) of the mortgage loans or it may select another Fannie Mae–approved servicer. Fannie Mae will notify the secured creditor after it terminates the lender or servicer's servicing rights that have been pledged. To the extent that Fannie Mae is fully reimbursed for all costs and expenses related to the sale or transfer and for any and all amounts it is due for unmet obligations under its

Lender Contract, Fannie Mae will notify the secured creditor of its right to claim all or part of any remaining sales proceeds or any applicable contract termination fees—if it has a valid power of attorney from the lender or servicer authorizing it to request distribution of the sales proceeds or any applicable contract termination fees. The secured creditor must present the power of attorney to the Fannie Mae regional office with its request that Fannie Mae distribute the sales proceeds or any applicable contract termination fees. A secured creditor's failure to execute the acknowledgment agreement may impair its ability to claim any portion of the sales proceeds or any applicable contract termination fees if Fannie Mae terminates the lender or servicer's contract and sells the servicing portfolio and will impair its ability to request Fannie Mae to transfer the mortgage loans for which the servicing rights are pledged to another servicer if the lender or servicer defaults under the security agreement. A lender or servicer's failure to execute the acknowledgment agreement could result in a suspension of its selling and servicing rights or in the termination of its Lender Contract, if it proceeds with an unauthorized pledging of its servicing rights.

Section 201.08 Termination of Servicing Arrangement Without Cause (04/01/09)

The servicer or Fannie Mae may terminate the servicing arrangement without cause.

Section 201.08.01 Servicer's Termination (09/30/06)

By giving Fannie Mae advance written notice, a servicer may terminate its contractual rights to the servicing of mortgage loans or participation interests in mortgage loans for all of the mortgage loans and MBS pools it is servicing without providing for a transferee servicer to assume the servicing obligations. The termination will become effective on the last business day of the third month following the month in which the notice is given. The servicer's termination of its servicing arrangement does not release it from any of its responsibilities or liabilities related to specific mortgage loans and MBS pools that Fannie Mae purchased or securitized (or contracted to purchase or securitize) before the termination, unless Fannie Mae expressly agrees in writing to release the servicer from those responsibilities or liabilities. Absent Fannie Mae's written agreement, the servicer may not terminate its servicing rights for less than all of the mortgage loans or participation interests in mortgage loans that it is servicing for Fannie Mae.

To assist Fannie Mae in complying with IRS reporting requirements, a servicer that collects prepayment premiums under the terms of a negotiated contract should report any prepayment premium it collects for a given mortgage loan (even if the premium is not remitted to Fannie Mae) as part of the monthly activity information it provides through Fannie Mae's investor reporting system.

Section 204 Changes in Servicer's Organization (04/01/09)

The servicer must send Fannie Mae written notice of any contemplated major change in its organization. The servicer must follow all requirements in the *Selling Guide*, *A4-3-01*, *Report of Changes in the Lender's Organization*.

In addition, in those situations in which a servicer either is involved in a merger or acquisition or is changing its name, undergoing a corporate reorganization, experiencing either a direct or an indirect change of control, or having a majority interest in its stock change hands, Fannie Mae will treat the action as a transfer of servicing that must be approved and processed in accordance with the requirements of *Section 205*, *Post-Delivery Transfers of Servicing (09/30/06)*. If the lender fails to provide adequate notice of, or obtain approval for, such contemplated actions, Fannie Mae may impose a compensatory fee and exercise any other available remedies

Section 205 Post-Delivery Transfers of Servicing (09/30/06)

Subsequent to the delivery of mortgage loans to Fannie Mae, a servicer cannot transfer its responsibility for servicing any such mortgage loans unless Fannie Mae approves the transfer. Fannie Mae will not recognize unauthorized transfers of servicing. In fact, any such action may be the basis for terminating the contractual relationships Fannie Mae has with both the transferor and transferee servicers. Instead of terminating the contractual relationship(s), Fannie Mae may choose to impose sanctions, compensatory fees, or other available remedies when a servicer fails to give Fannie Mae adequate notice of a proposed transfer, obtain its approval for a transfer, or fulfill any conditions of Fannie Mae's approval of a given transfer of servicing. (The amount of any compensatory fee Fannie Mae imposes can vary depending on the circumstances; however, it will not be greater than 1% of Fannie Mae's share of the aggregate UPB of the mortgage loans being transferred.) Fannie Mae will hold any transferor or transferee servicer that enters into an unauthorized transfer of servicing liable for any losses, liabilities, or other expenses Fannie Mae incurs as the result of the unauthorized transfer.

The servicer must obtain Fannie Mae's prior written consent for any transfer of servicing involving Fannie Mae–owned or Fannie Mae–securitized mortgage loans. Fannie Mae generally will consider requests for transfers of either all or a portion of the mortgage loans that a lender services for it. However, if the transfer involves mortgage loans in a regular servicing option MBS pool or a shared-risk special servicing option MBS pool for which the servicer's shared-risk liability is still in effect, individual loan-level servicing transfers are not permitted; rather, the servicing of all of the mortgage loans in the pool must be transferred. The transferor servicer may use a CPU-to-CPU electronic file transfer or any other electronic means that Fannie Mae specifies to notify Fannie Mae about a full transfer of its servicing portfolio or to provide it with a list of mortgage loans that will be included in a partial transfer of servicing (see *Part X, Section 206, Transaction Type 80 (Subservicer Arrangement Record) (01/31/03)*). The servicer's electronic notification may be submitted as early as six months and as late as fifteen days before the proposed effective date for the transfer of servicing.

The proposed transferee servicer must be an approved servicer that is in good standing with Fannie Mae. The servicer also must have in place appropriate controls and adequate procedures relating to the boarding of new loans (subsequent either to origination or acquisition of servicing pursuant to a servicing transfer) to avoid any delayed application of borrower payments of principal, interest, taxes, or insurance (when applicable). In particular, servicing errors and disputes may occur as a result of servicing transfers. Accordingly, before Fannie Mae approves a transfer, it will evaluate the transferee servicer's performance in the following areas (although it may consider additional factors if it chooses to do so):

- overall servicing performance, including the servicing of special mortgage loan products, accounting, and remitting;
- capacity to service the number and types of mortgage loans that are to be included in the proposed transfer;
- overall performance of other contractual duties and obligations;
- delinquency ratios;

- foreclosure and acquired property activity;
- status of unresolved issues related to repurchase requests, claim denials or curtailments, or other outstanding claims; and
- financial condition.

Fannie Mae's contractual requirements related to transfers of servicing and the servicers' obligations to perform under them apply in all cases (unless Fannie Mae expressly waives them in writing); therefore, Fannie Mae encourages a servicer that is contemplating the purchase of another servicer's portfolio to contact its Portfolio Manager, Servicing Consultant, or the National Servicing Organization's Servicer Solutions Center early in the negotiation process. This will ensure that the servicer is aware of any objections Fannie Mae might have to its becoming a transferee servicer for the servicing portfolio it is considering purchasing, can determine whether the proposed transfer involves unusual circumstances or conditions that might require additional time for Fannie Mae to review, and ascertain whether the proposed transfer has terms that might not be readily acceptable to Fannie Mae.

Fannie Mae will make no representations or warranties about the value, condition, or any other aspects of the mortgage loans for which servicing will be transferred. Because the transferee servicer will be liable to Fannie Mae for all obligations of the transferor servicer, Fannie Mae expects that the transferee servicer will perform a due diligence review of the servicing portfolio that it is acquiring. However, the transferee servicer's obligations to Fannie Mae are not contingent on the performance of such a due diligence review. To assist the two servicers in processing and reconciling the transfer of servicing, Fannie Mae has designed a series of reports that should significantly reduce the likelihood of errors or delays in the transfer process. The information in these reports can be used to reconcile and correct loan-level information related to the mortgage loans for which servicing is to be transferred. Any information in the reports Fannie Mae provides will be compiled from data in its records (including information it received from third parties, but did not independently verify). However, Fannie Mae does not attest to the accuracy, completeness, or suitability of the information for the servicers' use for any particular purpose(s). For any given transfer of servicing, Fannie Mae will use appropriate business practices to permit both the transferor servicer and the transferee servicer

(but no other parties) to have access to the data on which the reports are based. Fannie Mae does not represent or warrant that any unauthorized party will not be able to gain access to the data (particularly when it is transmitted electronically), nor will Fannie Mae be responsible for any damages arising out of, or related to, such parties gaining access to the data and using the information it provides.

To ensure that Fannie Mae has sufficient time to review a proposed transaction and to give the two servicers time to receive Fannie Mae's consent before the proposed effective date for the transfer (and before notices of the transfer are given to borrowers), the transferor servicer must submit a *Request for Approval of Servicing Transfer* (Form 629) in an electronic format to the appropriate Fannie Mae regional office at least 30 days (and no more than 180 days) before the proposed effective date. At the same time, the transferor servicer should submit a check for a nonrefundable $500 processing fee (which should note the names of both servicers and the proposed effective date of the transfer). (The proposed effective date of the transfer must be the last business day of the last month for which the transferor servicer will be responsible for reporting loan-level detail activity to Fannie Mae.)

If any of the mortgage loans for which servicing is to be transferred are in MBS pools that are part of a Fannie Majors® multiple pool and the transferee servicer is already servicing mortgage loans in the same Majors pool, it may report the transferred mortgage loans under the same nine-digit Fannie Mae lender identification number that it currently uses, as long as the mortgage loans have the same remittance type and date as the mortgage loans that it is already reporting under that number. If the transferred mortgage loans have a different remittance type or date, the transferee servicer must contact its Portfolio Manager, Servicing Consultant, or the National Servicing Organization's Servicer Solutions Center to request a new branch lender identification number for reporting on the transferred mortgage loans.

If Fannie Mae consents to a proposed transfer of servicing, it will deliver its consent to the two servicers using the same format in which it received the Form 629. Fannie Mae's consent will state that, by implementing the related transfer of servicing, both the transferor servicer and the transferee servicer agree to the provisions of the MSSC, this Guide (and any amendments made to this Guide with respect to servicing transfers or to

the servicing of the transferred mortgage loans), and any other provisions set forth in the consent and acknowledge that all such obligations become effective as of the effective date of the transfer of servicing (although some of the obligations, such as those for notifying borrowers, will have begun or will have been completed prior to the effective date). As a condition of approving the transfer of servicing, Fannie Mae reserves its right to request and obtain (at any time) a copy of the servicing transfer agreement between the transferor servicer and the transferee servicer.

The following *Sections* discuss Fannie Mae's standard conditions for approval of a servicing transfer. Fannie Mae also may impose additional terms and conditions on its consent to a servicing transfer if it deems it to be appropriate under the particular circumstances. If it does, it will describe those conditions in its consent statement.

Section 205.01 Portfolio Definition (01/31/03)

The transfer of the servicer's entire servicing portfolio must include all mortgage loans that are being serviced even if they no longer generate any servicing fee income. This means that delinquent mortgage loans and foreclosed mortgage loans that have been removed from an active accounting status must be transferred, unless Fannie Mae has notified the servicer that Fannie Mae's records have been closed or the servicer has repurchased a mortgage loan under the terms of the regular servicing option or a negotiated shared-risk servicing option.

Fannie Mae will approve the transfer of servicing for an FHA coinsured mortgage loan only if the proposed servicer is a HUD-approved coinsurer that is willing to assume the coinsurance obligations for the mortgage loan.

Section 205.02 Servicing Fee (01/31/03)

Generally, the transferee servicer will receive the same servicing compensation that the transferor servicer was receiving. For actual/actual and scheduled/actual remittance type mortgage loans held in Fannie Mae's portfolio, the transferee servicer will receive as its servicing fee the same amount—the base servicing fee plus any excess yield—that the transferor servicer had been receiving. For MBS mortgage loans and for scheduled/scheduled remittance type mortgage loans held in Fannie Mae's portfolio, the transferee servicer will receive compensation at the same rate that the transferor servicer had been receiving, which is the difference between the mortgage interest rate (less any applicable premium for

lender-purchased mortgage insurance) and the sum of Fannie Mae's required pass-through rate and the guaranty fee rate.

Section 205.03 Assumption of Warranties and Other Obligations (01/31/03)

The transferee servicer must assume all of the responsibilities, duties, and selling warranties that were agreed to whether made when the mortgage loan was originally sold to Fannie Mae or subsequent to that date. This includes responsibility for the performance of obligations that predate the transfer, including "special obligations" (as that term is used in *Section 201.02*, *Representation and Warranty Requirements for the Servicing of All Mortgage Loans (06/10/11)*). However, the transferee servicer's assumption of these responsibilities, duties, and warranties will in no way release the transferor servicer from its contractual obligations related to the transferred mortgage loans. The two servicers will be jointly and severally liable to Fannie Mae for all warranties and for repurchase, all special obligations under agreements previously made by the transferor servicer or any previous seller or servicer (including actions that arose prior to the transfer).

Fannie Mae requires a servicer to provide special notification to the new servicer when it includes eMortgages in a transfer of servicing. Specifically, the transferor servicer must advise the transferee servicer that eMortgages are part of the portfolio being transferred and must confirm that the transferee servicer is not only aware of the special requirements for eMortgages required by Fannie Mae's *Guide to Delivering eMortgage Loans to Fannie Mae*, but also agrees to assume the additional responsibilities associated with servicing eMortgages.

Fannie Mae requires the servicer to provide special notification to the new servicer when mortgage loans subject to resale restrictions (whether or not the restrictions survive foreclosure or acceptance of a deed-in-lieu) are included in the portfolio being transferred. The servicer must identify each mortgage loan subject to resale restrictions on the *Request for Approval of Servicing Transfer* (Form 629). The transferee servicer must be aware of its duties and obligations related to the servicing of mortgage loans subject to resale restrictions.

The transferee servicer agrees to assume all obligations related to the servicing of MBS pools—including all duties and responsibilities under the regular servicing option or a negotiated shared-risk servicing option, bearing all costs and risks previously borne by the transferor servicer (or

any earlier seller or servicer), as well as any additional costs and risks that arise subsequent to, or as the result of conditions imposed on, the transfer.

Fannie Mae's consent to a transfer of servicing does not release either the transferor servicer or the transferee servicer from any obligation it would otherwise have to Fannie Mae. As of the effective date for an approved transfer of servicing, the transferor servicer and the transferee servicer acknowledge their joint and several liability with respect to the transferred mortgage loans (and for any special obligations outstanding as of the effective date of the transfer, unless Fannie Mae has agreed to release one of the servicers from a specific responsibility). For the most part, Fannie Mae will look first to the transferee servicer for fulfilling any financial or other obligations related to the warranties, repurchase, and special obligations, but Fannie Mae does reserve the right to hold the transferor servicer to these obligations. In fact, both servicers also acknowledge their obligation to ensure that Fannie Mae is paid directly any proceeds of the servicing transfer that may be required to offset any claims Fannie Mae may have against the transferor servicer and agree to indemnify Fannie Mae for any loss or damage arising out of a failure to fully transfer all documents, records, and funds required by the servicing transfer agreement.

Section 205.04 Notifying Borrowers (01/31/03)

The transferor and transferee servicers must work together closely to ensure that borrowers receive not only prompt and accurate notification of a pending transfer, but also prompt and courteous responses to their inquiries about the servicing transfer. Both servicers are responsible for sending specific notices to the borrowers whose servicing is being transferred. All notices provided to borrowers must be made in accordance with applicable law, including the provisions of the Real Estate Settlement Procedures Act (RESPA) and any state law requirements.

Section 205.05 Notifying Third Parties (01/31/03)

To ensure that all servicing functions that involve third parties will continue uninterrupted (or will be discontinued if that is appropriate) after the transfer of servicing, either the transferor servicer or the transferee servicer must take the following actions:

- Fulfill all requirements of each mortgage insurance policy that insures any of the conventional mortgage loans included in the transfer—including, but not limited to, the requirements for providing timely notification or requesting prior approval—to ensure the continuation of

final monthly accounting period for all mortgage loans and MBS pools included in the servicing transfer. The two servicers should agree on how to resolve any differences and reconcile items or funds that are owed Fannie Mae or security holders. (Any questions regarding resolution of these issues should be directed to the transferor servicer's Fannie Mae investor reporting system Business Analyst.) Within 30 days after the effective date of the servicing transfer, the transferor servicer must send its Fannie Mae investor reporting system Business Analyst a copy of the completed shortage/surplus reconciliation related to the transferred mortgage loans (so it can be used to support any adjustment that may need to be made to the transferor servicer's shortage/surplus balance). The transferee servicer will be responsible for any Fannie Mae investor reporting system shortages or security balance deficiencies related to mortgage loans or pools included in the transfer that are not resolved by the transferor servicer.

Section 205.09
Preparing Mortgage Assignments (01/31/03)

The need to prepare new mortgage assignments in connection with a transfer of servicing will depend on whether Fannie Mae is the owner of record for the mortgage loan and, if Fannie Mae is not, on whether the mortgage loan is registered with MERS.

In those instances in which Fannie Mae holds the custodial documents, any required assignments that are submitted to Fannie Mae must be identified by the applicable Fannie Mae loan number and submitted under cover of a transmittal letter that includes the following information:

- the name of the transferor servicer;
- the name of the transferee servicer;
- the number of mortgage loans included in the transfer, as well as the number of mortgage loans for which recordable (but unrecorded) assignments to Fannie Mae have been executed;
- the effective date of the transfer;
- a trial balance of the transferred mortgage loans, which identifies the mortgage loans for which assignments to Fannie Mae are being provided (or, if only a few mortgage loans are being transferred, a list

of the transferred mortgage loans for which assignments are being provided);

- the transfer log number provided by the Portfolio Manager, Servicing Consultant, or the National Servicing Organization's Servicer Solutions Center when the transfer was approved; and

- the name and telephone number of a person Fannie Mae can contact if it has any questions about the documents.

Fannie Mae is the owner of record. A new mortgage assignment does not need to be prepared if the assignment to Fannie Mae has been recorded. A mortgage loan for which Fannie Mae is the owner of record would be one of the following:

- a mortgage loan that was delivered to Fannie Mae before it converted to the Fannie Mae investor reporting system in 1984 (regardless of the location of the security property);

- a mortgage loan that is secured by a property located in Mississippi or Utah, if the mortgage loan was delivered to Fannie Mae during the period that Fannie Mae required recorded assignments for a Mississippi mortgage loan (after September 1, 1988, until June 7, 1989) or for a Utah mortgage loan (after September 1, 1988, until October 31, 1991); or

- a mortgage loan for which Fannie Mae requested recordation of the assignment (for any reason) after it purchased or securitized the mortgage loan.

Fannie Mae is not the owner of record and the mortgage loan is not registered with MERS. An assignment from the transferor servicer to the transferee servicer must be prepared and recorded if an assignment to Fannie Mae has not been recorded for a mortgage loan that is not registered with MERS. (Blanket assignments may be used for the assignment, as long as the coverage for each blanket assignment is restricted to a single recording jurisdiction.) The transferee servicer has full responsibility for recording an assignment from the transferor servicer to itself, regardless of which servicer prepares and records the assignment. Then, an assignment from the transferee servicer to Fannie Mae must be

prepared (in recordable form, but not recorded) to replace the one Fannie Mae had originally received from the transferor servicer. This unrecorded assignment from the transferee servicer to Fannie Mae should be an individual assignment. The unrecorded assignment to Fannie Mae must be delivered to Fannie Mae or the applicable document custodian within ***six*** months of the effective date of the servicing transfer.

Generally, when a transferred mortgage loan is secured by a property located in Puerto Rico, neither an assignment of the mortgage loan from the transferor servicer to the transferee servicer nor an unrecorded assignment from the transferee servicer to Fannie Mae will need to be prepared and recorded. However, there are two situations in which an assignment of the mortgage loan (or a similar document) will need to be prepared and recorded:

- For a "direct" mortgage loan (one that is documented by a single instrument that combines the terms of the note and the mortgage loan), a deed of assignment of the mortgage loan must be prepared and recorded to advance the chain of title through the transferee servicer's name. (This deed of assignment can be an individual assignment or a blanket assignment, as permitted by the jurisdiction.) The transferee servicer will then need to execute an individual unrecorded assignment of the mortgage loan to Fannie Mae and submit it to Fannie Mae (or the applicable document custodian) within ***six*** months after the effective date of the servicing transfer.

- For any other mortgage loan for which Fannie Mae (or the applicable document custodian) does not have in its possession an unrecorded assignment to Fannie Mae that was executed by the lender that originated the mortgage loan, such an assignment must be obtained from the mortgage loan originator. If that is not possible, the transferee servicer must prepare an individual unrecorded assignment of the mortgage loan from itself to Fannie Mae and submit it to Fannie Mae (or the applicable document custodian) within ***six*** months of the effective date of the servicing transfer. When the transfer of servicing includes a large number of mortgage loans secured by properties in Puerto Rico, one or more blanket assignments may be used if it is not practical to execute individual assignments.

Fannie Mae is not the owner of record and the mortgage loan is registered with MERS. Generally, neither an assignment of the mortgage loan from the transferor servicer to the transferee servicer nor an unrecorded assignment from the transferee servicer to Fannie Mae will need to be prepared and recorded when the servicing of a MERS-registered mortgage loan is transferred to a servicer that is a MERS member (if the transferee servicer intends to continue the MERS registration for the mortgage loan). In some situations, Fannie Mae may indicate that it wants to obtain these assignments.

However, when the servicing of a MERS-registered mortgage loan is transferred to a servicer that is not a MERS member (or to a servicer that elects not to continue the MERS registration for the mortgage loan), Fannie Mae requires:

- the transferor servicer to prepare an assignment of the mortgage loan from MERS to the transferee servicer and have it executed,
- the transferor servicer to "deactivate" the mortgage loan in MERS,
- the transferor servicer or the transferee servicer (at their choice) to record the assignment of the mortgage loan from MERS to the transferee servicer, and
- the transferee servicer to prepare a recordable (but unrecorded) assignment of the mortgage loan from itself to Fannie Mae and to deliver it to Fannie Mae or the applicable document custodian.

When the originator of the mortgage placed the MERS Mortgage Identification Number (MIN) on the note when the mortgage was registered with MERS (and the mortgage loan is still registered with MERS), the document custodian will be able to tell whether an assignment of the mortgage loan needs to be required in connection with the transfer of servicing. When the MIN is on the note, but the mortgage loan is no longer registered with MERS, either the transferor servicer or the transferee servicer must notify the document custodian to delete the MIN from the note (with the servicer that is responsible for the deactivation providing the notice). When the MIN does not appear on the note, other actions must be taken to ensure that the custodian is aware of whether or not the mortgage loan is registered with MERS. This can be accomplished

by (1) providing the custodian with a copy of the original *Schedule of Mortgages* (Form 2005) that has been appropriately annotated to indicate that a mortgage loan originally registered with MERS is no longer registered (by deleting the MIN that was originally reported) or to indicate the subsequent registration with MERS (by inserting the applicable MIN); or (2) providing the custodian with a listing of all MERS-registered mortgage loans that are included in the transfer, along with a certification that any and all other mortgage loans included in the transfer are not currently registered with MERS. (If there are more MERS-registered mortgage loans included in the transfer than there are unregistered mortgage loans, the listing may instead identify the unregistered mortgage loans and then the certification should state that any and all other mortgage loans included in the transfer are currently registered with MERS.)

Section 205.10
Transfer of Custodial Documents (09/30/05)

When the transfer of servicing includes MBS mortgage loans, the transferee servicer may choose to use the existing document custodian (if it meets all of Fannie Mae's eligibility criteria for document custodians), to make arrangements for a different document custodian (including Fannie Mae's DDC), or to retain custody of the documents itself (if it satisfies Fannie Mae's eligibility criteria for document custodians and the additional criteria Fannie Mae imposes on lenders that act as the document custodian). If the transferee servicer chooses to use the existing document custodian, it will need to have a *Master Custodial Agreement* (Form 2003) executed—unless it already has a master custodial agreement on file for that custodian—and ask the document custodian to complete an *MBS Custodian Recertification* (Form 2002) in connection with the servicing transfer within six months of the effective date of the transfer. If Fannie Mae's DDC is already holding the custodial documents for the mortgage loans that are being transferred, Fannie Mae will update its records to reflect the new servicer and accept any new unrecorded assignment of the mortgage loan to Fannie Mae from the transferee servicer, if applicable, without charging any additional fees.

If the transferee servicer chooses to change document custodians (or decides to hold the documents itself), the transferor servicer is responsible for controlling the documents until they are released to the new document custodian. The transferee servicer and the transferor servicer must work out appropriate arrangements for paying the costs of transferring the documents and obtaining the required pool recertification in an

- protect against unauthorized access to or use of such files and records and is responsible for requiring, by contract, that any subservicers or other third parties that access mortgage files and records also implement these measures.

Fannie Mae has the right to examine, at any reasonable time, any and all records that pertain to mortgage loans it holds in its portfolio or those that have been included in an MBS pool, any and all accounting reports associated with those mortgage loans and borrower remittances, and any other reports, data, information, and documentation that it considers necessary to ensure that the servicer is in compliance with Fannie Mae's requirements.

Section 401 Ownership of Mortgage Loan Files and Records (01/31/03)

All records pertaining to mortgage loans sold to Fannie Mae—including but not limited to the following—are at all times the property of Fannie Mae and any other owner of a participation interest in the mortgage loan:

- notes,
- security instruments,
- loan applications,
- credit reports,
- property appraisals,
- tax receipts,
- payment records,
- insurance policies and insurance premium receipts,
- water stock certificates,
- ledger sheets,
- insurance claim files and correspondence,
- foreclosure files and correspondence,

- current and historical computerized data files,
- machine-readable materials, and
- all other documents, instruments and papers pertaining to the loan including, without limitation, any records, data, information, summaries, analyses, reports, or other materials representing, based on, or compiled from such records that are reasonably required to originate and subsequently service a mortgage loan properly.

These documents and records are Fannie Mae's property regardless of their physical form or characteristics or whether they are developed or originated by the mortgage loan seller or servicer or others.

The mortgage loan originator, seller, or servicer; any service bureau; or any other party providing services in connection with servicing a mortgage loan for, or delivering a mortgage loan to, Fannie Mae will have no right to possession of these documents and records except under the conditions specified by Fannie Mae.

Any of these documents and records in possession of the mortgage loan originator, seller, or servicer, any service bureau, or any other party providing services in connection with selling a mortgage loan to, or servicing a mortgage loan for, Fannie Mae are retained in a custodial capacity only.

Section 402 Electronic Records (10/31/08)

An electronic record is a contract or other record that is created, generated, sent, communicated, received, or stored by electronic means. A record is information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. Servicers (and/or, as applicable, document custodians) are required to retain the foregoing records as set out below. All records in the individual mortgage loan file may be retained as electronic records, except for the promissory note and any records that modify or supplement the promissory note, in which case the original ink-signed records of such instruments should be stored in the mortgage loan files. Where a lender has an eMortgage variance in place with Fannie Mae, these requirements may not apply.

must retain with its records for the applicable MBS pool, a copy of the Form 2002 and the trial balance (or annotated Form 2005) for the MBS pool. The servicer will not need to provide any recertification documentation if the new document custodian is Fannie Mae's DDC.

Section 405 Types of Records (01/31/03)

Mortgage loan files and records that may be required to be sent to Fannie Mae include individual mortgage loan files, permanent mortgage account records, and accounting system reports. The responsibility for the physical possession of the mortgage loan documents may vary depending on whether the mortgage loan is a portfolio or MBS mortgage loan.

The lender must establish the individual mortgage loan file when it originates a mortgage. If the lender does not service the mortgage, it must transfer the file to the servicer to ensure that the servicer will have complete information about the mortgage loan in its records.

The accounting records relating to mortgage loans serviced for Fannie Mae must be maintained in accordance with sound and generally accepted accounting principles and in such a manner as will permit Fannie Mae's representatives to examine and audit such records at any time.

Specifically, Fannie Mae's examination and audit of a servicer's records will consist of:

- monitoring all monthly accounting reports submitted to Fannie Mae;
- conducting periodic procedural reviews during visits to the servicer's office or the document custodian's place of business;
- conducting, from time to time, in-depth audits of the servicer's internal records and operating procedures—including, but not limited to, the examination of financial records, borrower escrow deposit accounts, and underwriting standards; and
- performing spot-check underwriting reviews of mortgage loans in the servicer's portfolio on a random sample basis.

State and federal law now recognizes electronic records as being equivalent to paper documents for legal purposes; therefore, Fannie Mae's

requirements for record accessibility and retention apply equally to paper and electronic records.

Section 405.01 Individual Mortgage Loan Files (08/24/03)

The lender must establish an individual file for each mortgage loan it sells to Fannie Mae. Each file must be clearly identified by Fannie Mae's loan number, which can be marked on the file folder or logically associated with any file which is composed of electronic records.

Files for participation pool mortgage loans must be clearly identified by the words "Fannie Mae participation" and Fannie Mae's percentage interest.

Files for MBS mortgage loans must identify the number of the related MBS pool.

Files must include any records that will be needed to service the mortgage loan as well as records that support the validity of the mortgage loan. The servicer should use the individual mortgage loan file established at the time of origination to accumulate other pertinent servicing and liquidation information, such as:

- property inspection reports,
- copies of delinquency repayment plans,
- copies of disclosures of ARM interest rate and payment changes,
- documents related to insurance loss settlements, and
- foreclosure notices.

Among other things, the initial individual mortgage loan file must include:

- a copy of the Participation Certificate, if applicable;
- a copy of the related Schedule of Mortgages for a mortgage loan (or a participation interest in a mortgage loan) if an MBS mortgage loan;

- originals of the recorded mortgage or deed of trust, any applicable rider, and any other documents changing the mortgage loan terms or otherwise affecting Fannie Mae's legal or contractual rights;

- a copy of the mortgage or deed of trust note and any related addenda;

- a copy of either the unrecorded assignment to Fannie Mae (or the recorded assignment, when applicable), or the original assignment to MERS, if the mortgage loan is registered with MERS and MERS is not named as nominee for the beneficiary, and copies of all required intervening assignments;

- a copy of the FHA mortgage insurance certificate, VA mortgage loan guaranty certificate, RD mortgage loan note guarantee certificate, HUD Indian mortgage loan guarantee certificate, or conventional mortgage insurance certificate, if applicable;

- a copy of the underwriting documents, including any Desktop Underwriter reports;

- a copy of the title policy, hazard insurance policy, flood insurance policy (if required), and any other documents that might be of interest to a prospective purchaser or servicer of the mortgage loan or might be required to support title or insurance claims at some future date (for example, FEMA's flood hazard determination form, title evidence, or survey); and

- a copy of the final HUD-1 Settlement Statement (or HUD-1A if applicable) or other closing statement evidencing all settlement costs paid by the borrower and seller, executed by the borrower and seller (if applicable).

Note: In escrow states, if the lender is unable to have the final HUD-1 signed by the borrower and seller, the lender may supplement the final HUD-1 signed by the escrow officer with either:

- the estimated HUD-1 (or multiple matching documents) signed by the borrower and seller, or

- the final Escrow Instructions (or multiple matching documents) signed by the borrower and seller.

The servicer must retain any of these applicable documents and must ensure that they are readily accessible if needed in any bankruptcy or foreclosure proceeding, or for any other purpose in connection with the servicing of the mortgage loan. The servicer may hold copies if originals are not required, while originals have been sent for filing but have not yet been returned, or while the originals are otherwise temporarily out of the servicer's possession.

After a mortgage loan is liquidated, the servicer must keep the individual mortgage loan records for at least four years (measured from the date of payoff or the date that any applicable claim proceeds are received), unless the local jurisdiction requires longer retention or Fannie Mae specifies that the records must be retained for a longer period.

Examples of the collateral document(s) for a manufactured home that are required for mortgage loans for which an application was taken on or after August 24, 2003 include:

- in states where a manufactured home can become real property without first being titled as personal property, documentation (if it is available) indicating that no certificate of title (or similar ownership document) was ever issued;

- in states where the certificate of title (or similar ownership document) can be surrendered or retired when the home becomes real property, documentation evidencing such surrender or retirement;

- the certificate of title (or similar ownership document) if it has not been or cannot be surrendered;

- any Uniform Commercial Code (UCC) financing statement (or similar notice of lien) that was filed pursuant to applicable law; or

- a security agreement that creates a lien on the manufactured home in addition to the mortgage loan or deed of trust.

Servicers that have collateral documents for manufactured housing loans prior to August 24, 2003, must retain any such documents, but they are not required to seek these documents for such mortgage loans.

Generally, the only documents associated with the origination and servicing of a mortgage loan that the servicer needs to retain in paper format are the security instrument (and any related riders), any other document that changes the terms of the mortgage loan, the assignment for a MERS-registered mortgage loan (when MERS is not named as nominee for the beneficiary), the unrecorded assignment of the mortgage loan to Fannie Mae (if the mortgage loan is not registered with MERS and the servicer or a document custodian is holding the assignment as a custodial document), and the note and any related addenda (if the servicer or a document custodian is holding the note as a custodial document). All other documents in the individual mortgage loan file may be retained in an electronic format (as discussed in *Section 406*, *Record Retention and Data Integrity (01/31/03)*). When the servicer chooses to store these documents in a format other than paper, it must provide any prospective transferee servicer with information about the methods it uses for document and records storage. If the transferee servicer uses a different storage method, the transferor servicer must work with the transferee servicer to convert the documents and records to a format that is compatible with the transferee servicer's storage methods.

Section 405.02 Mortgage Loan Payment Records (01/31/02)

The servicer also must maintain permanent mortgage account records for each mortgage loan it services for Fannie Mae. The records must be identified by Fannie Mae's loan number (and any related participation certificate or MBS pool number) in addition to any other identification the servicer uses. The servicer may develop its own system for maintaining these records, as long as it can produce an account transcript within a reasonable time after it is requested.

The servicer's accounting system must be able to produce detailed information on:

- all transactions that affect the mortgage loan balance (the amount and due date of each payment, when the payment was received, and how the payment was applied);

they would confirm that the servicer did not take certain actions that Fannie Mae requires. If that is not the case, the servicer must provide a reasonable explanation for its failure to produce the records and, if appropriate, offer evidence that any particular requirement Fannie Mae is concerned about was satisfied. If the servicer fails to provide a reasonable explanation or any evidence showing that the requirement was satisfied, Fannie Mae can take any action that is authorized under the Lender Contract or its Guides for the servicer's breach of its requirements.

If Fannie Mae has to take legal action to obtain these records, the servicer will be liable for any legal fees, costs, and related expenses that Fannie Mae incurs in enforcing its right of access to the records unless it is determined that Fannie Mae had no legal right of access to them.

Section 408 MERS-Registered Mortgage Loans (01/31/03)

MERS is an electronic system that assists in the tracking of mortgage loans, servicing rights, and security interests. To initiate the electronic tracking, a lender assigns a special MERS MIN to the mortgage loan, registers the mortgage loan in MERS, and then either (1) originates the mortgage loan with MERS appearing in the security instrument as nominee for the beneficiary and its successors and assigns or (2) records an assignment of the mortgage loan to MERS (thus making MERS the mortgagee of record).

When a MERS-registered mortgage loan is delivered to Fannie Mae, the lender reports the MIN on the *Loan Schedule* (Form 1068 or Form 1069) or on the *Schedule of Mortgages* (Form 2005) and, after Fannie Mae purchases the mortgage loan, Fannie Mae notifies MERS to ensure that its records are updated to reflect Fannie Mae's ownership interest. If a mortgage loan is not registered with MERS until after Fannie Mae purchases it, the servicer must report Fannie Mae's ownership when it registers the mortgage loan.

A servicer that chooses to register its entire servicing portfolio with MERS may identify a few instances in which Fannie Mae is the owner of record for the mortgage loan (because an original assignment of the mortgage loan to Fannie Mae was recorded in the public records). When that is the case, the servicer will need to prepare an assignment of the mortgage loan from Fannie Mae to MERS and send it to Fannie Mae for execution (and subsequently record it in the public records) before it can complete the registration of the mortgage loan with MERS.

Registration of Fannie Mae–owned or Fannie Mae–securitized mortgage loans in MERS (as either an assignee or the nominee of the original mortgagee) does not change the lender's (or mortgage servicer's) responsibility for complying with all applicable provisions of the MSSC, Fannie Mae's Guides (as they may be amended from time to time), the lender or servicer's Master Agreement, or any negotiated contract that it has with Fannie Mae (unless Fannie Mae specifies otherwise), or other agreements that are part of the Lender Contract. MERS will have no beneficial interest in the mortgage loan, even if it is named as the nominee for the beneficiary in the security instrument. In addition, MERS' failure to perform any obligation with respect to a MERS-registered mortgage loan does not relieve the lender (or the mortgage servicer) from its responsibility for performing any obligation required by the terms of its Lender Contract.

The lender or servicer is responsible for the accurate and timely preparation and recordation of security instruments, assignments, lien releases, and other documents relating to MERS-registered mortgage loans and must take all reasonable steps to ensure that the information on MERS is updated and accurate at all times. The lender or mortgage servicer also will be solely responsible for any failure to comply with the provisions of the MERS Member Agreement, Rules, and Procedures and for any liability that it or Fannie Mae incurs as a result of the registration of mortgage loans with MERS or any specific MERS transaction.

Section 408.01 Termination of MERS Registration for Active Mortgage Loan (01/31/03)

A servicer may decide that it does not want a mortgage loan that it is actively servicing to remain registered in MERS for some reason. In such cases, the servicer will need to notify MERS to request that the mortgage loan be "deactivated" in MERS. (MERS will notify Fannie Mae about the deactivation of any mortgage loan in which it has an interest.) The servicer will need to prepare an assignment of the mortgage loan from MERS to itself and have it executed, and then record the executed assignment in the public land records. The servicer also must prepare (in recordable form) an unrecorded assignment of the mortgage loan from itself to Fannie Mae and submit the original of that assignment to Fannie Mae's DDC or the applicable document custodian.

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Section 408.02
Termination of Servicer's MERS Membership (01/31/03)

If, for any reason, a servicer's membership in MERS is terminated, the servicer must notify Fannie Mae promptly. For each MERS-registered mortgage loan that it is servicing for Fannie Mae, the servicer must prepare an assignment of the mortgage loan from MERS to itself and have it executed, and then record the executed assignment in the public land records. The servicer also must prepare (in recordable form) an unrecorded assignment of the mortgage loan from itself to Fannie Mae and submit the original of that assignment to Fannie Mae's DDC or the applicable document custodian.

Section 101 Routine vs. Nonroutine Litigation (10/01/08)

A servicer generally should not initiate routine legal proceedings in Fannie Mae's name, but in instances where it is appropriate or necessary to do so, Fannie Mae must be described in the legal proceedings as "Federal National Mortgage Association (Fannie Mae), a corporation organized and existing under the laws of the United States." The servicer, its legal counsel, and foreclosure attorneys (or trustees) should not forward papers, pleadings, and notices related to routine uncontested legal actions to Fannie Mae. If any routine legal proceeding becomes contested (e.g., the defendant in any proceeding files any appeal, motion for rehearing, or similar procedure) or a servicer receives notice of a nonroutine action that involves a Fannie Mae–owned or Fannie Mae–securitized mortgage loan or that will otherwise affect Fannie Mae's interests—regardless of whether Fannie Mae is also named as a party to the action—the servicer must immediately contact Fannie Mae's Regional Counsel via e-mail to nonroutine_litigation@fanniemae.com.

A servicer may not initiate or defend nonroutine litigation on Fannie Mae's behalf unless it obtains prior written consent from its Fannie Mae Regional Counsel via email. This will enable Fannie Mae to concur in the necessity for the action, the selection of legal counsel, development of legal strategy, and approval of legal fees and costs. One example of a nonroutine legal action is a case in which the servicer's legal counsel wants to pursue a judicial foreclosure in order to clear technical defects even though the security property is located in a state in which the usual method of foreclosure is by non-judicial foreclosure. In this situation, the servicer should not commence a judicial foreclosure for a conventional mortgage loan without first clearing the action with Fannie Mae. Nonroutine litigation also includes any claim, counterclaim, or procedure that: challenges methods in which Fannie Mae does business; involves Fannie Mae's status as a federal instrumentality; requires interpretation of Fannie Mae's Charter, such as removal to federal court based on Fannie Mae's Charter; claims punitive damages from Fannie Mae; or asserts liability against Fannie Mae based on actions of its servicers. Additional examples include "show cause orders" or proceedings and motions for sanctions.

Section 102 Prereferral to Foreclosure Review (10/01/11)

The servicer must perform a prereferral to foreclosure review of the mortgage loan at least 7 days prior to the date the servicer is required to refer the mortgage loan to foreclosure. Before the review, the breach letter

Chapter A2-1, Contractual Obligations for Sellers/Servicers

Contractual Obligations for Sellers/Servicers

Introduction

This chapter explains the basic legal relationship between a seller, servicer, or seller/servicer and Fannie Mae.

In This Chapter

This chapter contains information on the following subjects:

A2-1-01, Contractual Obligations for Sellers/Servicers (09/04/2018) 7
A2-1-02, Nature of Mortgage Transaction (02/27/2018) 11
A2-1-03, Indemnification for Losses (08/29/2017) 12

A2-1-01, Contractual Obligations for Sellers/Servicers (09/04/2018)

Introduction

This topic describes some of the seller's, servicer's and seller/servicer's contractual arrangements, including:

- Role of MSSC
- Special Seller/Servicer Approval and MSSC Addendum
- Lender Contract: Integration and Non-Divisibility
- Amendments to the Guides
- General Contract Terms

Role of MSSC

After Fannie Mae approves a seller or servicer or seller/servicer, both parties execute the *Mortgage Selling and Servicing Contract* (MSSC) and any other relevant agreements. The continuation of that relationship depends on both parties honoring the mutual promises in the Lender Contract.

The MSSC establishes the basic legal relationship between a seller, servicer or seller/servicer and Fannie Mae and

- establishes the entity as an approved seller of mortgages and participation interests or an approved servicer of mortgages or both; and
- incorporates by reference the *Selling Guide*, the *Servicing Guide*, the *Requirements for Document Custodians*, Software Subscription Agreement, Manuals, Announcements, Lender Letters, Release Notes, Notices, directives and other documents which may be incorporated by reference into the Guides, all as amended or supplemented from time to time.

Special Seller/Servicer Approval and MSSC Addendum

Certain mortgage loan types require special approval. The following special approvals will be documented by an addendum to the *Mortgage Selling and Servicing Contract* (MSSC) between Fannie Mae and the seller/servicer:

- co-op share loans,
- second mortgages,
- HomeStyle Renovation mortgages, and
- electronic mortgages (eMortgages).

Sellers/servicers may request approval to deliver these loans through their Fannie Mae customer account team. Sellers/servicers may not deliver these loan types unless they obtain the applicable special approval and execute any additional agreements required by Fannie Mae. Sellers/servicers that apply for special approval to deliver HomeStyle Renovation mortgages must also complete a *Special Lender Approval Form* (*Form 1000A*).

Fannie Mae reserves the right to cease approving sellers/servicers for or accepting deliveries of any or all of the mortgage loan types listed above from any or all sellers/servicers. The decision to no longer accept deliveries may result in an amendment to, or the termination of, the special approval. Fannie Mae will provide the affected seller/servicer with reasonable notice of this decision. If the decision affects a seller/servicer's ability to fulfill any required mandatory delivery amount under its Master Agreement, Fannie Mae will consider alternatives through which the seller/servicer can fulfill its delivery obligation.

For a discussion of mortgage loan types that require special customized/negotiated terms in a Master Agreement, see A2-4-01, Master Agreement Overview (10/31/2017). For additional information on lender contracts, refer to E-1-04, List of Lender Contracts (12/06/2016).

Lender Contract: Integration and Non-Divisibility

The MSSC and all of the documents referenced above, together with any other agreements with Fannie Mae that provide for additional obligations to Fannie Mae, such as commitments, master agreements, technology agreements, and collateral agreements, are together referred to as the "**Lender Contract**" and form a single, integrated contract.

A servicer or seller/servicer's benefits and obligations to service loans under the Lender Contract are integrated and cannot be separated from the seller's or seller/servicer's benefits and obligations to sell loans under the Lender Contract.

Fannie Mae relies on this integration and non-divisibility in entering into, and continuing to be bound by, the Lender Contract and in consenting to a servicing transfer.

Amendments to the Guides

All of Fannie Mae's communications (Guides, Manuals, Announcements, Lender Letters, Release Notes, and Notices and directives) are incorporated into the Guides by reference, and are effective on the dates specified in such documents. Certain information and requirements posted on Fannie Mae's website are also incorporated by reference into the Guides.

Fannie Mae transmits communications to sellers, servicers and seller/servicers by posting them on Fannie Mae's corporate website (or other websites as Fannie Mae may establish in the future). Fannie Mae also publishes some communications (for convenience) via AllRegs.

General Contract Terms

The following table describes some general contract terms.

GENERAL CONTRACT TERMS	
Topic	**Description**
Joint and Several Responsibility	Unless Fannie Mae otherwise agrees in writing, upon the transfer of servicing loans: • the transferor and transferee are jointly and severally responsible for all selling representations, warranties, and obligations related to the transferred loans, including those that arise before delivery of the loans to Fannie Mae; and • the transferee is jointly and severally responsible for all servicing obligations and liabilities of the transferor, including those that arise before delivery of the loans to Fannie Mae.
Terminology and General Conventions	• While the term "lender" is generally used throughout the *Selling Guide* to refer to the entity responsible for all aspects of the origination and delivery of loans to Fannie Mae and if applicable, the servicing of loans, the terms "seller", "servicer", "lender", and "seller/servicer" are all used in the Guides in different contexts. The particular term used should not be viewed as an exclusion of an entity's responsibilities in connection with a loan. • The "responsible party" means a seller, servicer, or other entity(ies) that is responsible for the selling representations and warranties or for the servicing responsibilities and liabilities on a loan.
Glossary of Defined Terms	A glossary of defined terms is included in the Guides.
Independent Contractor	The servicer services Fannie Mae loans as an independent contractor and not as an agent, assignee, or representative of Fannie Mae.

GENERAL CONTRACT TERMS	
Topic	**Description**
Assignment	A seller, servicer or seller/servicer may not, without Fannie Mae's prior written consent, assign: • the Lender Contract, or any component of the Lender Contract such as master agreements, whole loan or MBS commitments or contracts, under any circumstances; or • its responsibility for servicing individual mortgages Fannie Mae owns or have a participation interest, except in accordance with the Guides. Fannie Mae may assign its participation interest in any mortgage and all rights in the mortgages owned under the Lender Contract or any other instruments.
No Third Party Beneficiaries	No borrower or other third party is a third party beneficiary of the Lender Contract or obtains any rights through the Lender Contract or any of our seller, servicer or seller/servicer communications.
Construction	• The term "including" and similar words means "including, without limitation". • Headings and captions are for convenience only. • If any provision of the Lender Contract is held invalid, the enforceability of all remaining provisions are not affected, and the Lender Contract will be interpreted as if the invalid provision were not contained in the Lender Contract.
Notice of Termination	Any notice of termination of the Lender Contract or any component must be in writing and delivered by hand, electronic mail (with electronic confirmation of delivery), overnight express or similar service (fees prepaid), or first-class United States registered or certified mail with return receipt requested (postage prepaid), to the applicable party at its address specified in the MSSC (which may be changed by written notice).
Governing Law	New York state law without regard to its conflict of law rules.

Related Announcements

The table below provides references to the Announcements that have been issued that are related to this topic.

Announcement	Issue Date
Announcement SEL-2018-07	September 04, 2018
Announcement SEL-2017-07	August 29, 2017
Announcement SEL-2013–03	April 9, 2013
Announcement 09-06	March 23, 2009

Announcement	Issue Date
Announcement 08-23	September 16, 2008

A2-1-02, Nature of Mortgage Transaction (02/27/2018)

Introduction

This topic contains information on mortgage transaction requirements.

- Delivery Methods
- True Sale

Delivery Methods

Sellers may sell loans to Fannie Mae using either of the two following delivery methods.

- As **whole loans** - the seller sells the loans to Fannie Mae and receives cash proceeds in the amount of the purchase price, with the loans to be retained by Fannie Mae in its porftolio or to be included later in MBS pools formed by Fannie Mae.
- As **MBS loans** - the sellers sells the loans which are conveyed to an MBS trust under the terms of the Fannie Mae MBS program and the seller (or its designee) receives mortgage pass-through certificates representing interests in the loans as the purchase price for the loans.

The term “delivery” refers to the delivery of whole loans to Fannie Mae and into MBS pools. In cases where specific requirements apply to one type of transaction, the delivery method is specified. The term “loan” means “mortgage loan” and includes participation interests in loans unless specified otherwise. The glossary defines terms used in connection with Fannie Mae requirements in the *Selling Guide*.

True Sale

Both Fannie Mae and the seller intend that every sale of loans to be the seller’s true, absolute, and unconditional sale to Fannie Mae of the loans. However, if a court or other appropriate forum holds the loans are still the seller’s property, then Fannie Mae and the seller intend that the transaction be deemed to be:

- a pledge by the seller to secure a debt or other obligation owed to Fannie Mae for all related loans, and
- a grant by the seller to Fannie Mae of a first priority perfected security interest in the loans.

Section A2-5.1, Establishment, Ownership, and Retention of Loan Files and Records

A2-5.1-01, Establishing Loan Files (12/19/2017)

Introduction

This topic contains information on loan files, including:

- Establishing the Loan File
- Establishing the Loan File for Manufactured Homes
- Additional Information for the Loan File

Establishing the Loan File

The seller must establish the individual mortgage loan file "loan file" when it originates a loan and clearly identifies each file with Fannie Mae's loan number (and Fannie Mae's participation and participation percentage interest and MBS pool number, if applicable). The loan file consists of the loan origination file, the loan custodial file, and the loan servicing file held by the seller, servicer, or a prior servicer arising from or related to the origination, sale, securitization, or servicing of a loan or acquired property, as applicable. The loan file includes all records needed to service the loan and support the validity of the loan, and must be readily accessible in connection with the servicing of the loan.

The loan origination file consists of the following:

- all documents, records and reports used to support the underwriting decision required by the Lender Contract;
- any documentation required by Fannie Mae or by law relating to the loan arising from or related to the origination, closing, sale, securitization, or delivery of a loan; and
- documents that are required as part of the post-closing mortgage loan file documentation requirements in the *Selling Guide*.

The following tables describe the documents included in the loan origination file and whether an original or a copy is required.

✓	Original Documents
	any unrecorded documents changing the terms of the note
	the assignment to MERS®, if the loan is registered with MERS and MERS is not named as nominee for the beneficiary, and the copies of all required intervening assignments

✓	Document Copies
	the recorded mortgage or deed or trust, any applicable recorded rider or recorded modification or any other recorded document affecting Fannie Mae's right under the mortgage with the recording information from the recorder's office
	the Participation Certificate, if applicable
	the related Schedule of Mortgages if an MBS loan
	the note and any related addenda
	unrecorded assignments to Fannie Mae (or the recorded assignment, when applicable) and all required intervening assignments
	FHA mortgage insurance certificate, VA loan guaranty certificate, RD loan note guarantee certificate, HUD Indian loan guarantee certificate, or conventional mortgage insurance certificate, if applicable
	underwriting documents, including any DU reports
	property appraisal and inspection orders and reports
	title policy, property insurance policy, flood insurance policy (if required) and any other documents that might be of interest to a prospective purchaser or servicer of the loan or might be required to support title or insurance claims at some future date (for example, FEMA's flood hazard determination form, title evidence, or survey)
	final settlement statement evidencing all settlement costs paid by the borrower and seller (if applicable), • the final version of the Closing Disclosure does not have to be signed by the borrower and seller although lenders may obtain signatures, which Fannie Mae supports as a best practice; • if there are separate Closing Disclosures for the borrower and seller, the copies of the final version of each must be kept in the mortgage loan file.
	any other documents, records, and reports not specified above that are part of the loan origination file

Establishing the Loan File for Manufactured Homes

Servicers that have collateral documents for manufactured home loans with application dates prior to August 24, 2003 must retain all such documents, but they are not required to obtain these documents if they do not already have possession of them.

For a manufactured home with an application date on or after August 24, 2003, collateral documents include the following:

✓	Manufactured Home Collateral Documents
	documentation (if available) indicating that no certificate of title (or similar ownership document) was ever issued in states where a manufactured home can become real property without first being titled as personal property;

✓	Manufactured Home Collateral Documents
	documentation evidencing surrender or retirement in states where the certificate of title (or similar ownership document) can be surrendered or retired when the home becomes real property;
	the certificate of title (or similar ownership document) if it has been or cannot be surrendered;
	any UCC financing statement (or similar notice of lien) that was filed pursuant to applicable law; and
	a security agreement that creates a lien on the manufactured home in addition to the loan or deed of trust.

In order to be prepared to meet special servicing and default management requirements for loans secured by manufactured homes, the servicer must ensure that all loans secured by manufactured homes are identified on their internal systems. If it comes to the attention of the servicer that it is servicing a loan secured by a manufactured home that was delivered to Fannie Mae without notation of Special Feature Code 235 (which is required to identify that property type), the servicer must initiate a post-purchase adjustment. See Fannie Mae's *website* for additional information.

Additional Information for the Loan File

The seller/servicer must use the loan origination file to accumulate other pertinent servicing and liquidation information, including, the following:

- property inspection reports,
- copies of delinquency repayment plans,
- copies of disclosures of ARM loan interest rate and payment changes,
- documents related to insurance loss settlements, and
- foreclosure notices.

The loan custodial file consists of the custodial documents and all documents, books, records, and reports, in any format, required to be retained by the document custodian pursuant to the *Servicing Guide* or other Fannie Mae requirements.

The loan servicing file (including the file maintained with respect to an acquired property) consists of all documents, books, records, reports, and payment and escrow histories, in any format, arising from or related to the servicing of the mortgage loan or acquired property by the current servicer or any prior servicer. This includes those required at any time by the Lender Contract or an insurer and documents and records set forth in the *Servicing Guide*. The loan servicing file must also include copies of all documents or records that are used to evaluate a borrower and the property condition when determining the eligibility for a workout option.

Related Announcements

The table below provides references to the Announcements that have been issued that are related to this topic.

Announcement	Issue Date
Announcement SEL- 2017-10	December 19, 2017
Announcement SEL-2013–03	April 9, 2013

A2-5.1-02, Ownership and Retention of Loan Files and Records (12/19/2017)

Introduction

This topic contains information on individual mortgage loan files, including:

- Ownership of the Loan File
- General Requirements for Records
- Record Retention Requirements

Ownership of the Loan File

All records related to loans (including all data and materials representing, based on, or compiled from such records) sold to or serviced for Fannie Mae are Fannie Mae's property and any other owner of a participation interest in the loan regardless of their physical form or characteristics or whether they are developed or originated by the loan seller, servicer, or others.

Each of the loan originator, seller, servicer, and any service bureau or any other party providing services in connection with selling or servicing a Fannie Mae loan:

- has no right to possess these documents and records except under the conditions specified by Fannie Mae, and
- must hold these documents solely for the benefit of Fannie Mae.

The servicer must use the loan origination file to accumulate other pertinent servicing and liquidation information.

If the seller does not service the loan, it must transfer the loan file to the servicer. The servicer must document in the servicing loan file its compliance with all Fannie Mae policies and procedures, including timelines that are required by the *Servicing Guide*. The servicer and the responsible party must keep all of the individual loan records and all servicing records for the time it serviced the loan.

General Requirements for Records

The seller/servicer must:

- maintain the accounting records relating to loans in accordance with sound and generally accepted accounting principles;
- ensure that the records meet Fannie Mae's requirements;
- ensure the accuracy, security, confidentiality, integrity, completeness and legibility of the individual loan file;
- protect against any anticipated threats or hazards to the security or integrity of files and records;
- protect against unauthorized access to or use of files and records and is responsible for requiring, by contract, that any subservicers or other third parties that access mortgage files and records also implement these measures;
- periodically review changes in technology to make sure that all records continue to be obtainable and readable in the future.

The following table describes Fannie Mae's general rights related to it audit of records.

GENERAL REQUIREMENTS FOR AUDITS OF RECORDS	
Topic	**Description**
Right to Audit	Fannie Mae may examine and audit, at any reasonable time, all loan records and other information that Fannie Mae considers necessary to ensure that the seller/servicer is complying with Fannie Mae requirements.

GENERAL REQUIREMENTS FOR AUDITS OF RECORDS	
Topic	**Description**
Delivery of Records	• When Fannie Mae sends a written request to a seller/servicer to examine mortgage records, the seller/servicer must deliver all records to Fannie Mae or to whomever Fannie Mae designates within the time frame specified by Fannie Mae. • Fannie Mae will not execute any trust receipts for documents it requests and will not pay for their delivery. If the seller/servicer is retaining any of the records in a format other than paper, the seller/servicer must reproduce them at it own expense. • If Fannie Mae has only a participation interest in a loan, Fannie Mae will provide proof of its ownership interest upon request. • If the seller/servicer is unable to respond to Fannie Mae's request to produce records in a timely manner, the seller/servicer must provide a reasonable explanation for its failure to produce the records and, if appropriate, offer evidence that it has satisfied any requirement about which Fannie Mae is concerned. • The seller/servicer is responsible for all Fannie Mae Losses incurred by Fannie Mae in enforcing its right of access to the records, unless it is determined that Fannie Mae had no legal right of access.
Audit Activities	Fannie Mae's examination and audit of the seller/servicer's records may consist of • monitoring all monthly accounting reports submitted to Fannie Mae; • conducting periodic procedural reviews during visits to the seller/servicer's office or the document custodian's place of business; • conducting in-depth audits of the seller/servicer's internal records and operating procedures; and • performing spot-check reviews of loans in the seller/servicer's portfolio on a random sample basis.

Record Retention Requirements

The following table describes the record retention requirements for certain types of records.

RECORD RETENTION REQUIREMENTS	
Type of Record	**Requirements**
Loan payment records	The servicer must maintain permanent mortgage account records for each loan it services for Fannie Mae. The records must be identified by Fannie Mae's loan number (and any related participation certificate or MBS pool number) in addition to any other identification the servicer uses. The servicer may develop its own system for maintaining these records, as long as it can produce an account transcript within a reasonable time after it is requested. The servicer's accounting system must be able to produce detailed information for the following: • all transactions that affect the loan balance, • the financial status of the loan, and • any overdrafts in the escrow account.
Accounting reports	Unless instructed otherwise, the servicer may destroy any accounting reports 18 months after such reports are filed with Fannie Mae.
Annual Statement of Eligibility for Document Custodians (Form 2001)	A servicer that is also a Fannie Mae document custodian must maintain a copy of Form 2001 for seven years at all locations that are covered by the completed form and ensure that they are available for on-site reviews.
Records related to HAMP	The servicer must retain: • all documents and information evidencing the complete evaluation of a borrower for HAMP for seven years after document collection or four years after loan liquidation, whichever is later; and • all data, books, reports, documents, audit logs, and records, related to HAMP, and a copy of all computer systems and application software necessary to review and analyze any electronic records for at least four years, or for such longer period as may be required by applicable law.

RECORD RETENTION REQUIREMENTS	
Type of Record	**Requirements**
Records related to 2MP	The servicer must retain: • all documents and information evidencing compliance with our requirements when evaluating a borrower for 2MP, for seven years after document collection or for four years after loan liquidation, whichever is later; • all documents and information related to the monthly payments during and after any trial period, as well as incentive payment calculation and such other required documents; and • detailed records to document the reason(s) for any trial loan modification failure.
Records related to bankruptcy or foreclosure proceedings	• The servicer must retain all of the documents required to be included in the individual loan file and must ensure that they are readily accessible if needed in any bankruptcy or foreclosure proceeding, or for any other purpose in connection with the servicing of the loan. • The servicer may hold copies if originals are not required, while originals have been sent for filing but have not yet been returned, or while the originals are otherwise temporarily out of the seller/servicer's possession.
Expense reimbursement claims	The servicer must retain in the loan servicing file all supporting documentation for all requests for expense reimbursement.
Liquidation records	After a loan is liquidated, the servicer must keep the individual loan records for at least four years, unless the local jurisdiction requires longer retention or Fannie Mae specifies that the records must be retained for a longer period.
Records related to repurchase or reimbursement	If a loan or property is repurchased or a make whole payment remitted, the responsible party must keep the individual loan records for at least four years from loan liquidation unless applicable law requires longer retention or Fannie Mae specifies that the records must be retained for a longer period.

Note: The time frame from loan liquidation is measured from the date of the loan payoff or the date that any applicable claim proceeds are received, whichever is later.

For eMortgages, the seller/servicer must follow the record retention requirements for the type of record described in the table immediately above, if applicable, and the requirements for storing mortgage loan files and records as described in A2-5.1-03, Electronic Records, Signatures, and Transactions (10/31/2017)

Related Announcements

The table below provides references to the Announcements that have been issued that are related to this topic.

Announcement	Issue Date
Announcement SEL-2017-10	December 19, 2017
Announcement SEL-2017-05	May 30, 2017
Announcement SEL-2015–09	August 25, 2015
Announcement SEL-2015–07	June 30, 2015
Announcement SEL-2012–13	November 13, 2012
Announcement SEL-2011–04	May 24, 2011
Announcement SEL-2010–10	August 12, 2010
Announcement 09-19	June 8, 2009

A2-5.1-03, Electronic Records, Signatures, and Transactions (10/31/2017)

Introduction

This topic contains information on electronic records, including:

- Electronic Records
- Electronic Signatures
- Electronic Notarizations
- Electronic Transactions with Fannie Mae
- Electronic Transactions with Third Parties

Announcements	Issue Date
Announcement SVC-2017-07	August 16, 2017
Announcement SVC-2016-04	May 11, 2016

A1-1-03, Evaluating a Servicer's Performance (11/25/2015)

Introduction

This topic contains the following:

- Performance Management Framework Overview
- Servicing Performance Categories
- Evaluating Performance
- Implementing Performance Improvement Plans

Performance Management Framework Overview

In order to determine the servicer's compliance with its servicing duties under the Lender Contract, Fannie Mae measures the servicer's performance utilizing various performance metrics, which may include servicer reviews and the STAR™ Program for those servicers (also refers to a subservicer if there is a subservicing arrangement) which Fannie Mae has identified for inclusion in the Program.

Servicers selected to participate in the STAR Program will receive written notification from Fannie Mae prior to being added into the program.

The STAR Program is one of Fannie Mae's performance management frameworks designed to determine the servicer's overall performance based on operational assessments and scorecards. The STAR Reference Guide serves as implementation guidance for servicers. The STAR Reference Guide is located on Fannie Mae's website on the STAR Program page and is incorporated herein by reference. Fannie Mae may change the STAR Reference Guide from time to time.

Servicing Performance Categories

Operational assessments and servicer reviews measure the servicer's performance based on key criteria in certain servicer performance categories, which may include, but are not limited to the following:

- customer service;

- escrow administration;
- property, flood, and MI;
- collections;
- loss mitigation;
- investor relations/reporting;
- mortgage loan payment processing;
- bankruptcy, foreclosure, and REO management;
- data integrity;
- delinquency and annual financial and management reporting;
- document custody and record retention;
- remitting; and
- accounting and reporting.

Fannie Mae reserves the right, from time to time, to

- amend the performance criteria,
- modify how the results are determined, and
- revise the content of the performance metrics.

Fannie Mae may also communicate individual performance targets which may not be included in the STAR Program operational assessments and scorecards. Fannie Mae must regularly monitor each servicer's performance.

Evaluating Performance

Fannie Mae considers many factors when it evaluates whether the servicer's overall performance is acceptable, including, without limitation, the following:

- trends in performance,
- adequacy of staffing,
- compliance reviews and audits,
- STAR Program results,
- mortgage loan file reviews,
- timeliness of its payment obligations, and
- overall compliance with the requirements of the Lender Contract.

Unacceptable performance, including unacceptable STAR Program results, may result in a performance improvement plan. Fannie Mae reserves the right to terminate the servicer's Lender Contract in whole or in part, including its selling and/or servicing arrangement at any time with or without cause, in accordance with the Lender Contract.

Implementing Performance Improvement Plans

Fannie Mae expects all servicers to service all mortgage loans in full compliance with the Lender Contract. The servicer's performance may be measured by Fannie Mae through any number of servicing quality and compliance reviews, including the STAR Program, servicer reviews, as well as, timely payment of its obligations, compliance with the *Servicing Guide*, and other key performance metrics.

Servicers with unacceptable performance may be subject to a performance improvement plan issued by Fannie Mae.

Performance improvement plans may require the servicer to take actions and/or meet targets within defined time frames in order to remedy servicing deficiencies, which may include one or more of the following areas:

- customer service;
- escrow administration;
- property, flood, and MI;
- collections;
- loss mitigation;
- investor relations/reporting;
- mortgage payment processing, remitting, accounting and reporting;
- bankruptcy, foreclosure and REO management;
- data integrity;
- delinquency and annual financial and management reporting; and
- document custody and record retention.

The failure of the servicer to meet the terms of its performance improvement plan, including any timeline requirements for the performance improvement, constitutes a breach of the Lender Contract and may result in Fannie Mae terminating the servicer's selling and/or servicing approvals in whole or in part or taking other appropriate actions under its Lender Contract.

Related Announcements

The following table provides references to Announcements that are related to this topic.

Announcements	Issue Date
Announcement SVC–2015–14	November 25, 2015

A2-1-03, Execution of Legal Documents (11/12/2014)

Introduction

The servicer ordinarily appears in the land records as the mortgagee to facilitate performance of the servicer's contractual responsibilities, including, but not limited to, the receipt of legal notices that may impact Fannie Mae's lien, such as notices of foreclosure, tax, and other liens. However, Fannie Mae may take any and all action with respect to the mortgage loan it deems necessary to protect its or an MBS trust's ownership of the mortgage loan, including recording an assignment of mortgage, or its legal equivalent, from the servicer to Fannie Mae or its designee. In the event that Fannie Mae determines it necessary to record such an instrument, the servicer must assist Fannie Mae by

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

The servicer must follow the procedures in F-1-10, Obtaining and Executing Legal Documents (05/10/2017) when sending documents for Fannie Mae's execution.

The servicer is authorized to execute legal documents related to payoffs, foreclosures, releases of liability, releases of security, mortgage loan modifications, subordinations, assignments of mortgages, and conveyances (or reconveyances) for any mortgage loan for which it (or MERS®) is the owner of record. When an instrument of record requires the use of an address for Fannie Mae, including assignments of mortgages, foreclosure deeds, REO deeds, and lien releases, the servicer must follow the procedures in *Fannie Mae Contacts for Document Execution Requests* in F-1-10, Obtaining and Executing Legal Documents (05/10/2017) to locate the appropriate address.

This topic contains the following:

- Fannie Mae's Limited Power of Attorney to Execute Documents
- Correcting Conveyances to Fannie Mae

Fannie Mae's Limited Power of Attorney to Execute Documents

When Fannie Mae is the owner of record for a mortgage loan, it permits the servicer that has Fannie Mae's LPOA to execute certain types of legal documents on Fannie Mae's behalf. The servicer must have an LPOA in place to be authorized to execute the following legal documents on behalf of Fannie Mae:

- full satisfaction or release of a mortgage or the request to a trustee for a full reconveyance of a deed of trust;
- partial release or discharge of a mortgage or the request to a trustee for a partial reconveyance or discharge of a deed of trust;
- modification or extension of a mortgage or deed of trust;
- subordination of the lien of a mortgage or deed of trust;

- completion, termination, cancellation, or rescission of foreclosure relating to a mortgage or deed of trust, including, but not limited to, the following actions:
  - the appointment of a successor or substitute trustee under a deed of trust, in accordance with state law and the deed of trust;
  - the issuance or cancellation or rescission of notices of default;
  - the cancellation or rescission of notices of sale; and
  - the issuance of such other documents as may be necessary under the terms of the mortgage, deed of trust, or state law to expeditiously complete said transactions, including, but not limited to, assignments or endorsements of mortgages, deeds of trust, or promissory notes to convey title from Fannie Mae to the Attorney-in-Fact under this LPOA;
- conveyance of properties to FHA, HUD, the VA, RD, or a state or private mortgage insurer; and
- assignments or endorsements of mortgages, deeds of trust, or promissory notes to FHA, HUD, VA, RD, a state or private mortgage insurer, or MERS.

To request an LPOA, the servicer must follow the procedures in *Requesting a Limited Power of Attorney* in F-1-10, Obtaining and Executing Legal Documents (05/10/2017).

If the servicer does not have an LPOA to execute documents on Fannie Mae's behalf, or has a power of attorney that does not authorize it to execute documents for a specific type of transaction, the servicer must send the documents requiring execution in any instance in which Fannie Mae is the owner of record for the mortgage loan by email, when permitted. If, however, an original document must be executed by Fannie Mae, the servicer must send the document by regular or overnight mail. The servicer must follow the procedures in *Fannie Mae Contacts for Document Execution Requests* in F-1-10, Obtaining and Executing Legal Documents (05/10/2017) for instructions in sending documents to Fannie Mae.

Correcting Conveyances to Fannie Mae

The servicer must execute a quitclaim deed for properties that have been conveyed in error to Fannie Mae. The servicer must follow all procedures in F-1-10, Obtaining and Executing Legal Documents (05/10/2017) when preparing the reconveyance quitclaim deed. A quitclaim deed is an instrument of conveyance of real property that passes whatever title, claim, or interest that the grantor has in the property, but does not make any representations as to the validity of such title. A quitclaim deed is not a guarantee that the grantor has clear title to the property; rather it is a relinquishment of the grantor's rights, if any, in the property. The holder of a quitclaim deed receives only the interest owned by the person conveying the deed.

Fannie Mae will execute the quitclaim deed only if the servicer has prepared the document to quitclaim or assign back to the previous grantor or assignor. The servicer must send the request for quitclaim deed execution to Fannie Mae as described in *Submitting a Reconveyance Quitclaim Deed* in F-1-10, Obtaining and Executing Legal Documents (05/10/2017).

A2-1-04, Note Holder Status for Legal Proceedings Conducted in the Servicer's Name (06/21/2017)

Introduction

Fannie Mae is at all times the owner of the mortgage note, whether the mortgage loan is in Fannie Mae's portfolio or part of the MBS pool. In addition, Fannie Mae at all times has possession of and is the holder of the mortgage note, whether Fannie May has direct possession of the note or a custodian has custody of the note, except in the limited circumstances expressly described in this topic.

This topic contains the following:

- Temporary Possession by the Servicer
- Physical Possession of the Note by the Servicer
- Reversion of Possession to Fannie Mae

Temporary Possession by the Servicer

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

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.

When Fannie Mae transfers possession, if the note is held by a document custodian on Fannie Mae's behalf, the custodian has possession of the note on behalf of the servicer so that the servicer has constructive possession of the note and the servicer shall be the holder of the note and is authorized and entitled to enforce the note in the name of the servicer for Fannie Mae's benefit.

If the servicer determines based on state law that it needs to be the holder of an eNote prior to representing the interests of Fannie Mae in a foreclosure, bankruptcy, or other legal proceeding, the servicer must follow the procedures in *Foreclosure, Bankruptcy and Other Legal Proceedings* in F-1-29, Servicing eMortgages (10/19/2016) to request a transfer in control and location from Fannie Mae.

Physical Possession of the Note by the Servicer

In most cases, the servicer will have a copy of the mortgage note. If the servicer determines that it needs physical possession of the original mortgage note to represent the interests of Fannie Mae in a foreclosure, bankruptcy, probate, or other legal proceeding, the servicer may obtain physical possession of the original mortgage note by submitting a request directly to the document custodian.

If Fannie Mae possesses the original note through a third-party document custodian that has custody of the note, the servicer must submit a *Request for Release/Return of Documents* (*Form 2009*) to Fannie Mae's custodian to obtain the note and any other custodial documents that are needed.

In either case, the servicer must specify whether the original note is required or whether the request is for a copy.

For eMortgages, if the eNote is not acceptable in its electronic form for a foreclosure, bankruptcy, or other legal proceeding, the servicer is authorized to use a printed Authoritative Copy of the eNote for the legal proceeding or action.

Reversion of Possession to Fannie Mae

At the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding, or upon the servicer ceasing to service the loan for any reason, possession automatically reverts to Fannie Mae, and Fannie Mae resumes being the holder for itself, just as it was before the foreclosure, bankruptcy, probate, or other legal proceeding. If the servicer has obtained physical possession of the original note, it must be returned to Fannie Mae or the document custodian, as applicable.

Related Announcements

The following table provides references to Announcements that are related to this topic.

Announcements	Issue Date
Announcement SVC-2017-05	June 21, 2017
Announcement SVC-2016–09	October 19, 2016

A2-1-05, Use of Fannie Mae Trademarks (08/16/2017)

Introduction

For a list of trademarks currently used by Fannie Mae and requirements on how to refer to them, see Selling Guide A2-6-01, Fannie Mae and Trademarks and *Fannie Mae's website*.

Related Announcements

The following table provides references to Announcements that are related to this topic.

Announcement	Date
Announcement SVC-2017-07	August 16, 2017

Chapter A2-4, Fannie Mae's Quality Control Review

Fannie Mae's Quality Control Review

Introduction

This chapter contains information on Fannie Mae's quality control review.

In This Chapter

This chapter contains the following topic:

A2-4-01, Quality Control Reviews (08/17/2016) 94

A2-4-01, Quality Control Reviews (08/17/2016)

Introduction

Fannie Mae may review mortgage loans it has purchased or securitized (including those with early payment defaults, those that have been foreclosed, as well as any other mortgage loan) to ensure that its underwriting, eligibility, and servicing requirements have been met.

When Fannie Mae's quality assurance risk assessment identifies a mortgage loan as having a higher degree of risk, Fannie Mae may perform a post-foreclosure full file QC review to evaluate the seller/servicer's initial underwriting of the mortgage loan and, if applicable, the actions the seller/servicer took in servicing the mortgage loan. In such cases, Fannie Mae will notify the seller/servicer about the type of review Fannie Mae will perform and the scope of the review.

This topic contains the following:

- Notification of a Quality Control Review
- Timely Delivery of Individual Mortgage Loan Files
- Document Submission Requirements
- Fannie Mae's Quality Control Review
- Requirements Specific for Servicing Quality Control Reviews
- Fannie Mae Quality Control Report

- Appeal of Fannie Mae QC Review Decisions
- Servicing Review File Requirements
- Underwriting or Servicing Reviews of Acquired Properties

Notification of a Quality Control Review

The seller/servicer is notified which mortgage loans Fannie Mae has selected for review via written or electronic notification. Electronic notification will be delivered via QAS if the seller/servicer has signed up for it.

Timely Delivery of Individual Mortgage Loan Files

The seller/servicer must send the requested documentation for an underwriting or servicing review so that Fannie Mae receives the review file within 30 days after Fannie Mae notifies the seller/servicer that it has selected a mortgage loan for review. Fannie Mae, in its sole discretion, may request the documentation in a shorter or longer period of time based upon circumstances at the time.

Fannie Mae will make every effort to work with the seller/servicer when extenuating circumstances prevent it from delivering documentation in a timely manner. However, if a seller/servicer delays in providing the requested information, Fannie Mae, in its sole discretion, reserves the right to require indemnification, repurchase (depending on the circumstances of the individual case) of these mortgage loans, or other alternatives. When a seller/servicer has a pattern of extensive delays or unresponsiveness, Fannie Mae may consider this a breach of contract and consider other actions against the seller/servicer, up to and including termination.

Document Submission Requirements

The seller and servicer must maintain a complete individual mortgage loan file and be able to produce copies of the complete individual mortgage loan file upon Fannie Mae's request. The servicing review file must include supporting documents for all *requests for expense reimbursement* it has submitted or intends to submit to Fannie Mae (for example, vendor invoices and third-party invoices from the vendor rendering services), in addition to other servicing and liquidation information such as

- property inspection reports,
- copies of delinquency repayment plans,
- copies of disclosures of ARM loan interest rate and payment changes,
- documents related to insurance loss settlements, and
- foreclosure records, as stated in the *Servicing Guide*.

In all instances, the servicer must document its compliance with all Fannie Mae policies and procedures, including, but not limited to, timelines that are required by the *Servicing Guide*. The servicer must maintain in the individual mortgage loan file all documents and system records that preserve Fannie Mae's ownership interest in the individual mortgage loan.

The seller/servicer must package the requested documentation requested by Fannie Mae. When Fannie Mae requests both a mortgage loan origination and a mortgage loan servicing file, the seller/servicer may package the material as a single file

(with the origination and servicing documentation separated and clearly labeled within the file) or as two separate files that are packaged together (with one file identified as the "origination" file and the other identified as the "servicing" file).

The complete mortgage loan file must include clear copies of any required paper documents, not the originals. Paper documents must be sent in a manila folder, with the credit and property documents on the right side and the legal documents on the left side.

If the seller/servicer keeps its files electronically, Fannie Mae must be able to reproduce the documents required in a manner in terms of cost and time frames acceptable to Fannie Mae.

If the seller/servicer wishes to submit files in a form other than paper, it must contact the Fannie Mae's LQC File Receipt and Assignment team (see F-4-03, List of Contacts (09/18/2018)) to ensure that the requested form is compatible with the LQC's systems and processes. The requested files must be sent to Fannie Mae's LQC File Receipt and Assignment team (see F-4-03, List of Contacts (09/18/2018)).

Fannie Mae's Quality Control Review

Fannie Mae has QC policies and procedures in place for its review of performing and non-performing mortgage loans. Fannie Mae uses a statistically valid approach in selecting a random sample of new mortgage loan deliveries for review. The random sample is augmented with targeted, discretionary sampling, which aids in the measurement of the overall quality of mortgage loan deliveries. The QC process evaluates individual mortgage loan files on a comprehensive basis with the primary focus of confirming that mortgage loans meet Fannie Mae's underwriting and eligibility requirements. Fannie Mae will continue to review any servicing files requested with the primary focus of confirming that the mortgage loan has been serviced in accordance with the Lender Contract.

The QC process also provides the seller/servicer with data and feedback about the quality of its mortgage loan origination process. The goal is to engage the seller/servicer in frequent, meaningful exchanges of information about trends in the quality of delivered mortgage loans and to inform the seller/servicer about significant underwriting deficiencies identified through the QC review process. Together, Fannie Mae and its sellers/servicers should share a commitment to improving the quality of mortgage loan originations. Fannie Mae requires that the seller/servicer implement and enforce strong underwriting processes and, if necessary, will work with the seller/servicer to develop action plans to improve origination quality.

Fannie Mae's QC policies are administered by its LQC. The selection process may change at any time to address concerns.

Requirements Specific for Servicing Quality Control Reviews

Fannie Mae will utilize delinquent mortgage loan status code data and other information collected from the servicer during other interactions to identify delays in the default management process. Fannie Mae may elect to perform a servicing review to further evaluate the actions the servicer took in servicing those mortgage loans.

Fannie Mae will notify the servicer of the intention to perform a desk review or an on-site review. The servicer must submit the requested documentation or make it available for an on-site review in the time frame specified in the notification. If the servicer fails to do so, Fannie Mae may exercise available remedies, including compensatory fees, without first reviewing the individual mortgage loan file. The list of documents that must be included in any servicing review file Fannie Mae request are outlined in *Servicing Review File Requirements*.

Fannie Mae will communicate any performance deficiencies noted to the servicer. Unless Fannie Mae elects to immediately terminate the servicer's right to service the mortgage loans, the servicer will be given an opportunity to explain any mitigating circumstances or factors that justify the servicing actions it took or did not take within the time frame specified by Fannie Mae in its communication of the performance deficiencies.

Fannie Mae's evaluation of the actions the servicer took in servicing the mortgage loan will focus primarily on determining whether the servicer took all of the appropriate steps to cure the delinquency or avoid foreclosure (through Fannie Mae's various relief provisions or foreclosure prevention alternatives) and, if a foreclosure could not be avoided, on confirming that the servicer completed the legal actions within Fannie Mae's required time frames.

For the most part, Fannie Mae will rely on various reports that are produced by its automated delinquency and foreclosure prevention management systems to evaluate the servicer's performance. However, when Fannie Mae's analysis of these reports indicates that there is a possibility that the servicer's delinquency management performance is poor or if Fannie Mae believes certain servicing files should be reviewed for other reasons, Fannie Mae may require the servicer to submit a servicing review file for a mortgage loan to Fannie Mae's SF CPM division (see F-4-03, List of Contacts (09/18/2018)).

If Fannie Mae identifies deficiencies in its evaluation of the servicing review file, it will communicate them to the servicer. The servicer, in most instances, will be given an opportunity to explain any mitigating circumstances or factors that justify the servicing actions it took (or did not take).

When the servicer's review identifies significant deficiencies, it may offer to purchase the property from Fannie Mae when it submits the complete individual mortgage loan file (rather than waiting for the results of Fannie Mae's review). Fannie Mae will entertain such offers–as long as they will make Fannie Mae whole and are permitted by the Trust Agreement, if applicable–since Fannie Mae would no longer have to be concerned about the property disposition process.

When Fannie Mae has received the origination and/or servicing review file, it will begin the process of reviewing the file(s) to determine whether the mortgage loan met Fannie Mae's origination, eligibility and/or servicing standards. If Fannie Mae concludes that a repurchase demand should be issued on a mortgage loan pursuant to the origination defect remedies framework, Fannie Mae generally will issue a request for repurchase (calling for the servicer to take title to the property and pay Fannie Mae for its full investment in it). Fannie Mae may, on occasion, give the servicer the option of having Fannie Mae dispose of the property (and agreeing to indemnify Fannie Mae for any loss Fannie Mae incurs in connection with the sale), or require the lender to fully reimburse Fannie Mae for its loss through a demand for a make whole payment in the event that Fannie Mae sells the property or accepts a purchase offer prior to notifying the servicer that the mortgage loan did not meet Fannie Mae's eligibility or underwriting requirements.

In the event the servicing defect identified by Fannie Mae also turns out to be a breach of any provision of any MI policy issued with respect to a mortgage loan, the seller/servicer is not released from any breach of the Lender Contract that may result if the MI company insuring the loan rescinds, cancels, denies, or curtails the MI benefit due to the same or similar acts or omissions that make up the defect.

Fannie Mae Quality Control Report

Fannie Mae provides the seller/servicer with ongoing feedback about their overall QC performance. The feedback identifies defect types, reporting on frequent or common defects, and describes quality trend analyses and significant underwriting deficiencies identified through the QC review process. This information is provided through a variety of methods that range from regular electronic transmissions to more formal periodic discussions.

When Fannie Mae identifies a defective mortgage loan, it may in its sole discretion, impose a condition to retaining the mortgage loan, such as requiring the seller/servicer to agree to an alternative remedy to repurchase. In some cases, as permitted by the Lender Contract, Fannie Mae will issue a repurchase or make whole payment request to the seller/servicer.

The *Servicing Guide* contains timelines by which the seller/servicer must pay Fannie Mae the funds that are due in connection with a demand for a servicing remedy in A1-3-02, Fannie Mae-Initiated Repurchases, Indemnifications, Make Whole Payment Requests and Deferred Payment Obligations (08/17/2016). If the seller/servicer delays in this or has a pattern of unresponsiveness, Fannie Mae may consider this an independent breach of contract and consider other actions against the seller/servicer, up to and including termination.

Certain servicing repurchase alternatives may be available only to certain seller/servicers that are in good standing with Fannie Mae. See *Servicer Responses to a Demand* in A1-3-02, Fannie Mae-Initiated Repurchases, Indemnifications, Make Whole Payment Requests and Deferred Payment Obligations (08/17/2016) for more information.

Appeal of Fannie Mae QC Review Decisions

Fannie Mae maintains processes for the seller/servicer to appeal a demand for a servicing remedy, including an IDR process, in certain instances. See the *Selling Guide* for more information on the origination defect remedies framework appeals process and *Servicer Responses to a Demand* in A1-3-02, Fannie Mae-Initiated Repurchases, Indemnifications, Make Whole Payment Requests and Deferred Payment Obligations (08/17/2016) for more information on the servicing defect remedies framework appeal and escalation processes. A demand for a repurchase servicing remedy or reimbursement may be rescinded or withdrawn because the seller/servicer provides documentation within the time period specified by Fannie Mae (when Fannie Mae determines that a breach of the Lender Contract may be corrected).

Servicing Review File Requirements

The following table provides a list of the documentation that must be included in the servicing review file.

✓	The servicer must include in the servicing review file...
	The collection history for the default that led to the foreclosure or mortgage release (including the reason for the default, delinquency notices sent, and copies of borrower's previous payment histories).
	A summary of all attempts to develop a workout plan or arrange a workout option, including evidence of any communication with Fannie Mae.
	A bankruptcy tracking log, or a separate report indicating the dates of any bankruptcy filings and the dates that any lifting of a bankruptcy stay was attempted and attained.
	The foreclosure tracking log, or a separate report indicating the date that the case was referred to the foreclosure attorney and the date of the foreclosure sale, as well as summarizing any communications with Fannie Mae about delays in the foreclosure process (including delays resulting from the presence of hazardous waste, natural disasters, massive layoffs, etc.) or departures from standard foreclosure procedures (such as using judicial foreclosure in a power of sale state).
	Any other type of information that is requested, given the type of review.

The outside of the servicing review file must clearly identify the case, as follows:

- servicing file for acquired property;
- mortgage remittance type (A/A, S/A, or S/S);
- servicing option (special or shared risk);
- Fannie Mae mortgage loan number;
- servicer mortgage loan number;
- borrower's name; and
- property address.

Underwriting or Servicing Reviews of Acquired Properties

When Fannie Mae receives an offer to purchase an acquired property that is also subject to an underwriting or servicing review, Fannie Mae may accept the purchase offer without first notifying the servicer, whether or not a final decision has been reached with respect to the review. If, after completion of the review, Fannie Mae determines that the mortgage loan did not meet its eligibility or underwriting requirements and Fannie Mae has incurred a loss by selling the property, the seller/servicer will be required to fully reimburse Fannie Mae for its loss.

Related Announcements

The following table provides references to Announcements that are related to this topic.

Announcements	Issue Date
Announcement SVC–2016–07	August 17, 2016
Announcement SVC–2015–15	December 16, 2015

Chapter A2-5, Individual Mortgage Loan Files and Records

Individual Mortgage Loan Files and Records

Introduction

This chapter contains information on resources for mortgage loan files and records, including electronic transactions.

In This Chapter

This chapter contains the following topics:

A2-5-01, Ownership and Retention of Individual Mortgage Loan Files and Records (12/13/2017) 100

A2-5-01, Ownership and Retention of Individual Mortgage Loan Files and Records (12/13/2017)

See the *Selling Guide* Chapter A2-5: Individual Mortgage Loan Files and Records for the following requirements:

- *Selling Guide* A2-5.1-01, Establishing Loan Files for information on documentation requirements and managing the individual loan file.
- *Selling Guide* A2-5.1-02, Ownership and Retention of Loan Files and Records for information on records retention.
- *Selling Guide* A2-5.1-03, Electronic Records, Signatures, and Transactions for information related to maintaining electronic records and data integrity.

Related Announcements

The following table provides references to Announcements that are related to this topic.

Announcements	Issue Date
Announcement SVC-2017-11	December 13, 2017

Chapter A2-8, Mortgage Electronic Registration System

Mortgage Electronic Registration System

Introduction

This chapter contains information on the Mortgage Electronic Registration System.

In This Chapter

This chapter contains the following topic:

A2-8-01, Mortgage Electronic Registration System (11/12/2014) 126

A2-8-01, Mortgage Electronic Registration System (11/12/2014)

Introduction

MERS is an electronic system that assists in the tracking of mortgage loans, servicing rights, and security interests. To initiate the electronic tracking, the seller/servicer assigns a special MERS MIN to the mortgage loan, registers the mortgage loan in MERS and the either

- originates the mortgage loan with MERS appearing in the security instrument as nominee for the beneficiary and its successors and assigns, or
- records an assignment of the mortgage loan to MERS (thus making MERS the mortgagee of record).

This topic contains the following:

- Registration of a Mortgage Loan to MERS
- Naming MERS as the Nominee for the Beneficiary in the Security Instrument
- Termination of the Use of MERS

Registration of a Mortgage Loan to MERS

When a MERS-registered mortgage loan is delivered to Fannie Mae, the seller/servicer reports the MIN on the Loan Schedule (*FRM/GEM Loan Schedule* (*Form 1068*) or *ARM/GPARM Loan Schedule* (*Form 1069*) or on the *Schedule of Mortgages* (*Form 2005*).

The following table outlines the steps that must be taken when a mortgage loan is registered with MERS.

If the mortgage loan is…	Then…
registered with MERS before Fannie Mae purchases it	Fannie Mae will notify MERS to ensure that its records are updated to reflect Fannie Mae's ownership interest in the mortgage loan.
not registered with MERS until after Fannie Mae purchases it	the seller/servicer must report Fannie Mae's ownership when it registers the mortgage loan.

If the seller/servicer encounters a situation where Fannie Mae is the owner of record for a mortgage loan because the original assignment of the mortgage loan to Fannie Mae was recorded in the public records, the seller/servicer must correct the error before it completes the MERS registration by

- preparing an assignment of the mortgage loan from Fannie Mae to MERS,
- sending the assignment to Fannie Mae for execution, and
- recording the assignment in the public records.

Naming MERS as the Nominee for the Beneficiary in the Security Instrument

MERS will have no beneficial interest in the mortgage loan, even if it is named as the nominee for the beneficiary in the security instrument. In addition, the failure of MERS to perform any obligation with respect to a MERS-registered mortgage loan does not relieve the seller/servicer from its responsibility for performing any obligation required by the terms of its Lender Contract.

The following table describes the requirements of the seller/servicer.

✓	The seller/servicer must…
	Accurately and timely prepare and record security instruments, assignments, lien releases, and other documents relating to MERS-registered mortgage loans.
	Take all reasonable steps to ensure that the information on MERS is updated and accurate at all times.
	Be solely responsible for any failure to comply with the provisions of the MERS Member Agreement, Rules, and Procedures and for any liability that it or Fannie Mae incurs as a result of the registration of mortgage loans with MERS or any specific MERS transaction.

Registration of Fannie Mae mortgage loans in MERS (as either assignee or the nominee of the original mortgagee) does not change the seller/servicer's responsibility for complying with all applicable provisions of

- the MSSC;
- Fannie Mae's Guides, as they may be amended from time to time;
- the seller/servicer's Master Agreement;
- any negotiated contract that it has with Fannie Mae, unless Fannie Mae specifies otherwise; or
- any other agreements that are part of the Lender Contract.

Termination of the Use of MERS

If the seller/servicer decides to discontinue the use of MERS, the seller/servicer must request from MERS that the mortgage loan be "deactivated" in MERS. MERS will notify Fannie Mae about the deactivation of any mortgage loan in which it has an interest.

If the seller/servicer's membership in MERS is terminated, the seller/servicer must promptly notify Fannie Mae.

For each MERS-registered mortgage loan that it is servicing for Fannie Mae, the seller/servicer must perform the functions outlined in the following table.

✓	The seller/servicer must…
	Prepare an assignment of the mortgage loan from MERS to itself.
	Have the assignment executed.
	Record the executed assignment in the public land records.
	Prepare in (recordable form) an unrecorded assignment of the mortgage loan from itself to Fannie Mae.
	Submit the original of that assignment to Fannie Mae's DDC or the applicable document custodian.

Section E-1.3, Handling Non-Routine Litigation

E-1.3-01, General Servicer Responsibilities for Non-Routine Matters (11/12/2014)

"Non-routine" litigation generally consists of an action that, regardless of whether Fannie Mae is a party to the proceeding

- seeks monetary damages against Fannie Mae, its officers, directors, or employees;
- challenges the validity, priority, or enforceability of a Fannie Mae mortgage loan or seeks to impair Fannie Mae's interest in an acquired property and the handling of which is not otherwise addressed in the *Servicing Guide*; or
- presents an issue that may pose a significant legal or reputational risk to Fannie Mae.

The following table describes the servicer's responsibilities related to non-routine litigation.

✓	The servicer must...
	Appropriately handle legal matters affecting Fannie Mae mortgage loans.
	Notify Fannie Mae's Legal department of any non-routine litigation by submitting a *Non-Routine Litigation Form* (*Form 20*). **Note**: Fannie Mae reserves the right to direct and control all litigation involving a Fannie Mae mortgage loan, and the servicer and any law firm handling the litigation must cooperate fully with Fannie Mae in the prosecution, defense, or handling of the matter.
	Obtain Fannie Mae's prior written approval before either • removing a case to federal court based on Fannie Mae's Charter, or • appealing or otherwise challenging judgment in any foreclosure or bankruptcy proceeding. **Note**: The servicer must also notify Fannie Mae's Legal department by submitting *Form 20* if a borrower files an appeal or seeks other post-judgment relief in a foreclosure or bankruptcy proceeding.
	Periodically update Fannie Mae on the progress of non-routine litigation as necessary and appropriate.

✓	The servicer must...
	Provide Fannie Mae with sufficient opportunity in advance of any deadline or due date to review and comment upon proposed substantive pleadings, including: • motions, • responses, • replies, and • briefs.
	Notify retained counsel of its proposal to offer any mortgage loan modification and provide counsel with sufficient opportunity in advance of the solicitation to review and provide comments in connection with any solicitation materials. See also *Determining Eligibility for a Fannie Mae Flex Modification* in D2-3.2-09, Fannie Mae Flex Modification (09/18/2018), and *Determining Eligibility for a Fannie Mae Cap and Extend Modification for Disaster Relief* in D2-3.2-07, Fannie Mae Cap and Extend Modification for Disaster Relief (09/18/2018), for eligibility requirements.

Not all contested matters constitute non-routine litigation. The following represent examples that are considered routine litigation and need not be reported to Fannie Mae:

- a contested foreclosure action in which the borrower alleges a case-specific procedural or technical defect in the foreclosure, or
- a contested foreclosure action in which the borrower alleges a case specific payment application claim.

In contrast, a contested foreclosure or bankruptcy action in which a borrower challenges the servicer's ability to conduct a foreclosure or seek relief from stay based on a legal argument that, if upheld, could have broader application to other Fannie Mae mortgage loans is non- routine litigation because of the potential for negative legal precedent to extend beyond the immediate case.

In order to assist the servicer in identifying non-routine litigation, the following table lists the categories of non-routine litigation and provides examples of matters that must be reported to Fannie Mae as non-routine litigation. Given the evolving nature of default-related litigation, it is not possible to provide an exhaustive list.

Non-Routine Category	Examples
Actions that seek monetary relief against Fannie Mae.	Any claim (including counterclaims, cross- claims, or third-party claims in foreclosure or bankruptcy actions) for damages against Fannie Mae or its officers, directors, or employees.

Non-Routine Category	Examples
Actions that challenge the validity, priority, or enforceability of a Fannie Mae mortgage loan or seek to impair Fannie Mae's interest in an acquired property.	An action seeking to demolish a property as a result of a code violation; An action seeking to avoid a lien based on a failure to comply with a law or regulation; An attempt by another lienholder to assert priority over Fannie Mae's lien or extinguish Fannie Mae's interests; A quiet title action seeking to declare Fannie Mae's lien void; or An attempt by a borrower to effect a cramdown of a mortgage loan in bankruptcy as to which Fannie Mae has not delegated authority to the servicer or law firm to address.

Non-Routine Category	Examples
Actions that present an issue that may pose significant legal or reputational risk to Fannie Mae.	Any issue involving Fannie Mae's conservatorship, its conservator FHFA, Fannie Mae's status as a federal instrumentality, or an interpretation of Fannie Mae's Charter; Any contention that Fannie Mae is a federal agency or otherwise part of the United States Government; Any "due process" or other constitutional challenge; Any challenge to the methods by which Fannie Mae does business; Any putative class action involving a Fannie Mae mortgage loan; A challenge to the standing of the servicer to conduct foreclosures or bankruptcies that, if successful, could create negative legal precedent with an impact beyond the immediate case; A challenge to the methods by which MERS does business or to its ability to act as nominee under a mortgage; Any "show cause orders" or motions for sanctions relating to a Fannie Mae mortgage loan, whether against Fannie Mae, the servicer, a law firm, or a vendor of the servicer or law firm; Any foreclosure on Native American tribal lands; Any environmental litigation relating to a Fannie Mae loan; A need to foreclose judicially in a state where non-judicial foreclosures predominate; Any claim invoking a Fannie Mae HAMP as a basis to challenge a foreclosure; Any cross-border insolvency proceeding under Chapter 15 of the Bankruptcy Code; Any claim of predatory lending or discrimination in loan origination or servicing; or Any claim implicating the interpretation of the terms of the Fannie Mae/Freddie Mac Uniform Mortgage Instruments.

E-1.3-02, Reporting Non-Routine Litigation to Fannie Mae (11/12/2014)

Non-routine litigation must be reported to Fannie Mae within two business days of the servicer receiving notice of the litigation, except with respect to the following three categories of loan-level challenges:

- a challenge to the standing of the servicer to conduct foreclosures or bankruptcies that, if successful, could create negative legal precedent with an impact beyond the immediate case;
- a challenge to the methods by which MERS does business or its ability to act as nominee under a mortgage; or
- any claim invoking HAMP as a basis to challenge a foreclosure.

With respect to these three categories of loan-level challenges, it is not necessary for the servicer to notify Fannie Mae until

- the borrower seeks summary judgment on such a challenge,
- briefing is required in response to such a challenge, or
- the issue is expected to be raised at a scheduled trial.

E-1.3-03, Reporting “Legal Filings” to MERS (11/12/2014)

Rule 14 of the MERS System Rules of Membership imposes notification requirements concerning “Legal Filings” that raise certain MERS-related challenges. The servicer is responsible for ensuring any notification required under MERS Rule 14 is provided to MERSCORP Holdings, Inc., and also immediately to Fannie Mae’s Single Family Legal department (see F-4-03, List of Contacts (09/18/2018)).

Section E-3.1, Foreclosure Proceedings in General

E-3.1-01, General Servicing Requirements Related to Foreclosure Proceedings (11/12/2014)

This chapter provides Fannie Mae's requirements and policies for conducting foreclosure proceedings for Fannie Mae mortgage loans.

Fannie Mae sets out those instances when its requirements vary for any particular

- lien type,
- amortization method,
- remittance type,
- servicing option,
- mortgage loan type, or
- ownership interest.

Absent any restrictive language, the same policy or requirement applies for all mortgage loans Fannie Mae has purchased or securitized as standard transactions.

Occasionally, Fannie Mae may address the need for a special servicing option MBS mortgage loan to be handled in a different manner than other mortgage loans serviced for Fannie Mae. Under no circumstances should the servicer of a regular servicing option MBS mortgage loan interpret the content of this chapter as relieving it of its responsibilities and obligations for conducting the foreclosure proceedings and disposing of the acquired property, including the absorption of all costs and any related losses.

E-3.1-02, Performing Due Diligence Prior to Considering Foreclosure (11/12/2014)

The servicer of a portfolio mortgage loan, a participation pool mortgage loan that Fannie Mae holds in its portfolio, or of a special servicing option MBS loan, must protect Fannie Mae's investment by making every reasonable effort to cure the delinquency through Fannie Mae's various workout options before referring a mortgage loan for foreclosure proceedings. The servicer must complete the actions shown in the following table prior to referring a mortgage loan to foreclosure.

✓	The servicer must...
	Inspect the property and analyze the individual circumstances of the delinquency.
	Diligently investigate mortgage loans originated as investment properties and attempt to determine whether or not the borrower is collecting rental income from the property. If the servicer suspects that the property or any unit(s) of the property is tenant occupied, it must take appropriate action to ascertain the actual occupancy status of the property. This includes completing detailed property inspections and conducting skip tracing.

Note: If the servicer learns of a change in mortgage loan status after referring the mortgage loan to foreclosure, the servicer must promptly notify the law firm of the change. Status changes include:

- occupancy status,
- rental income and amounts,
- tenant information, and
- lease information.

Related Announcements

The following table provides references to Announcements that are related to this topic.

Announcements	Issue Date
Announcements SVC-2017-08	September 13, 2017

E-3.1-03, Fannie Mae Address for Instruments of Record (11/12/2014)

When an instrument of record relating to a single-family property requires the use of an address for Fannie Mae, including assignments of mortgages, foreclosure deeds, REO deeds, and lien releases, see F-4-03, List of Contacts (09/18/2018) for the proper address.

E-3.1-04, Addressing a Bankruptcy Filed During Active Foreclosure (11/12/2014)

The servicer must contact the law firm within one business day after it learns of a bankruptcy filing in connection with a mortgage loan that has already been referred to a law firm for foreclosure. See *Required Referral Timelines for Mortgage Loans Previously Referred for Foreclosure* in E-1.2-01, Timing of the Bankruptcy Referral (11/12/2014) for additional requirements.

E-3.2-09, Conducting Foreclosure Proceedings (11/12/2014)

Introduction

This topic contains the following:

- Conducting Foreclosure Proceedings When Fannie Mae Is the Mortgagee of Record
- Conducting Foreclosure Proceedings When the Servicer Is the Mortgagee of Record
- Conducting Foreclosure Proceedings When MERS Is the Mortgagee of Record

Conducting Foreclosure Proceedings When Fannie Mae Is the Mortgagee of Record

The servicer must conduct the foreclosure in Fannie Mae's name when Fannie Mae is the mortgagee of record for all mortgage loans except for regular servicing option MBS mortgage loans that are secured by properties located in Utah or Mississippi. For these mortgage loans, the servicer must request that Fannie Mae reassign the mortgage loan to it so the foreclosure can be completed in the servicer's name.

The servicer must execute any required substitutions of trustees when Fannie Mae has granted the servicer its LPOA to do so on Fannie Mae's behalf. However, if state law or customary practice prohibits an attorney-in-fact from executing substitutions of trustees, the servicer must submit the substitution of trustee documents to Fannie Mae for execution before the foreclosure proceedings begin.

Conducting Foreclosure Proceedings When the Servicer Is the Mortgagee of Record

When the servicer is the mortgagee of record for a mortgage loan, the jurisdiction in which the security property is located will affect how the foreclosure proceedings are conducted or initiated.

In most states, the law firm must initiate the proceedings in the servicer's name when the servicer is the mortgagee of record or in the participating lender's name when the servicer is not the mortgagee of record for a participation pool mortgage loan. The law firm must subsequently have title vested in Fannie Mae's name in a manner that will not result in the imposition of a transfer tax.

The servicer and the law firm must determine the most appropriate method to use in each jurisdiction.

In any state or jurisdiction in which the foreclosure proceedings must be conducted in Fannie Mae's name to prevent the imposition of a transfer tax (such as Rhode Island; New Hampshire; Maine; or Orleans Parish, Louisiana), an assignment of the mortgage or deed of trust to Fannie Mae must be prepared and recorded in a timely manner to avoid any delays in the initiation of the foreclosure proceedings. If the servicer believes that a foreclosure proceeding must be conducted in Fannie Mae's name in any other jurisdiction to prevent the imposition of a transfer tax, the servicer must contact Fannie Mae's Legal department (see F-4-03, List of Contacts (09/18/2018)) for permission to do so.

When Fannie Mae's DDC or third-party document custodian has custody of an original unrecorded assignment of the mortgage to Fannie Mae, the servicer may either

- request return of that document so it can be recorded, or
- prepare a new assignment if doing so will expedite the process.

Once the assignment to Fannie Mae has been recorded, the foreclosure proceedings must be conducted in Fannie Mae's name.

Conducting Foreclosure Proceedings When MERS Is the Mortgagee of Record

The servicer must not name MERS as a plaintiff or foreclosing party in any foreclosure action on a Fannie Mae mortgage loan. When MERS is the mortgagee of record, the servicer must prepare an assignment from MERS to the servicer and bring the foreclosure in its own name unless Fannie Mae specifically allows the foreclosure to be brought in the name of Fannie Mae. In that event, the assignment must be from MERS to Fannie Mae, in care of the servicer at the servicer's address for receipt of notices. The assignment must be prepared and provided to the law firm in the referral package.

Fannie Mae will not reimburse the servicer for any expense incurred in preparing or recording an assignment of the mortgage loan from MERS to the servicer or to Fannie Mae. If the borrower reinstates the mortgage loan prior to completion of the foreclosure proceedings, re-assigning and re-registering the mortgage loan with MERS will be at the discretion and expense of the servicer.

The servicer must consult with the law firm to determine if any other legal requirements apply when conducting foreclosures of mortgage loans in which MERS is the prior mortgagee of record. See *Additional Required Foreclosure Referral Documents* in E-1.1-02, Required Referral Documents (11/12/2014) for additional information regarding MERS and proper assignments.

E-3.2-10, Paying Certain Expenses During the Foreclosure Process (11/12/2014)

The servicer must use any funds remaining in the borrower's escrow deposit account to pay T&I premiums that come due during the foreclosure process. The servicer also may use escrow funds to pay costs for the protection of the security and related foreclosure costs as long as state or local laws, government regulations, or the requirements of the mortgage insurer or guarantor do not preclude the use of escrow funds for these purposes. If the escrow balance is not sufficient to cover these expenses, the servicer must advance its own funds. See also *Advancing Funds to Cover Expenses* in B-1-01, Administering an Escrow Account and Paying Expenses (06/13/2018) for additional information.

E-3.2-11, Collecting Under an Assignment of Rents (08/12/2015)

The servicer must determine whether it is appropriate to pursue collections under the assignment of rents provision, taking into consideration mortgage insurer or guarantor requirements.

If the servicer pursues collections under an assignment of rents provision, it must ensure

- local law allows the mortgagee to collect rents under these circumstances, and
- this action will not create any new rights for the occupant that might impair Fannie Mae's ability to foreclose the mortgage loan at a later date.

Rental income that is collected on a delinquent mortgage loan must be applied in accordance with the terms of the note and security instrument.

The following table provides the servicer with instructions when the mortgage loan is in foreclosure and the servicer is already collecting rental income.

✓	The servicer must…
	Hold any rental income it receives as unapplied funds until the mortgage loan is liquidated.
	Keep a record of rental income collections and disbursements so that they can be considered when the final claim under the MI or guaranty is filed.
	Remit Fannie Mae's share of the rental income to Fannie Mae or deduct it from the amount due to reimburse the servicer for any advances it made.

Related Announcements

The following table provides references to Announcements that are related to this topic.

Announcements	Issue Date
Announcement SVC–2015–11	August 12, 2015

E-3.2-12, Performing Property Preservation During Foreclosure Proceedings (07/12/2017)

When a mortgage loan is delinquent including throughout the foreclosure process, the servicer must perform all property maintenance functions as necessary to ensure that the condition and appearance of the property are satisfactorily maintained.

The servicer must manage and protect the property until it is conveyed to the insurer or guarantor, or until Fannie Mae assigns that responsibility elsewhere, including when

- a borrower selects an immediate move Mortgage Release and the REOgram is submitted to Fannie Mae, or
- a borrower selects the three-month transition or twelve-month lease.

The servicer must take whatever action is necessary to protect the value of the property in accordance with the *Property Preservation Matrix and Reference Guide*. This includes making sure that no apparent violations of applicable law are occurring on the property (such as violations of laws relating to illegal narcotics and similar substances) and that the property is protected against vandals and the elements.

The servicer must refer to the *Property Preservation Matrix and Reference Guide* for all maintenance work when a mortgage loan is delinquent and the property is vacant or abandoned. When the cost to complete property preservation work will exceed the Fannie Mae allowable, the servicer must submit the request via HomeTracker. The servicer must follow the procedures in *Requesting Fannie Mae Approval for Property Preservation and Maintenance* in F-1-08, Managing Foreclosure Proceedings (11/14/2018), for detailed instructions for submitting a request when it does not have access to HomeTracker.

Related Announcements

The following table provides references to Announcements that are related to this topic.

Announcements	Issue Date
Announcement SVC-2017-06	July 12, 2017

E-3.2-13, Addressing Title Defects Generally (12/16/2015)

With respect to each first lien mortgage loan sold to Fannie Mae, the following warranties are made to Fannie Mae:

- the mortgage is a valid and subsisting lien on the property;
- the property is free and clear of all encumbrances and liens having priority over it except for liens for real estate taxes, and liens for special assessments, that are not yet due and payable; and

Document Ownership	Document Execution Submission Without LPOA or Servicer Unable to Execute	For Inquiries OR If Required Delivery Method is Email	Delivery Address when an Original is Required to be Mailed
SF CPM Division	• Quitclaim deeds for properties conveyed in error • Release of liability • Assignments of mortgage • Substitution of trustees • Conveyance or reconveyances of acquired properties • Mortgage Loan Modifications • All other documents	*CPM_Servicing_Documents@fanniemae.com*	Fannie Mae Attn: SF CPM, Documents P.O. Box 650043, Dallas, TX 75265 or P.O. Box 809007 Dallas, TX 75265
SF CPM, Loss Mitigation Division	Partial Release of Security	*partial_releases@fanniemae.com*	Fannie Mae SF CPM, Loss Mitigation Department 5600 Granite Parkway VII Plano, TX 75024

Related Announcements

The following table provides references to Announcements that are related to this topic.

Announcements	Issue Date
Announcement SVC-2017-04	May 10, 2017

F-1-11, Post-Delivery Servicing Transfers (09/18/2018)

Introduction

This Servicing Guide Procedure includes the following:

- Requesting Fannie Mae Approval
- Special Notifications to the Transferee Servicer
- Notifying Third Parties

- Transfer of Individual Mortgage Loan Files and Portfolio Information
- Submission of Final Accounting Reports/Remittances
- Preparing Mortgage Loan Assignments
- Transfer of Custodial Documents

Requesting Fannie Mae Approval

Transfer of Mortgage Loans

As required in *Requesting Fannie Mae Approval* in A2-7-03, Post-Delivery Servicing Transfers (09/18/2018), the servicer must submit the appropriate information to request Fannie Mae's approval of the transfer of servicing, including servicing transfers involving a subservicer.

When requesting approval to transfer servicing, the transferor or transferee servicer or subservicer must submit a fully completed *Request for Approval of Servicing or Subservicing Transfer* (*Form 629*) in an electronic format to the Servicing Transfers group at *servicing_transfers@fanniemae.com*. The submission is required at least 60 days before the earlier of proposed sale or transfer date for servicing transfers, and at least 30 days before the earlier of proposed sale or transfer date for subservicing transfers.

The servicer must include the transfer and sale dates on *Form 629*. The transfer date refers to the date on which the physical transfer of the servicing (or subservicing) responsibilities from the transferor servicer (or subservicer, as the case may be) to the transferee servicer (or subservicer) occurs. It may not necessarily be the same date as the sale date identified in a servicing transfer agreement. The sale date is the date on which the ownership of the servicing rights and the legal liability for the servicing of the Fannie Mae mortgage loans transfer from one servicer to another.

> **Note**: While Fannie Mae requires the transferring parties to identify the sale date associated with a servicing transfer, Fannie Mae's approval will only be issued as to the transfer date.

Special Notifications to the Transferee Servicer

As required in *Obligations of the Transferor and Transferee Servicers* and *Special Notifications to the Transferee Servicer* in A2-7-03, Post-Delivery Servicing Transfers (09/18/2018), the transferor servicer must provide special notification to the transferee servicer when a transfer of servicing includes the following:

- an eMortgage,
- a mortgage loan modified under HAMP and/or 2MP, or
- a mortgage loan subject to resale restrictions regardless of whether the restrictions survive foreclosure or acceptance of a Mortgage Release (deed-in-lieu of foreclosure).

When a Servicing Transfer Includes an eMortgage or a Mortgage Loan Modified Under HAMP/2MP

For an eMortgage or a mortgage loan modified under HAMP/2MP, the transferor servicer must take the actions described in the following table.

✓	The transferor servicer must...
	Advise the transferee servicer that an eMortgage or a mortgage loan modified under HAMP/2MP is part of the portfolio being transferred.
	Confirm that the transferee servicer • is aware of the special requirements for these mortgage loans, and • agrees to assume the additional responsibilities associated with servicing these mortgage loans.

Special Requirements when the Servicing Transfer includes eMortgages

Subsequent to Fannie Mae's approval of a servicing transfer, the following table describes additional actions that the transferor servicer must complete prior to the date of transfer, for a transfer of servicing that includes eMortgages.

✓	The transferor servicer must...
	Provide to the transferee servicer a copy of all eNotes included in the transfer via MSERS eDelivery or some other mutually agreed-upon means.
	Update the "Servicing Agent" field in the MERS eRegistry to reflect the transferee servicer or transferee servicer's agent, as applicable.
	Provide to the transferee servicer all associated borrower attribution evidence and audit trail information detailing the eClosing event.

The transferee servicer must confirm that all actions in the table above have been completed prior to the date of the transfer.

When a Servicing Transfer Includes a Mortgage Loan Subject to Resale Restrictions

For a mortgage loan subject to resale restrictions, the transferor servicer must take the actions described in the following table.

✓	The transferor servicer must...
	Identify each mortgage loan subject to resale restrictions on *Form 629*.
	Confirm that the transferee servicer is aware of its duties and obligations related to the servicing of a mortgage loan subject to resale restrictions.

Notifying Third Parties

As described in *Notifying Third Parties* in A2-7-03, Post-Delivery Servicing Transfers (09/18/2018), the transferor and transferee servicers must take certain actions to ensure that all servicing functions that involve third parties will continue uninterrupted (or discontinued, if appropriate) after the transfer of servicing.

The following table describes the actions the transferor or transferee servicer must take to ensure that all servicing functions that involve third parties will continue uninterrupted (or discontinued, if appropriate) after the transfer of servicing.

✓	The transferor or transferee servicer must...
	Fulfill all requirements of each MI policy that insures any conventional mortgage loans included in the transfer—including, but not limited to, the requirements for providing timely notification or requesting prior approval—to ensure the continuation of the MI coverage. If the current mortgage insurer will not provide continuing coverage following the servicing transfer, the transferee servicer must find another mortgage insurer to provide MI coverage that is equivalent to the previous coverage—at no increased cost to the borrower or Fannie Mae—and obtain that mortgage insurer's written commitment to provide the required coverage.
	Fulfill all requirements of FHA, VA, RD, or HUD—including, but not limited to, providing timely notification or requesting prior approval—to ensure the continuation of the MI or mortgage loan guaranty, if applicable.
	Notify the hazard, flood, earthquake, other property insurance carriers, as applicable, to request a policy endorsement to substitute the transferee servicer's name in the mortgagee clause and to change the premium billing address to that of the transferee servicer (unless the borrower pays the premium directly).
	Notify any tax or flood service provider and any optional insurance provider (or other products that are providing coverage) that the transferor servicer used for any of the mortgage loans that are being transferred to indicate whether the transferee servicer will continue using its services.
	Send appropriate notices of the transfer of servicing (providing the transferee servicer's name and address) to taxing authorities, holders of leaseholds, HOAs, and other lien holders. **Note**: Any public utilities that levy mandatory assessments for which funds are being escrowed also must be notified.
	Notify any law firm involved in the management of foreclosure or other legal action in connection with the mortgage loans or acquired properties.
	Notify the current document custodian of the pending transfer of servicing and make arrangements for the prompt and safe transfer of the custodial documents to the document custodian designated by the transferee servicer, in accordance with requirements in the *Servicing Guide.*

Transfer of Individual Mortgage Loan Files and Portfolio Information

As described in *Transfer of Individual Mortgage Loan Files and Portfolio Information* in A2-7-03, Post-Delivery Servicing Transfers (09/18/2018), the transferor servicer must deliver specific information to the transferee servicer.

The following table describes the information that must be delivered to the transferee servicer.

✓	The transferor servicer must deliver to the transferee servicer...
	Documentation evidencing each mortgage insurer's approval of the servicing transfer or its commitment to insure the transferred mortgage loans, or a copy of the mortgage insurer's master policy evidencing that it is permissible to transfer servicing of insured mortgage loans without the mortgage insurer's prior approval.
	A list of any conventional mortgage loans that have borrower-paid or lender-purchased MI (identifying the applicable premium rates and the due date of the next premium payment) and an explanation of the premium payment obligations and claim payment procedures that apply to them.
	A list of any eMortgages that are part of the portfolio being transferred.
	Copies of any tax or flood service contracts that will remain in effect, or notification that the contracts will be transferred to the transferee servicer by a tape process.
	A list of tax bills, assessments, property insurance premiums, MIPs, etc. that are due to be paid by the servicer, but that are still unpaid as of the transfer date.
	A list of the expiration dates and premium payment frequencies for property insurance, and MI policies, as applicable, related to each mortgage loan being transferred, whether or not premiums for these policies are escrowed.
	A list of mortgage loans that have optional insurance and other insurance products that will remain in effect.
	A list of mortgage loans that are subject to automatic drafting of the monthly payments.
	A list of ARM loans, showing the plan identification and parameters, the index used, the next interest rate change date, the next payment change date, the dates on which any fixed rate conversion option may be exercised, and the current status of any changes in process.
	Transaction and payment histories for the life of the mortgage loans.

✓	The transferor servicer must deliver to the transferee servicer...
	Trial balances, as of the close of business on the day immediately preceding the transfer date, showing • the remittance type for each mortgage loan (actual/actual, scheduled/actual, or scheduled/scheduled); • the remittance cycle for each MBS mortgage loan (standard, RPM, or MBS Express); • Fannie Mae's applicable ownership interest if it holds only a participation percentage in the mortgage loan; • the applicable pool number for MBS mortgage loans; • delinquencies, foreclosure, bankruptcies, and acquired properties; • transfers of ownership, payoffs, and other exception transactions that are in process, including mortgage loan modification-related transactions; • escrow balances, escrow advances, curtailments, unapplied funds, and loss drafts; and • buydown account balances for mortgage loans subject to temporary interest rate buydown plans.
	A copy of the custodial bank reconciliation for each custodial bank account maintained as of the cutoff date (if the transferor servicer is unable to complete this reconciliation by the transfer date, it should complete the reconciliation as promptly as possible and send it to the transferee servicer within five business days after the transfer date).
	Copies of all investor accounting reports that were filed with Fannie Mae for the three months that immediately precede the cutoff date.
	A reconciliation of any outstanding shortage/surplus balance, if applicable, related to the mortgage loans being transferred as of the last reporting period of Fannie Mae's investor reporting system.
	Definitions of codes used in ledger records, trial balances, or any other documents that are being forwarded to the transferee servicer.
	Escrow analyses.
	All information relating to delinquency management and default prevention.
	Copies of all documents including items held by a document custodian, and all other documents pertinent to servicing the mortgage loans including mortgage loan modification agreements.
	All customer correspondence and responses, including borrower complaints and escalated cases.
	The title policies or alternative title products.
	A list of each mortgage loan that is in the process of foreclosure or for which the borrower has filed bankruptcy, including the Fannie Mae loan number and the name and address of the law firm handling the foreclosure or bankruptcy.
	Information and records for any mortgage loans that are in foreclosure, bankruptcy, or a workout status and for any properties that Fannie Mae acquired by foreclosure or acceptance of a Mortgage Release [(deed-in-lieu of foreclosure) (if Fannie Mae has not sold them by the transfer date)]. **Note**: If the original mortgage loan custodial documents are not part of the individual mortgage loan file that is being transferred, the transferor servicer must provide a list showing the name of the party that is in possession of the original mortgage loan note.

✓	The transferor servicer must deliver to the transferee servicer...
	All pertinent information related to the status of any mortgage loan for which a workout option is being pursued.
	A list of any acquired properties for which it is performing administrative functions, such as paying taxes or performing property maintenance if the responsibilities for these functions will be transferred to the transferee servicer. The list must identify each property by the Fannie Mae loan number and include a history of the transferor servicer's actions from the date the property was acquired (including information about expenditures, receipts, and management and marketing activities) and provide the appropriate documentation.
	Information on any mortgage loan or acquired property being transferred that is the subject of litigation at the time of the transfer, including all records pertaining to such litigation (including court filings, disclosure requests and responses, and preliminary rulings).

Transfer of P&I and T&I Funds

As required in A4-1-02, Establishing Custodial Bank Accounts (04/12/2017), the servicer is responsible for the safekeeping of custodial funds at all times. The transferor servicer must forward to the transferee servicer all P&I and T&I custodial account balances including, but not limited to, the following:

- unremitted P&I collections;
- escrow funds;
- unapplied funds;
- loss drafts;
- accruals on deposit—for example, for the payment of future renewal premiums for lender-purchased MI; and
- buydown funds.

If the transferor servicer has advanced delinquent interest or scheduled P&I to Fannie Mae, the transferee servicer must reimburse the transferor servicer once it receives a final accounting of all monies from the transferor servicer.

All new amounts owed must be paid to the appropriate party promptly, as agreed by the parties.

Submission of Final Accounting Reports/Remittances

As described in *Submission of Final Accounting Reports/Remittances* in A2-7-03, Post-Delivery Servicing Transfers (09/18/2018), the transferor servicer must submit the monthly LAR for the month that includes the transfer date.

In the month of the transfer date, the transferor servicer will be contractually responsible for

- reporting the monthly LAR for all mortgage loan activity processed on the mortgage loans, and
- ensuring that sufficient funds to satisfy that month's remittance obligation are available for drafting on the scheduled remittance date. However, the transferor and transferee servicers may agree that the transferee servicer will make the actual remittance to Fannie Mae.

In the month following the transfer date, the transferee servicer will be responsible for reporting the monthly LAR applicable to the transferred mortgage loans.

The transferor servicer must provide the transferee servicer with copies of its Fannie Mae investor reporting system shortage/surplus reconciliations for the final monthly accounting period for all mortgage loans included in the servicing transfer. The two servicers should agree on how to resolve any differences and reconcile items or funds that are owed Fannie Mae and security holders. (Any questions regarding these issues must be directed to the transferor servicer's Fannie Mae Investor Reporting Representative.)

If, after reconciling the final shortage/surplus balance, the transferor servicer determines that Fannie Mae needs to process a shortage/surplus adjustment, the transferor servicer must send to its Fannie Mae Investor Reporting Representative (see F-4-03, List of Contacts (09/18/2018)) a copy of the final shortage/surplus reconciliation along with adequate documentation to support the requested adjustment. The adjustment must be requested within 30 days after the transfer date. The transferee servicer will be responsible for any Fannie Mae investor reporting system shortages related to mortgage loans included in the transfer that are not promptly resolved by the transferor servicer.

Preparing Mortgage Loan Assignments

Mortgage loan assignments must be prepared and recorded, if required, in accordance with *Preparing Mortgage Loan Assignments* in A2-7-03, Post-Delivery Servicing Transfers (09/18/2018).

Any required assignment that is submitted to the document custodian(s) must be identified by the applicable Fannie Mae loan number and submitted under cover of a transmittal letter that includes the following information:

- the name of the transferor servicer;
- the name of the transferee servicer;
- the number of mortgage loans included in the transfer, as well as the number of mortgage loans for which recordable (but unrecorded) assignments to Fannie Mae have been executed;
- the transfer date; and
- a trial balance of the transferred mortgage loans, which identifies the mortgage loans for which assignments to Fannie Mae are being provided (or, if only a few mortgage loans are being transferred, a list of the transferred mortgage loans for which assignments are being provided).

Fannie Mae is the Mortgagee of Record

A new mortgage loan assignment does not need to be prepared if the assignment to Fannie Mae has been recorded. A mortgage loan for which Fannie Mae is the mortgagee of record would be one of the following:

- a mortgage loan that was delivered to Fannie Mae before it converted to the Fannie Mae investor reporting system in 1984 (regardless of the location of the security property);
- a mortgage loan that is secured by a property located in Mississippi or Utah, if the mortgage loan was delivered to Fannie Mae during the period that Fannie Mae required recorded assignments for a Mississippi mortgage loan (after September 1, 1988, until June 7, 1989) or for a Utah mortgage loan (after September 1, 1988, until October 31, 1991); or
- a mortgage loan for which Fannie Mae requested recordation of the assignment (for any reason) after it purchased or securitized the mortgage loan.

Fannie Mae is Not the Mortgagee of Record and the Mortgage Loan is Not Registered with MERS

An assignment from the transferor servicer to the transferee servicer must be prepared and recorded if an assignment to Fannie Mae has not been recorded for a mortgage loan that is not registered with the MERS. The transferor servicer is re-

sponsible for recording the assignment from itself to the transferee servicer. (Blanket assignments may be used for the assignment, as long as the coverage for each blanket assignment is restricted to a single recording jurisdiction.) If the transferee servicer is a master servicer utilizing a subservicer and the subservicer will be the mortgagee of record, the required assignment must be from the transferor servicer to the subservicer unless the subservicer is already the mortgagee of record. If the transferor servicer will be the subservicer of the transferee servicer and will remain the mortgagee of record, an assignment to the transferee servicer will not be required.

An assignment from the transferee servicer (or the subservicer if the subservicer will be the mortgagee of record) to Fannie Mae must be prepared (in recordable form, but unrecorded) to replace the one Fannie Mae had originally received from the transferor servicer. This unrecorded assignment from the transferee servicer to Fannie Mae must be an individual assignment. The transferee servicer is responsible for preparing the unrecorded assignment to Fannie Mae and delivering to the applicable document custodian within six months of the transfer date. If the transferor servicer will be the subservicer of the transferee servicer, will remain the mortgagee of record and has previously delivered an unrecorded assignment to the document custodian; a new unrecorded assignment to Fannie Mae will not be required.

> **Note**: Generally, when a transferred mortgage loan is secured by a property located in Puerto Rico, neither an assignment of the mortgage loan from the transferor servicer to the transferee servicer nor an unrecorded assignment from the transferee servicer to Fannie Mae will need to be prepared and recorded.

Fannie Mae is Not the Mortgagee of Record and the Mortgage Loan is Registered with MERS

Generally, when the servicing of a MERS-registered mortgage loan is transferred to a servicer that is not a MERS member (or to a servicer that elects not to continue the MERS registration for the mortgage loan), Fannie Mae requires

- the transferor servicer to prepare an assignment of the mortgage loan from MERS to the transferee servicer (or the subservicer if the subservicer will be the mortgagee of record) and have it executed and recorded,
- the transferor servicer to “deactivate” the Mortgage Identification Number (MIN) in the MERS system for reason: “Transfer to Non-MERS Status,” and
- the transferee servicer (or the subservicer if the subservicer will be the mortgagee of record) to prepare a recordable (but unrecorded) assignment of the mortgage loan from itself to Fannie Mae and to deliver it to the applicable document custodian.

Transfer of Custodial Documents

If the transferee servicer continues to store the custodial documents with the existing document custodian, it must execute the *Master Custodial Agreement*, in accordance with *Fannie Mae’s Requirements for Document Custodians.* If the transferee servicer already has a master custodial agreement on file with that document custodian, the transferee servicer must obtain an *MBS Custodian Recertification* (*Form 2002*) in connection with the servicing transfer within six months of the transfer date.

The transferee servicer and the transferor servicer must work out appropriate arrangements for paying the costs of transferring the documents and obtaining the required pool recertification in an expeditious manner. MBS pool documents that will be held by a new document custodian or by the transferee servicer must be recertified, and *Form 2002* must be completed and submitted to the transferee servicer’s Fannie Mae office within six months of the transfer date. In the event the transferee servicer cannot complete recertification of the transferred mortgage loans and cannot cure an exception to recertification within six months of the transfer date, the transferee servicer must contact its Fannie Mae Servicing Representative (see F-4-03, List of Contacts (09/18/2018)) for further discussion and resolution.

Custodial Documents for Participation Pool Mortgage Loans

For participation pool mortgage loans that Fannie Mae holds in its portfolio, any original mortgage notes that the transferor servicer has in its possession must be transferred to Fannie Mae's DDC for permanent retention no later than 30 days after the transfer date. To ensure that the transferred documents are appropriately identified, a label showing the Fannie Mae loan number must be affixed to the notes. The documents that are being turned over to Fannie Mae for custody also must be annotated on the trial balance that is submitted to Fannie Mae in connection with the servicing transfer.

Related Announcements

The following table provides references to Announcements that are related to this topic.

Announcements	Issue Date
Announcement SVC-2018-06	September 18, 2018
Announcement SVC-2017-05	June 21, 2017
Announcement SVC-2017-04	May 10, 2017
Announcement SVC-2017–01	January 18, 2017
Announcement SVC–2016–09	October 19, 2016

F-1-12, Preparing to Implement a Workout Option (11/14/2018)

Introduction

This Servicing Guide Procedure contains the following:

- Calculating the Housing Expense-to-Income Ratio for Imminent Default for a Conventional Mortgage Loan Modification
- Calculating the Housing Expense-to-Income Ratio for Imminent Default for a Fannie Mae Short Sale or Fannie Mae Mortgage Release
- Processing the IRS Form 4506T-EZ or IRS Form 4506–T
- Notifying Fannie Mae of Lead-Based Paint Citations

Calculating the Housing Expense-to-Income Ratio for Imminent Default for a Conventional Mortgage Loan Modification

The servicer must determine the borrower's pre-modification housing expense-to-income ratio as outlined in *Evaluating a Borrower for Imminent Default for Conventional Mortgage Loan Modification Eligibility* in D2-1-01, Determining if the Borrower's Mortgage Payment is in Imminent Default (11/14/2018).

EXHIBIT C