

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

2  
3       ALBERT ELLIS LINCICOME, JR., AND  
4       VICENTA LINCICOME,

5                                   Appellants,

6       v.

7  
8       SABLES, LLC A NEVADA LIMITED  
9       LIABILITY COMPANY, AS TRUSTEE OF  
10      THE DEED OF TRUST GIVEN BY  
11      VICENTA LINCICOME AND DATED  
12      5/23/2007; FAY SERVICING, LLC, A  
13      DELAWARE LIMITED LIABILITY  
14      COMPANY AND SUBSIDIARY OF FAY  
15      FINANCIAL, LLC; PROF-2013-M4 LEGAL  
16      TITLE TRUST BY U.S. BANK, N.A., AS  
17      LEGAL TITLE TRUSTEE; BANK OF  
18      AMERICA, N.A.; BRECKENRIDGE  
19      PROPERTY FUND 2016, LLC, A UTAH  
20      LIMITED LIABILITY COMPANY;  
21      NEWREZ, LLC, D/B/A SHELLPOINT  
22      MORTGAGE SERVICING, LLC; 1900  
23      CAPITAL TRUST II, BY U.S. BANK TRUST  
24      NATIONAL ASSOCIATION; AND MCM-  
25      2018-NPL2,

26                                   Respondents.

Supreme Court Case No.  
83261

Electronically Filed  
Dec 22 2021 02:22 p.m.  
Third Judicial District  
Elizabeth A. Brown  
Clerk of Supreme Court  
01332

27                                   **RESPONDENT BRECKENRIDGE PROPERTY FUND 2016, LLC'S**  
   **MOTION TO DISMISS APPEAL**

          Comes now Respondent Breckenridge Property Fund 2016, LLC  
("Breckenridge"), by and through its undersigned counsel of record, Hutchison &  
Steffen, and hereby submits its Motion to Dismiss Appeal. This motion is based on  
the pleadings and papers on file herein and the following memorandum of points

1 and authorities.

2 Dated this 22<sup>nd</sup> day of December, 2021.

3 HUTCHISON & STEFFEN, PLLC

4  
5  
6 /s/Brenoch Wirthlin

7 John T. Steffen (4390)  
8 Brenoch R. Wirthlin (10282)  
9 10080 W. Alta Dr., Suite 200  
10 Las Vegas, NV 89145

11 Casey J. Nelson (12259)  
12 WEDGEWOOD, LLC  
13 Office of the General Counsel  
14 2320 Potosi Street, Suite 130  
15 Las Vegas, Nevada 89146  
16 *Attorney for Respondent,*  
17 *Breckenridge Property Fund, LLC*

18 **I. INTRODUCTION**

19 Appellants Albert Ellis Lincicome, Jr., and Vicenta Lincicome  
20 (“Appellants”) have prematurely appealed this matter, thereby denying this Court  
21 the necessary jurisdiction to hear the instant appeal. The trial court below has not  
22 entered a final appealable judgment in this case with respect to Breckenridge. The  
23 order granting Breckenridge’s motion for summary judgment, from which the  
24 Appellants appeal, among others, is interlocutory and is not appealable because it  
25 fails to establish damages and Breckenridge’s counterclaims were not reduced to  
26 judgment. Specifically, Breckenridge filed counterclaims for, among other things,  
27 rent that the Appellants owe to Breckenridge due to their wrongful possession of

1 the real property at issue (“Subject Property”) and refusal to turn it over to  
2 Breckenridge. While the District Court granted Breckenridge’s motion for  
3 summary judgment on its counterclaims, Appellants filed the instant appeal prior  
4 to Breckenridge’s claims being reduced to judgment. Thus, not all of the issues  
5 before the Third Judicial Court have been resolved, requiring dismissal of the  
6 instant appeal for lack of jurisdiction.  
7

## 9 **II. STANDARD OF REVIEW**

10 This Court has limited jurisdiction to consider appeals that are either  
11 authorized by statute or rule, including a “final judgment”. *Valley Bank of Nevada v.*  
12 *Ginsburg*, 110 Nev. 440 (1994); *see also* NRAP 3A. Importantly, a final judgment is  
13 one that “disposes of all the issues presented in the case, and leaves nothing for the  
14 future consideration of the court, except for post-judgment issues such as attorney's  
15 fees and costs.” *See Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch*  
16 *Cmt. Ass'n*, 137 Nev. Adv. Op. 52, 495 P.3d 492, 496 (2021) (*citing Lee v. GNLV*  
17 *Corp.*, 116 Nev. 424 (2000)). The purpose is to promote judicial economy by  
18 avoiding piecemeal appellate review. *See Valley Bank of Nevada*, 110 Nev. at 444.  
19

## 22 **III. STATEMENT OF RELEVANT FACTS**

23  
24 1. On or about May 23, 2007, Appellants executed a Note and Deed of  
25 Trust that was secured by the Subject Property. *See Exhibit #1.*  
26  
27

1           2.     Appellants subsequently defaulted on that loan obligation resulting in  
2 a Notice of Default and Notice of Sale being recorded against the Subject Property.

3 ***See Exhibits #2 and #3.***  
4

5           3.     On November 7, 2018, Appellants filed a complaint for injunctive  
6 relief, contractual claims, and declaratory relief regarding the scheduled  
7 foreclosure sale of the Subject Property.  
8

9           4.     On November 8, 2018, Appellants recorded a *lis pendens* on the  
10 Property and also filed an Application for Ex Parte Restraining Order, Preliminary  
11 Injunction and Permanent Injunction.  
12

13           5.     On December 31, 2018, the Court entered an order enjoining the  
14 foreclosure on the Subject Property ***if*** the Appellants timely posted of a bond in the  
15 amount of \$172,610.67 and additional security in the amount of \$2,105.10 per  
16 month thereafter.  
17

18           6.     Appellants failed to post the bond and the Subject Property went to  
19 foreclosure sale on or about January 4, 2019, at which time Breckenridge  
20 purchased the Subject Property at the NRS 107 foreclosure sale for \$294,000.01,  
21 relying on the fact that the noticed foreclosure sale was valid because Plaintiff  
22 failed to post the requisite bond. ***See Exhibit #4.***  
23

24           7.     On January 25, 2019, the Trustees Deed Upon Sale confirming  
25 Breckenridge's ownership of the Subject Property was recorded. ***See Exhibit #5.***  
26  
27

1           8.     The Appellants were in possession of the Property at the time  
2 Breckenridge purchased the Property and have been in possession since that date.  
3  
4 On or about January 28, 2019, Breckenridge served a Three-Day Notice to quit to  
5 the Appellants (“Three-Day Notice”). *See Exhibit #6.*

6           9.     Notwithstanding the Three-Day Notice, the Appellants remained in  
7 possession of the Subject Property until December 14, 2021.<sup>1</sup>  
8

9           10.    On December 20, 2019, Appellants filed their Second Amended  
10 Complaint, wherein they brought claims against Breckenridge for Declaratory  
11 Relief and Quiet Title.  
12

13           11.    Breckenridge subsequently filed a Counterclaim against Appellants  
14 through which it claims ownership to the Subject Property, sought to quiet title in  
15 its favor, sought monetary damages for unpaid rent during the time the Appellants  
16 remained in the Subject Property, as well as possession of the Property through a  
17 claim for writ of restitution (“Counterclaims”). *See Exhibit #7.*  
18  
19

20           12.    Specifically, Breckenridge brought five (5) claims for relief: Quiet  
21 Title, Slander of Title, Writ of Restitution, Unjust Enrichment, and Rent or Monies  
22 for Possession of the Subject Property. *Id.*  
23  
24

---

25           <sup>1</sup> Breckenridge obtained a permanent writ of restitution and on December 14,  
26 2021, the Appellants vacated the Subject Property.  
27

1           13. Among other things, Breckenridge sought payment of “reasonable  
2 rents for the period of time from service of the Three-Day Notice until such time as  
3 the [Appellants] vacate the Subject Property.” *Id.*

4  
5           14. Because the Appellants remained in possession of the Subject  
6 Property even after service of the Three-day Notice, Appellants are required to pay  
7 rent to Breckenridge from February 1, 2019, until the date they vacated the Subject  
8 Property.  
9

10           15. Ultimately, the Trial Court made a determination granting  
11 Breckenridge’ Counterclaims and denying Appellants’ claims. *See* Trial Court’s  
12 Order on Breckenridge’s Motion for Summary Judgment (“MSJ Order”), ***Exhibit***  
13 ***#8.***  
14

15  
16           16. However, the MSJ Order does not adjudicate the amounts due to  
17 Breckenridge on its claims, nor did the MSJ Order reduce any of Breckenridge’s  
18 Counterclaims to monetary judgment.  
19

20           17. On July 19, 2021, Appellants filed their Notice of Appeal (“NOA”)  
21 challenging, among other things, the “Order on Breckenridge Motion for Summary  
22 Judgment” (*i.e.*, the MSJ Order). *See* NOA, on file herein, at p. 2.  
23

24 ///

25 ///

26 ///

1 **IV. ARGUMENT**

2 **A. This appeal is improper and should be dismissed for lack of**  
3 **jurisdiction.**  
4

5 Here, as noted above, the Appellants have filed a notice of appeal challenging  
6 the MSJ Order. Yet, this order is not a final appealable judgment. *See Lee v. GNLV*  
7 *Corp.*, 116 Nev. 424 (2000). The MSJ Order does not contain an award of damages  
8 and the trial court has been unable to conduct the necessary proceedings to ascertain  
9 the proper amount of damages because of this improperly filed appeal.  
10

11 As this Court has explained, a final appealable judgment is one that “disposes  
12 of all the issues presented in the case, and leaves nothing for the future consideration  
13 of the court, except for post-judgment issues such as attorney's fees and costs.” *See*  
14 *Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Cmty. Ass'n*, 137 Nev.  
15 *Adv. Op.* 52, 495 P.3d 492, 496 (2021). Therefore, given the fact that the trial court  
16 has not awarded any damages to Breckenridge on its Counterclaims, an appeal at this  
17 time would create a piecemeal proceeding which would give the Appellants another  
18 opportunity to appeal the final judgment after an award of damages is made. Thus,  
19 the MSJ Order is not an appealable order and this Court should dismiss the instant  
20 appeal for lack of jurisdiction to permit Breckenridge to reduce its Counterclaims to  
21 judgment, at which point said judgment would become appealable with the  
22 appropriate bond.  
23  
24  
25  
26  
27

///

1 **V. CONCLUSION**

2 For all these reasons, Respondent Breckenridge respectfully requests that this  
3 Court dismiss the instant appeal, and grant such other and further relief as the Court  
4 deems appropriate.  
5

6 Dated this 22<sup>nd</sup> day of December, 2021.  
7

8 HUTCHISON & STEFFEN, PLLC  
9

10 /s/Brenoch Wirthlin  
11

12 John T. Steffen (4390)  
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15 Las Vegas, NV 89145

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20 Las Vegas, Nevada 89146  
21 *Attorney for Respondent,*  
22 *Breckenridge Property Fund, LLC*  
23  
24  
25  
26  
27



1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, hereby certify that, pursuant to NRAP Rule 25(d), I served  
3 the foregoing **RESPONDENT BRECKENRIDGE PROPERTY FUND 2016,**  
4 **LLC'S MOTION TO DISMISS APPEAL** on all parties of record to this appeal.  
5  
6 via the manner of service indicated below, on December 22, 2021:  
7

8 ***Via Electronic Service through E-***  
9 ***Flex System:***

10 Michael G. Millward, Esq.  
11 MILLWARD LAW, LTD.  
12 1591 Mono Avenue  
13 Minden, NV 89423  
*Attorney for Appellants*

14 Ariel E. Stern, Esq.  
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National Association as Legal  
Title Trustee; Fay Servicing,  
LLC, and Shellpoint Mortgage  
Servicing, LLC*

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ZIEVE BRODNAX & STEEL  
9435 W. Russell Road, #120  
Las Vegas, NV 89148  
*Attorney for Sables, LLC*

21 ***Via US Mail***

22 Lansford Levitt  
23 Settlement Judge  
24 4230 Christy Way  
25 Reno, NV 89159

26 Dated: December 22, 2021.

27 /s/ Danielle Kelley  
An Employee of Hutchison & Steffen

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EXHIBIT PAGE ONLY

## EXHIBIT 1

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

DOC # 407150  
05/25/2007 04 34 PM  
Official Record

Requested By  
STEWART TITLE OF NEVADA  
Lyon County - NV  
Mary C Milligan Recorder  
Page 1 of 20 Fee \$58.00  
Recorded By DLW RPTT



Assessor's Parcel Number  
29-401-17

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

/s/ LYNDA KLEIN  
FUNDER

Recording Requested By  
SIERRA PACIFIC MORTGAGE COMPANY, INC  
280 BRINKBY STREET, SUITE 100  
RENO, NV 89509  
775-826-3700

Loan No 0000479436

[Space Above This Line For Recording Data]

## DEED OF TRUST

MIN 1000703-0000479436-5

### 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 MAY 23, 2007 together with all Riders to this document.

(B) "Borrower" is VICENTA LINCICOME, A MARRIED WOMAN

Borrower is the trustor under this Security Instrument

(C) "Lender" is SIERRA PACIFIC MORTGAGE COMPANY, INC.

Lender is a CORPORATION organized and existing under the laws of CALIFORNIA  
Lender's address is 50 IRON POINT CIRCLE, STE 200, FOLSOM, CA 95630

(D) "Trustee" is GREENHEAD INVESTMENTS, INC., A CALIFORNIA CORPORATION

NEVADA- Single Family- Yvette Mae/Freddie Mae UNIFORM INSTRUMENT with MERS  
DRAW MERS NV CVL DT 1 WPF (0101DOCS\DEEDS\CVL\NV\_MERS CVL)

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(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P O Box 2026, Flint, Michigan 48501-2026, tel (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MAY 23, 2007.

The Note states that Borrower owes Lender

THREE HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED FIFTY and NO/100 Dollars  
(U S \$ 381,150.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 1, 2037.

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

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

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

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

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

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

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

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

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

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

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

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

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

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS  
DRAW MERS NV CVL DT 2 WPF (0101DOCS\DEEDS\CVL\NV\_MERS CVL)

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## TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note, and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY

of

LYON

[Name of Recording Jurisdiction]

[Type of Recording Jurisdiction]

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

which currently has the address of 70 RIVERSIDE DRIVE [Street],  
DAYTON [City], Nevada 89403 [Zip Code] ("Property Address")

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

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

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

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

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash, (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity, or (d) Electronic Funds Transfer. Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS  
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not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

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

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

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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

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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 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.

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.

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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.

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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.

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

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

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

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

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

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

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

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

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acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge

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

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

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

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

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

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

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

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

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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.

NEVADA Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS  
DRAW MERS NV CVL DT 11 WFF (0101DCS\DEEDS\CVL\NV\_MERS CVL)

Loan No: 0000479436  
Form 3029 1/01  
(page 11 of 13 pages)

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

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

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lenders' election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. 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 \$ MAXIMUM ALLOWED BY LAW.

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS  
DRAW MERS NV CVL DT 12 WFF (0101DOCS/DEEDS/CVLANV\_MERS CVL)

Loan No: 0000479436  
Form 3029 1/01  
(page 12 of 13 pages)

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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

*Vicenta Lincicome* (Seal)  
-Borrower  
VICENTA LINCICOME

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

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

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

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

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

Loan No: 0000479436

STATE OF NEVADA,

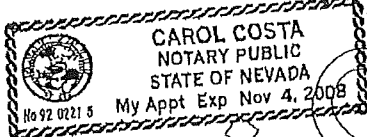
County ss.

This instrument was acknowledged before me on

*Vicenta Lincicome*

My Commission Expires

11-4-08



NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS  
DRAW MERS NV CVL DT 13 WPR (010100S100REDS1CVLNV\_MERS CVL)

Form 3029 1/01  
(page 13 of 13 pages)

WHEN RECORDED MAIL TO

MIP INSURING DEPARTMENT  
SIERRA PACIFIC MORTGAGE COMPANY, INC.  
50 IRON POINT CIRCLE, STE 200  
FOLSOM, CA 95630  
916-932-1700

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# ADJUSTABLE RATE RIDER

(1 Year LIBOR Index - Rate Caps)  
(Assumable after Initial Period)

THIS ADJUSTABLE RATE RIDER is made this 23rd day of MAY 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure the Borrower's Adjustable Rate Note (the "Note") to SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender") of the same date and covering the property described in the Security Instrument and located at

70 RIVERSIDE DRIVE  
DAYTON, NV 89403  
[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES  
The Note provides for an initial interest rate of 6.875 % 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 JUNE 2017, and may change 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 US

Loan No: 0000479436

MULTISTATE ADJUSTABLE RATE RIDER-1 Year LIBOR Index (Assumable after IP)-Single Family Freddie Mac Uniform Instrument

Form 5131 3/04  
(Page 1 of 4)

DRAW 0304 MX CVL ARM RIDER 5131 1 WFF (P OPSSHARE\0101DOCS\RIDERS\CVL\MXPH5131 ARM)

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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 which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding percentage points ( 2.250 %)

**TWO AND ONE QUARTER**

to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.875 % or less than 2.250 %. 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 12 months. My interest rate will never be greater than 11.875 %.

(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**  
**1 UNTIL BORROWER'S INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION A ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL BE IN EFFECT AS FOLLOWS.**

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by

Loan No: 0000479436

MULTISTATE ADJUSTABLE RATE RIDER-1 Year LIBOR Index (Assumable after IP)-Single Family Freddie Mac Uniform Instrument

Form 5131 3/04  
(Page 2 of 4)

DRAW 0304 MX/CVL ARM RIDER 5131 2 WFF (P) OPSSSHARE0101DOCSRIDERS/CVL/MX/FH5131 ARM)

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Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

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

2 AFTER MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT DESCRIBED IN SECTION 11(A) ABOVE SHALL THEN CEASE TO BE IN EFFECT, AND UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL INSTEAD BE DESCRIBED AS FOLLOWS

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

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

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

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

Loan No: 0000479436

MULTISTATE ADJUSTABLE RATE RIDER-1 Year LIBOR Index (Assumable after IP)-Single Family Freddie Mac Uniform Instrument

Form 5131 3/04  
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DRAW D304 MX CVL ARM RIDER 5131 3 WFF (P \OPSSHARE\0101\DOCS\RIDERS\CVL\MXCFH5131 ARM)

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017 of 20

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

*Vicenta Lincicome* (Seal)  
VICENTA LINCICOME -Borrower

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

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

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

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

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

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

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

[Sign Original Only]

Loan No: 0000479436

MULTISTATE ADJUSTABLE RATE RIDER: 1 Year LIBOR Index (Assumable after IP) Single Family Freddie Mac Uniform Instrument

DRAW 0304 MX CVL ARM RIDER 5131 / WFF (P:\OPSSHARE\01\DOCS\RIDERS\CVL\MXFH5131 ARM)

Form 5131 3/04  
(Page 4 of 4)

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## INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

Property Address 70 RIVERSIDE DRIVE  
DAYTON, NV 89403

THIS ADDENDUM is made this 23<sup>rd</sup> day of MAY 2007  
and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date  
as this Addendum executed by the undersigned and payable to  
SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender")

THIS ADDENDUM supersedes Section 4(C) of the Rider. None of the other provisions of the Rider are changed  
by this Addendum

### 4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

#### (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 for such Change Date. The Note Holder will then round the result of this addition to the  
nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded  
amount will be my new interest rate until the next Change Date

During the Interest-Only Period, the Note Holder will then determine the amount of the monthly payment  
that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier  
of the next Change Date or the end of the Interest-Only Period unless I make a voluntary prepayment of principal  
during such period. If I make a voluntary prepayment of principal during the Interest-Only Period, my payment  
amount for subsequent payments will be reduced to the amount necessary to pay interest at the then current interest  
rate on the lower principal balance. At the end of the Interest-Only Period and on each Change Date thereafter, the  
Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid  
principal that I am expected to owe at the end of the Interest-Only Period or Change Date, as applicable, in equal  
monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of  
my monthly payment. After the end of the Interest-Only Period, my payment amount will not be reduced due to  
voluntary prepayments

Loan No: 0000479436

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE RIDER 5/1 LIBOR ARM - MULTISTATE  
DRAW MX CVL ARM IO ADNDM RIDER 1 WFF (0101DOCS\RIDERS\CVL\MXIO\_ADN RID)

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(page 1 of 2 pages)

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

*Vicente Lincicome* (Seal)  
VICENTA LINCICOME -Borrower

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

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

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

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

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

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

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

[Sign Original Only]

Loan No: 0000479436

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE RIDER 5/1 LIBOR ARM -- MULTISTATE  
DRAW MX CVL ARM IO ADNDM RIDER 2 WPF (01010005RIDERS/CVLAMXIO\_ADN RID)

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(page 2 of 2 pages)

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EXHIBIT "A"  
LEGAL DESCRIPTION

Order No: 06041897-JA

The land referred to herein is situated in the State of Nevada,  
County of LYON, described as follows:

LOT 42 AS SHOWN ON THE OFFICIAL MAP OF GOLD CANYON ESTATES,  
PHASE 2, FILE IN THE OFFICE OF THE LYON COUNTY, NEVADA RECORDER,  
ON OCTOBER 20, 2005, AS DOCUMENT NO. 365687.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF, LYING BELOW THE,  
NATURAL ORDINARY HIGH WATER LINE OF THE CARSON RIVER.

ASSESSOR'S PARCEL NO. 029-401-17

Unofficial

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EXHIBIT PAGE ONLY

## EXHIBIT 2

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

APN: 029-401-17

WHEN RECORDED MAIL TO:

Sables, LLC  
c/o Zieve Brodnax & Steele  
3753 Howard Hughes Parkway, Suite 200  
Las Vegas, Nevada 89169

DOC# 572258  
11/03/2017 10:29AM  
**Official Record**  
Requested By  
SERVICELINK TITLE AGENCY INC.  
Lyon County - NV  
Dawna L. Warr - Recorder  
Page: 1 of 6 Fee: \$288.00  
Recorded By BKC RPTT: \$0.00



0572258

TS No. : 16-42397

## NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO SELL THE REAL PROPERTY UNDER DEED OF TRUST

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business day prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this Notice of Default may be recorded (which date of recordation appears on this notice). This amount is \$265,572.39 as of 10/31/2017 and will increase until your account becomes current.

NOTICE IS HEREBY GIVEN THAT: SABLES, LLC, a Nevada limited liability company is either the original trustee, or the duly appointed substituted Trustee, or acting as agent for the Trustee or the Beneficiary under a under a Deed of Trust dated 6/23/2007, executed by VICENTA LINCICOME, A MARRIED WOMAN, as trustor to secure obligations in favor of Mortgage Electronic Registration Systems, Inc., as nominee for SIERRA PACIFIC MORTGAGE COMPANY, INC. its successors and assigns, as Beneficiary, recorded 5/25/2007, instrument no. 407150 The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011 of Official Records in the office of the County recorder of Lyon, County, Nevada securing, among other obligations including

One note(s) for the Original sum of \$381,150.00, that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by Beneficiary; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:

The monthly installment which became due on 9/1/2008, along with late charges, and all subsequent monthly installments.

You are responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to; foreclosure trustee fees and costs, advances and late charges.

Furthermore, as a condition to bring your account in good standing, you must provide the undersigned with written proof that you are not in default on any senior encumbrance and provide proof of insurance.

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11/03/2017  
2 of 6**T.S. No.: 16-42397**

Nothing in this Notice of Default should be construed as a waiver of any fees owing to the beneficiary under the Deed of Trust, pursuant to the terms and provisions of the loan documents.

That by reason thereof the present Beneficiary under such deed of Trust has executed and delivered to said duly appointed Trustee a written Declaration of Default and Demand for Sale and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

### NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. As to owner-occupied property, where reinstatement is possible, the time to reinstate may be extended to 5 days prior to the date of sale pursuant to NRS 107.080. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

**To determine if reinstatement is possible and the amount, if any, to cure the default, contact:**

PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee  
c/o Fay Servicing, LLC  
c/o SABLES, LLC, a Nevada limited liability company  
3753 Howard Hughes Parkway, Suite 200  
Las Vegas, NV 89169  
Beneficiary Phone: 800-495-7166  
Trustee Phone: (702) 664-1774

To reach a person with authority to negotiate a loan modification on behalf of the lender:

Lauren Jowers  
800-495-7166

Property Address: **70 RIVERSIDE DRIVE, DAYTON, Nevada 89403**

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

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

Attached hereto and incorporated herein by reference is the Affidavit of Authority in Support of Notice of Default and Election to Sell pursuant to NRS 107.080.

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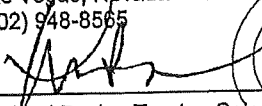
11/03/2017  
3 of 6

T.S. No.: 16-42397

You may wish to consult a credit counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with names and addresses of local HUD approved counseling agency by calling their approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to HUD's website: <http://portal.hud.gov>.

Dated: 11/1/2017

SABLES, LLC, a Nevada limited liability company, as Trustee  
Sables, LLC  
c/o Zieve Brodnax & Steele  
3753 Howard Hughes Parkway, Suite 200  
Las Vegas, Nevada 89169  
(702) 948-8565

  
Michael Busby, Trustee Sale Officer

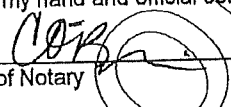
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA  
County of ORANGE

On 11/1/2017, before me, Christine O'Brien, personally appeared Michael Busby 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.

  
Signature of Notary



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572258

11/03/2017  
4 of 6**Affidavit of Authority**

(Nevada Revised Statute §107.080 as amended effective June 1, 2013)

Re: TS# 16-42397

Borrower Name: VICENTA LINCICOME

Property Address: 70 RIVERSIDE DRIVE  
DAYTON, Nevada 89403

I, Veronica Talley, am the Foreclosure Specialist at Fay Servicing, LLC, the current servicer for the beneficiary of the deed of trust described in the notice of default and election to sell to which this affidavit is attached ("Deed of Trust"). The following facts are based upon my personal review of documents that are of public record in the State of Nevada and personal knowledge acquired by my personal review of the business records of the beneficiary, which are within my custody and control. The business records of the beneficiary contain entries made in the ordinary course of business at or about the time the events reflected therein occurred.

1(a). The full name and business address of the current trustee of record for the Deed of Trust is Sables LLC, a Nevada Limited Liability Company, 3753 Howard Hughes Parkway, Suite 200, Las Vegas, Nevada 89169

1(b). The full name and business address of the current holder of the Note secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services - PROF

1(c). The full name and business address of the current beneficiary for the obligation or debt secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services - PROF

1(d). The full name and business address of the current servicer for the obligation secured by the Deed of Trust is Fay Servicing, LLC, 440 S. LaSalle St, Suite 2000, Chicago, IL 60605

2. From my review of the documents of public record and the business records of the current beneficiary and a title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to Chapter 692A of the NRS, the name of each assignee and each recorded assignment of the Deed of Trust.

2(a). Assignee Name: PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee  
Instrument and Recording Information: Assignment of Deed of Trust recorded on 11/25/2016 Instrument No. 544042

2(b). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP  
Instrument and Recording Information: Corporation Assignment of Deed of Trust recorded on 08/15/2011 Instrument No. 480360

2(c). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP  
Instrument and Recording Information: Assignment of Mortgage recorded on 11/10/2010 Instrument No 467719

3. The current beneficiary under the Deed of Trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the Deed of Trust.

4. From my review of the documents of public record and the business records of the current beneficiary, the current trustee has authority to exercise the power of sale with respect to the property



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11/03/2017  
5 of 6

encumbered by the Deed of Trust, pursuant to instruction from the current beneficiary of record and current holder of the note secured by the Deed of Trust.

5. From my review of the documents of public record and the business records of the current beneficiary, the beneficiary, servicer of the obligation, or an attorney of the beneficiary or servicer has sent to VICENTA LINCICOME, a written statement of: (I) the amount of payment required to make good the deficiency in performance of payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement; (II) the amount in default; (III) the principal amount of the obligation or debt secured by the deed of trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the power of sale; and (VI) contact information for obtaining the most current amounts due and the local or toll-free telephone number that VICENTA LINCICOME may call to receive the most current amounts due and a recitation of the information in this affidavit.

6. The borrower or obligor of the loan secured by the Deed of Trust may call Fay Servicing, LLC at 800-495-7166 to receive the most current amounts due and a recitation of the information contained in this Affidavit.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this Affidavit was executed on October 5, 2016.

By: **Fay Servicing, LLC, its attorney in fact**

Veronica Talley

(Print Name)

Veronica Talley

(Signature)

**Foreclosure Specialist IV**

(Title)

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 Texas

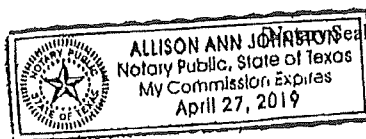
County of Denton

On October 5, 2016 before me, Allison Ann Johnston, Notary Public, personally appeared, Veronica Talley, 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 that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Allison Ann Johnston  
Signature





572258

11/03/2017  
6 of 6

## Declaration of Mortgage Servicer Pursuant to NR 107.510

T.S. Number: 16-42397  
Borrower(s): VICENTA LINCICOME  
Mortgage Servicer: Fay Servicing, LLC  
Property Address: 70 RIVERSIDE DRIVE  
DAYTON, Nevada 89403

The undersigned, as an authorized agent or employee of the mortgage servicer named below, declares that:

1. ☒ The mortgage servicer has contacted the borrower pursuant to NRS 107.510 (2), to assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale. Thirty (30) days, or more, have passed since the initial contact was made.
2. ☐ The mortgage servicer has exercised due diligence to contact the borrower pursuant to NRS 107.510 (5), to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.
3. ☐ No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to NRS 107.410.
4. ☐ During the preceding annual reporting period, the Lender has foreclosed on 100 or fewer real properties located in this state and therefore, pursuant to NRS 107.460, the provisions of NRS 107.400 to 107.560, inclusive, do not apply.
5. ☐ The loan is not a "residential mortgage loan" as defined in NRS 107.450.

I certify that this declaration is accurate, complete and supported by competent and reliable evidence which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

Dated: 4-5-2016

By: 

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EXHIBIT PAGE ONLY

## EXHIBIT 3

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

**Doc #: 587470**

10/12/2018 02:27 PM Page: 1 of 2

**OFFICIAL RECORD**

Requested By: SERVICELINK TITLE AGENCY INC

**Lyon County, NV**  
**Dawna L. Warr, Recorder**

Fee: \$38.00 RP TT: \$0.00

Recorded By: mkassebaum

APN No.: 029-401-17

[Recording requested by:]

[When recorded mail to:]

**Sables LLC**  
**c/o Zieve Brodnax & Steele**  
**9435 West Russell Road, Suite 120**  
**Las Vegas, Nevada 89148**

T.S. No. 16-42397

## **NOTICE OF TRUSTEE'S SALE**

**YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 5/23/2007. 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 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.**

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 appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee 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: VICENTA LINCICOME, A MARRIED WOMAN**

Duly Appointed Trustee: Sables LLC, a Nevada Limited Liability Company  
Recorded 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011 Official Records in the office of the Recorder of Lyon County, Nevada, Described as follows:

**THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:**

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

**EXCEPTING THEREFROM** all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Date of Sale: 11/9/2018 at 11:00 AM

BRECK000066

Place of Sale: 31 S. Main Street Yerington, Nevada 89447  
Lyon County Courthouse  
Estimated Sale Amount: \$666,632.22  
Street Address or other common designation of real property: 70 RIVERSIDE DRIVE  
DAYTON, Nevada 89403

A.P.N. No.: 029-401-17

The undersigned Trustee disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above. If no street address or other common designation is shown, directions to the location of the property may be obtained by sending a written request to the beneficiary within 10 days of the date of first publication of this Notice of Sale.

Date: 10/11/2018

Sables LLC, a Nevada Limited Liability Company  
c/o Zieve Brodnax & Steele  
9435 West Russell Road, Suite 120  
Las Vegas, NV 89148  
Phone: (702) 948-8565  
Sale Information: (714) 848-9272 [www.elitepostandpub.com](http://www.elitepostandpub.com)  
For Non-Automated Sale Information, call: (702) 664-1774

Michael Busby, Trustee Sale Officer

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.

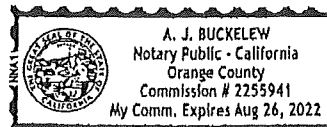
State of CALIFORNIA  
County of ORANGE

On 10/11/2018, before me, A.J. Buckelew Notary Public, personally appeared Michael Busby 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.

A.J. Buckelew  
Signature of Notary



THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND  
ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE.

BRECK000067



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EXHIBIT PAGE ONLY

## EXHIBIT 4

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

1 John T. Steffen (4390)  
2 Matthew K. Schriever (10745)  
3 Alex R. Velto (14961)  
4 HUTCHISON & STEFFEN, PLLC  
5 10080 West Alta Drive, Suite 200  
6 Las Vegas, NV 89145  
7 Tel (702) 385-2500  
8 Fax (702) 385-2086  
9 mschriever@hutchlegal.com

10 Casey J. Nelson, Esq. (12259)  
11 Wedgewood, LLC  
12 Office of the General Counsel  
13 2320 Potosi Street, Suite 130  
14 Las Vegas, Nevada 89146  
15 Tel (702) 305-9157  
16 Fax (310) 730-5967  
17 caseynelson@wedgewood-inc.com  
18 *Attorney for Defendant, Counterclaimant, and Cross-Plaintiff*  
19 *Breckenridge Property Fund 2016, LLC*

20 **THIRD JUDICIAL DISTRICT COURT**  
21 **LYON COUNTY, NEVADA**

22 ALBERT ELLIS LINCICOME, JR., and  
23 VICENTA LINCICOME,

24 Plaintiff,

25 v.

26 SABLES, LLC, a Nevada limited liability  
27 company, as Trustee of the Deed of Trust given  
28 by Vicenta Lincicome and dated 5/23/2007; FAY  
SERVICING, LLC, a Delaware limited liability  
company and subsidiary of Fay Financial, LLC;  
PROF-2013-MF LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for BANK  
OF AMERICA, N.A.; BRECKENRIDGE  
PROPERTY FUND 2016; NEWREZ LLC dba  
SHELLPOINT MORTGAGE SERVICING,  
LLC; 1900 CAPITAL TRUST II, BY U.S.  
BANK TRUST NATIONAL ASSOCIATION;  
MCM-2018-NPL2 and DOES 1-50,

Defendants.

AND RELATED MATTERS.

Case No.: 18-CV-01332  
Dept No.: II

**DECLARATION IN SUPPORT OF  
BRECKENRIDGE PROPERTY FUND 2016  
LLC'S MOTION FOR SUMMARY  
JUDGMENT AGAINST PLAINTIFF**

1 The undersigned, Jason Campbell declares under penalty of perjury that the following assertions  
2 are true;

3 1. I am an authorized agent of Breckenridge Property Fund 2016, LLC ("Breckenridge").

4 2. I am competent to testify to the matters asserted herein, of which I have personal  
5 knowledge, except as to those matters stated upon information and belief. As to those matters stated  
6 upon information and belief, I believe them to be true. I make this declaration in support of  
7 Breckenridge's motion for summary judgment against Plaintiffs.

8 3. On January 4, 2019, Breckenridge purchased real property located at 70 Riverside Drive,  
9 Dayton, Nevada 89403 ("Subject Property") at a foreclosure sale conducted pursuant to NRS 107.  
10 ("Foreclosure Sale").

11 4. Breckenridge was the highest bidder and paid \$294,000.01 to purchase the Subject  
12 Property at the Foreclosure Sale.

13 5. Breckenridge relied on the fact that the noticed Foreclosure Sale was valid because  
14 Plaintiffs failed to post the court-ordered bond.

15 6. Breckenridge had no role in this dispute prior to its purchase of the Subject Property at  
16 the Foreclosure Sale.

17 7. Breckenridge is entitled to an order quieting title in its favor because there were no defects  
18 in the Foreclosure Sale and any rights, title, or interest that Plaintiffs previously had in the Subject  
19 Property has been terminated by way of the Foreclosure Sale

20 8. I declare under penalty of perjury of the laws of the United States and the State of Nevada  
21 that these facts are true to the best of my knowledge and belief.

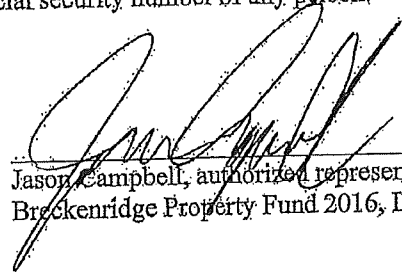
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Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person.

  
Jason Campbell, authorized representative of  
Breckenridge Property Fund 2016, LLC

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EXHIBIT PAGE ONLY

## EXHIBIT 5

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

70 RIVERSIDE DR

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:  
Breckenridge Property Fund, 2016, LLC  
2320 Potosi St. Ste 130  
Las Vegas, NV 89146

Forward Tax Statements to  
the address given above

Recorded As An Accommodation  
Only Without Liability

**Doc #: 591393**

01/25/2019 08:21 AM Page: 1 of 2

**OFFICIAL RECORD**

Requested By: FIRST AMERICAN TITLE INSURANCE CO

**Lyon County, NV**  
**Margie Kassebaum, Recorder**

Fee: \$38.00 RPTT: \$1,148.65  
Recorded By: Inhumildad

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

### TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.65  
The Grantee Herein WAS NOT the Foreclosing Beneficiary.  
The Amount of the Unpaid Debt was \$671,249.37  
The Amount Paid by the Grantee was \$294,000.01  
Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

**Breckenridge Property Fund, 2016, LLC**

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:  
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

BRECK000025

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO;  
Breckenridge Property Fund, 2016, LLC  
2320 Potosi St. Ste 130  
Las Vegas, NV 89146

Recorded As An Accommodation

Forward Tax Statements to      Only Without Liability  
the address given above

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

### TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55  
The Grantee Herein WAS NOT the Foreclosing Beneficiary.  
The Amount of the Unpaid Debt was \$671,249.37  
The Amount Paid by the Grantee was \$294,000.01  
Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

#### Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

BRECK000026

## TRUSTEE'S DEED UPON SALE

T.S. #: 16-42397

Order #: 160069595-NV-VOO

Trustee having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Breach and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified return receipt mail, postage pre-paid to each person entitled to notice in compliance with Nevada Revised Statutes 107.080,

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 1/4/2019. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being \$ \$294,000.01, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, SABLES, LLC, a Nevada limited liability company, as Trustee, has this day, caused its name to be hereunto affixed.

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey  
Neal

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

On 1/15/2019 before me, the undersigned, J. Develasco Notary Public, personally appeared Geoffrey Neal 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.

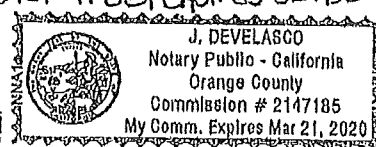
WITNESS my hand and official seal.

Signature

J. Develasco

(Seal)

J. Develasco



BRECK000027



**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

**1. Assessor Parcel Number(s)**

- a) 029-401-17  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

**2. Type of Property:**

- |  |   |
|--|---|
| a) <input type="checkbox"/> Vacant Land  | b) <input checked="" type="checkbox"/> Single Fam. Res. |
| c) <input type="checkbox"/> Condo/Twnhse | d) <input type="checkbox"/> 2-4 Plex                    |
| e) <input type="checkbox"/> Apt. Bldg    | f) <input type="checkbox"/> Comm'l/Ind'l                |
| g) <input type="checkbox"/> Agricultural | h) <input type="checkbox"/> Mobile Home                 |
| <input type="checkbox"/> Other _____     |   |

**FOR RECORDER'S OPTIONAL USE ONLY**

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

3. a. Total Value/Sales Price of Property \$ \$294,000.01  
b. Deed in Lieu of Foreclosure Only (value of property) \_\_\_\_\_  
c. Transfer Tax Value: \$ \$294,000.01  
d. Real Property Transfer Tax Due \$ 1148.66

**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  Capacity AGENT

Signature \_\_\_\_\_ Capacity AGENT

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

Print Name: Sables, LLC, a Nevada  
limited liability company  
Address: 3753 Howard Hughes Parkway,  
Suite 200, Las Vegas, NV 89169

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

Print Name: Breckenridge Property Fund,  
2016, LLC  
Address: 2320 Potosi St. Ste 130  
Las Vegas, NV 89146

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

Print Name: First American Escrow #: ACCU  
Address: 1000 W. Charleston  
City: Las Vegas State: NV Zip: 89102

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

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EXHIBIT PAGE ONLY

## EXHIBIT 6

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

### THREE-DAY NOTICE TO QUIT

TO: VICENTA LINCICOME  
TENANT AND SUBTENANT AND ALL OCCUPANTS  
70 RIVERSIDE DR.  
DAYTON, NEVADA 89403

Or any occupants of the above-named property or any persons in possession of the above-mentioned property.

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.


YOU ARE HEREBY NOTIFIED AND DEMAND IS MADE that you surrender possession of the property to the undersigned at or before noon of the third (3) day after receipt of this Notice pursuant to Sections 40.255, 40.280, and 40.290 to 40.420 of the Nevada Revised Statutes.

YOU ARE HEREBY NOTIFIED that if you are a tenant of the prior owner of the Property, you are to refer to the Notice to Tenant which is attached as Exhibit A to this Three-Day Notice to Quit. If you need another copy of the Notice to Tenant, please contact the undersigned below.

UPON YOUR FAILURE TO VACATE OR SURRENDER THE PREMISES AS DEMANDED, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25<sup>th</sup> day of January, 2019.

WEDGEWOOD, LLC

  
CASEY J. NELSON, ESQ.  
Nevada Bar # 12259  
Office of the General Counsel  
2320 Potosi Street, Suite 130  
Las Vegas, Nevada 89146

*Attorney for Plaintiff  
Breckenridge Property Fund 2016, LLC*

# EXHIBIT A

# EXHIBIT A

## NOTICE TO TENANT

TO: VICENTA LINCICOME  
TENANT AND SUBTENANT AND ALL OCCUPANTS  
70 RIVERSIDE DR.  
DAYTON, NEVADA 89403

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED OF A CHANGE OF OWNERSHIP. The new owner of the property is BRECKENRIDGE PROPERTY FUND 2016, LLC, 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146.

YOU MUST CONTACT US AND ESTABLISH YOUR BONA FIDE TENANCY in the property **within three (3) business days** of receipt of this Notice.

IN ORDER TO ESTABLISH YOUR TENANCY, within three (3) business days of receipt of this Notice you must furnish a copy of your fully executed, current lease or rental agreement and proof of all past payments to Breckenridge Property Fund 2016, c/o the owner's attorney, Casey J. Nelson, Esq., at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Failure to produce valid documentation clearly demonstrating a bona fide tenancy will result in eviction proceedings immediately being brought against all occupants.

A LEASE OR TENANCY shall be considered bona fide only if:

- 1) The mortgagor/prior owner or the child, spouse, or parent of the mortgagor/prior owner under the contract is not the tenant or occupant;
- 2) The lease or tenancy was the result of an arms-length transaction; and
- 3) The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy

The new owner reserves the right to challenge the authenticity and validity of any purported lease or tenancy based upon other terms, conditions, or factors which appear fraudulent or which are not otherwise standard terms within residential leases in the geographic area.

YOU ARE HEREBY NOTIFIED that if you are a bona fide tenant or subtenant in the property, **you must still vacate the property within either 1) 90 days of this notice; or 2) upon the expiration of the remainder of the term of your bona fide lease, whichever date is later.**


**YOU ARE HEREBY NOTIFIED that you must continue to pay rent to the new owner throughout the remainder of your tenancy in order to avoid eviction proceedings being brought against you for non-payment of rent.**

Rent shall be remitted to BRECKENRIDGE PROPERTY FUND 2016, LLC at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Your failure to pay rent to the new owner throughout the notice period or comply with any other term of the agreement or applicable law shall constitute a breach of the lease or rental agreement and may result in eviction proceedings.

YOU ARE HEREBY NOTIFIED that upon your failure to timely establish your tenancy or upon your failure to fully vacate or surrender the premises as demanded, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25<sup>th</sup> day of January, 2019.

WEDGEWOOD, LLC

  
CASEY J. NELSON, ESQ.  
Nevada Bar # 12259  
Office of the General Counsel  
2320 Potosi Street, Suite 130  
Las Vegas, Nevada 89146

*Attorney for Plaintiff  
Breckenridge Property Fund 2016, LLC*

Attorney or Party without Attorney: Wedgewood, LLC Casey J. Nelson, Esq. (SBN 12259) 2320 Potosi Street, Suite 130 Las Vegas, NV 89146 Telephone No: (702) 305-9157 Attorney For: Plaintiff				<b>For Court Use Only</b>
Ref. No. or File No.: 70 RIVERSIDE DR.				
Insert name of Court, and Judicial District and Branch Court:				
Plaintiff: BRECKENRIDGE PROPERTY FUND 2016, LLC Defendant: VICENTA LINCICOME; TENANT AND SUBTENANT AND ALL OCCUPANTS				
<b>AFFIDAVIT OF SERVICE</b>	Hearing Date:	Time:	Dept/Div:	Case Number:

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Three-Day Notice to Quit, Notice to Tenant
3.
  - a. Party served: Vicenta Lincicome; Tenant and Subtenant and All Occupants
  - b. Person served: Posted
4. Address where the party was served: 70 Riverside Drive, Dayton, NV 89403
5. I served the party:
  - a. By Posting. On: Mon, Jan 28 2019 (2) at: 02:20 PM by posting a copy of the documents in a conspicuous place on the property.
  - b. By Mailing. On: Mon, Jan 28 2019 by mailing a copy of the documents, addressed as shown in item 4, via Certified Mail Issued by United States Post Office from: Las Vegas, NV.
6. Person Who Served Papers:
  - a. Toni Ruckman (R-052005, Washoe)
  - b. FIRST LEGAL  
2920 N. Green Valley Parkway, Suite 514  
Henderson, NV 89014
  - c. (702) 671-4002
  - d. The Fee for Service was:

Pursuant to NRS 53.045

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

01/29/2019

(Date)

*Toni L Ruckman*

(Signature)



AFFIDAVIT OF  
SERVICE

3012509  
(55105770)

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com).

DAYTON NV 89403-9055

**OFFICIAL USE**

Postmark Here

01/28/2019  
55105770

Certified Mail Fee	\$3.50
Extra Services & Fees (check box, add fee as appropriate)	\$7.80
<input type="checkbox"/> Return Receipt (hardcopy)	\$2.80
<input type="checkbox"/> Return Receipt (electronic)	\$1.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$4.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$0.55
Total Postage and Fees	\$6.85

Sent To: VICENTA LINCICOME  
Street or PO Box: TENANT/SUBTENANT/ALL OCCUPANTS  
City, State, ZIP+4<sup>®</sup>: 70 RIVERSIDE DR.  
DAYTON, NV 89403-9055

PS Form 3800, April 2008

1520 500T 2000 DEPT 9101

Situations



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EXHIBIT PAGE ONLY

## EXHIBIT 7

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

FILED

2019 OCT -3 PM 3:25

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

KATHY THOMAS DEPUTY

John T. Steffen (4390)  
Matthew K. Schriever (10745)  
HUTCHISON & STEFFEN, PLLC  
10080 W. Alta Dr., Suite 200  
Las Vegas, NV 89145  
Telephone: (702) 385-2500  
Facsimile: (702) 385-2086  
mschriever@hutchlegal.com

Casey J. Nelson (12259)  
WEDGEWOOD, LLC  
Office of the General Counsel  
2320 Potosi Street, Suite 130  
Las Vegas, Nevada 89146  
Telephone: (702) 305-9157  
Facsimile: (310) 730-5967  
caseynelson@wedgewood-inc.com

*Attorney for Defendant in Intervention / Counterclaimant*

**THIRD JUDICIAL DISTRICT COURT  
LYON COUNTY, NEVADA**

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-MF LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-  
50.,

Defendants.

BRECKENRIDGE PROPERTY FUND  
2016, LLC,

Defendant in Intervention.

Case No.: 18-CV-01332  
Dept No.: II

**INTERVENOR'S COUNTERCLAIM**

*Caption continued on next page.*

1 BRECKENRIDGE PROPERTY FUND  
2 2016, LLC,

3 Counterclaimant,

4 vs.

5 ALBERT ELLIS LINCICOME, JR., an  
6 individual; VICENTA LINCICOME, an  
7 individual; and DOE OCCUPANTS 1-5.

Counterdefendants.

8 COMES NOW, BRECKENRIDGE PROPERTY FUND 2016, LLC  
9 (“Counterclaimant”), by and through its counsel of record, HUTCHISON & STEFFEN,  
10 PLLC and WEDGEWOOD, LLC, and hereby files this Counterclaim against ALBERT  
11 ELLIS LINCICOME, JR., VICENTA LINCICOME, and DOE OCCUPANTS 1-5  
12 (collectively “Counterdefendants”) as follows:

13 **JURISDICTION AND VENUE**

14 1. This court has subject matter jurisdiction over this action under § 6, Article  
15 6 of the Nevada Constitution.

16 2. This Court has subject matter jurisdiction over this matter.

17 3. Defendants has sufficient minimum contacts with Nevada so as to allow  
18 this Court to exercise jurisdiction over it.

19 4. Venue is proper in this Judicial District under NRS § 13.010 and 13.040.

20 **PARTIES**

21 5. The following are real parties in interest pursuant to NRCP 17.

22 6. ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME are  
23 individual residents of Lyon County, Nevada residing at the property located at 70  
24 Riverside Drive, Dayton, Nevada 89403 (“Subject Property”).

1           7.     The Defendants DOE OCCUPANTS 1-5 are set forth herein pursuant to  
2 Rule 10 of the Nevada Rules of Civil Procedure, are all unknown persons or business  
3 entities currently unknown to Counterclaimant who have wrongfully remained in the  
4 Subject Property, and who are believed to be responsible for the events and happening  
5 referred to in this Complaint, causing injuries and damages to Counterclaimant. At such  
6 time when the names of said DOE OCCUPANTS 1-5 have been ascertained,  
7 Counterclaimant will request leave from the Court to insert their true names and capacities  
8 and join them in this action.

9                                   **FACTUAL ALLEGATIONS**

10           8.     On October 12, 2018, Sables, LLC recorded a Notice of Trustee's Sale  
11 ("NOS") setting a foreclosure sale date for the Subject Property because the  
12 Counterdefendants were in default of loan obligations.

13           9.     Counterdefendants subsequently filed the underlying Complaint in this  
14 action and recorded a Lis Pendens with the county recorder on November 8, 2018 at  
15 Document No. 588549, seeking to postpone or cancel the scheduled foreclosure sale.

16           10.    On December 31, 2018, this Court entered an Order enjoining Sables, LLC  
17 from foreclosing on the Subject Property on the condition that Counterdefendants post a  
18 bond in the amount of \$172,610.67 and additional security in the amount of \$2,105.10 per  
19 month thereafter. (Exhibit #1).

20           11.    The Counterdefendants failed to post the required bond and security, which  
21 resulted in the foreclosure sale proceeding forward on January 4, 2019. (*Id.*).

22           12.    Counterclaimant purchased the Subject Property at the NRS 107  
23 foreclosure sale for \$294,000.01 and took title thereto. (Exhibit #2).

24    ///

1           13.   Despite Counterclaimant's sole and superior ownership interest in the  
2 Subject Property, the Lis Pendens remains a cloud on title and negatively affects  
3 Counterclaimant's interests in the Subject Property.

4           14.   The Counterdefendants were in possession of the Subject Property at the  
5 time Counterclaimant purchased the Subject Property and have been in possession since  
6 that date.

7           15.   On or about January 28, 2019, Counterclaimant served a Three-Day Notice  
8 to Quit to the Counterdefendants. (Exhibit #3).

9           16.   Notwithstanding the Three-Day Notice to Quit, the Counterdefendants have  
10 remained in possession of the Subject Property up to and including the present time.

11           17.   The Counterclaimant has made repeated demand on the Counterdefendants  
12 to vacate the Subject Property, but the Counterdefendants, without cause or reason, have  
13 refused to vacate the Subject Property.

14           18.   The Counterdefendants continue in possession of the Subject Property  
15 notwithstanding the termination of the tenancy by service of the aforesaid Three-Day  
16 Notice.

17           19.   The Counterdefendants' actions are in violation of NRS 40.250-255 and the  
18 Counterclaimant is entitled to possession of the Subject Property as prescribed in NRS  
19 40.290-420.

20           20.   Pursuant to NRS 40.360, Counterclaimant is further entitled to treble  
21 damages occasioned by Counterdefendants' unlawful detainer, including, but not limited  
22 to, the reasonable rental value of the Subject Property as the Counterdefendants have been  
23 in possession from January 4, 2019 until the time that Counterdefendants vacate the  
24 Subject Property.

21. As a result of the Counterdefendants' actions, the Counterclaimant has suffered damages in an amount in excess of \$15,000.00, but which amount will be determined at the time of trial.

22. It has become necessary for the Counterclaimant to retain the services of counsel to prosecute these claims and Counterclaimant is entitled to any and all costs incurred herein including, without limitation, any and all attorneys fees.

**FIRST CAUSE OF ACTION**  
**(Quiet Title)**

23. Counterclaimant repeats and realleges each and every allegation contained in paragraphs 1 through 22 inclusively and incorporates them by reference as if fully set forth herein.

24. Counterclaimant owns in fee simple title to the Subject Property.

25. Counterdefendants' claim, or may have claimed, an interest in the Subject Property adverse to Counterclaimant; Counterclaimant' claims are without any right, estate, title, lien, or interest in the Subject Property or any part thereof.

26. Counterclaimants' claim of any interest, estate, right, title or lien in or to the Subject Property is adverse to Counterclaimant and such claim or claims constitute a cloud on Counterclaimant's Property.

27. Counterclaimant is entitled to a judgment from this Court pursuant to NRS 40.010, *et seq.*, quieting title to the Subject Property in Counterclaimant's favor and declaring that the Counterdefendants do not have any estate, right, title, lien or interest in or to the Subject Property.

///

///

1 **SECOND CAUSE OF ACTION**  
2 **(Slander of Title)**

3 28. Counterclaimant repeats and realleges each and every allegation contained  
4 in paragraphs 1 through 27 inclusively and incorporates them by reference as if fully set  
5 forth herein.

6 29. Counterdefendants, by allowing the November 8, 2018 Lis Pendens to  
7 remain recorded against the Subject Property, has made false and malicious  
8 communications disparaging to Counterclaimant's title in the Subject Property.

9 30. Counterclaimant has been damaged by the conduct of the  
10 Counterdefendants in an amount in excess of \$15,000.00, which amount will be proven at  
11 the time of trial of this matter.

12 31. The conduct of the Counterdefendants has been fraudulent and malicious  
13 entitling the Counterclaimant to punitive damages against the Counterdefendants in an  
14 amount sufficient to punish the Counterdefendants and to deter similar conduct in those  
15 similarly situated.

16 **THIRD CAUSE OF ACTION**  
17 **(Writ of Restitution)**

18 32. Counterclaimant repeats and realleges each and every allegation contained  
19 in paragraphs 1 through 31 inclusively and incorporates them by reference as if fully set  
20 forth herein.

21 33. The Counterclaimant is entitled to a Writ of Restitution for the Subject  
22 Property pending the outcome of this matter.

23 ///

24 ///

34. The Counterdefendants should be required to pay reasonable rents for the period of time from service of the Three-Day Notice until such time as the Counterdefendants vacate the Subject Property.

#### FOURTH CAUSE OF ACTION (Unjust Enrichment)

35. Counterclaimant repeats and realleges each and every allegation contained in paragraphs 1 through 34 inclusively and incorporates them by reference as if fully set forth herein.

36. On or about January 4, 2019, the Counterclaimant became the owner of the Subject Property.

37. Counterclaimant is entitled to sole use and possession of the Subject Property.

38. The Counterdefendants have unjustly retained possession of the Subject Property, rightfully owned by the Counterclaimant, against the fundamental principles of justice, equity, and good conscience.

39. Despite repeated demands to vacate the Subject Property, the Counterdefendants have remained in possession of the Subject Property up to and including the present time without cause or reason and refused to vacate the Subject Property and give Counterclaimant peaceable restitution of the Subject Property.

40. The Counterdefendants have not paid any rents or monies to Counterclaimant for possession of the Subject Property from the time the Counterclaimant became the owner of it.

///

///



41. The Counterdefendants have benefited from the possession of the Subject Property, without cause or reason, to the inequitable and unjust detriment of the Counterclaimant.

42. The Counterdefendants have been unjustly enriched to the detriment of the Counterclaimant. The Counterdefendants continual possession of the Subject Property, despite Counterclaimant's repeated demands that the Counterdefendants vacate the Subject Property, has resulted in the Counterclaimant suffering damages in an amount in excess of \$15,000.00, but which amount will be determined at the time of trial.

## FIFTH CAUSE OF ACTION

**(Rent or Monies for Possession of the Subject Property)**

43. Counterclaimant repeats and realleges each and every allegation contained in paragraphs 1 through 42 inclusively and incorporates them by reference as if fully set forth herein.

44. On or about January 4, 2019, the Counterclaimant became the owner of the Subject Property.

45. The Counterclaimant is entitled to use and possession of the Subject Property.

46. The Counterdefendants have retained possession of the Subject Property, rightly owned by the Counterclaimant.

47. Despite repeated demands to vacate the Subject Property, the Counterdefendants have remained in possession of the Subject Property up to and including the present time without cause or reason, and refuses to vacate the Subject Property and give Counterclaimant peaceable restitution of same.

///

48. The Counterdefendants have not paid any rents or monies to the Counterclaimant for possession of the Subject Property from the time the Counterclaimant became the owner of it.

49. The Counterdefendants have benefited from possession of the Subject Property, without cause or reason, and has not paid Counterclaimant, the rightful owner of the Subject Property, any rents or monies for possession of the Subject Property.

50. Because the Counterdefendants have received the benefit from possession of the Subject Property owned by the Counterclaimant, the Counterdefendants should be compelled to pay Counterclaimant rents or monies for possession of the Subject Property in an amount that will be determined at the time of trial.

## PRAYER FOR RELIEF

WHEREFORE, Counterclaimant prays for judgment against Counterdefendants as follows:

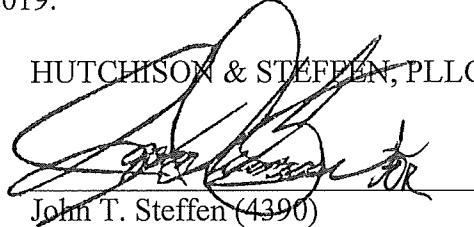
1. For damages against the Counterdefendants in an amount in excess of \$15,000.00;
2. For restitution and possession of the Subject Property;
3. For a Writ of Restitution without bond;
4. For the Court to quiet title to the Subject Property in favor of Counterclaimant;
5. For the Court to declare that title in the Subject Property is vested in the Counterclaimant free and clear of all other liens, Lis Pendens', and encumbrances and that the Counterdefendants herein have no estate, right, title or interest in the Subject Property.

///

- 1           6.     For an award of attorney's fees and litigation costs incurred; and  
2           7.     Such other and further relief as may be deemed just and proper under the  
3                 circumstances.

4           DATED this 30 day of October, 2019.

5                                 HUTCHISON & STEFFEN, PLLC

6                                   
7                                 John T. Steffen (4390)

8                                 Matthew K. Schriever (10745)  
                                  10080 W. Alta Dr., Suite 200  
                                  Las Vegas, NV 89145

9                                 Casey J. Nelson (12259)  
10                                WEDGEWOOD, LLC  
11                                Office of the General Counsel  
                                  2320 Potosi Street, Suite 130  
                                  Las Vegas, Nevada 89146

12                                *Attorney for Defendant in Intervention /*  
13                                *Counterclaimant*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **INTERVENOR'S COUNTERCLAIM** via U.S. Mail to the parties designated below.

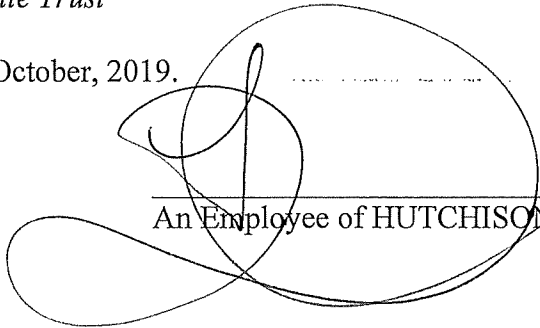
Michael G. Millward, Esq.  
MILLWARD LAW, LTD.  
1591 Mono Avenue  
Minden, NV 89423  
*Attorney for Plaintiffs*

Shadd A. Wade, Esq.  
ZIEVE BRODNAX & STEEL  
9435 W. Russell Road, #120  
Las Vegas, NV 89148  
*Attorney for Sables, LLC*

Christopher A. J. Swift, Esq.  
Ramir M. Hernandez, Esq.  
WRIGHT FINLAY & ZAK, LLP  
7785 W. Sahara Avenue, #200  
Las Vegas, NV 89117  
*Attorney for Fay Servicing, LLC and  
US Bank Prof-2013-M4 Legal Title Trust*

Scott R. Lachman, Esq.  
Darren T. Brenner, Esq.  
ACKERMAN, LLP  
1635 Village Center Circle, #200  
Las Vegas, NV 89134  
*Attorney for Bank of America*

DATED this 3 day of October, 2019.

  
\_\_\_\_\_  
An Employee of HUTCHISON & STEFFEN

LIST OF EXHIBITS  
**INTERVENOR'S COUNTERCLAIM**

18-CV-01332

Exhibit No.	DOCUMENT TITLE	# OF PAGES
1	Order date 12/31/2018	8
2	Deed Upon Sale	4
3	Three Day Notice to Quit	4

# **EXHIBIT 1**

# **EXHIBIT 1**

FILED

Case No: 18-CV-01332

2018 DEC 31 AM 10:48

Dept.: II

TANYA GEL RINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Andrea Andersen

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\*\*\*\*\*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiffs,

v.

**ORDER**

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

THIS MATTER comes before the Court upon the *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction* (hereinafter "Application") filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome (hereinafter "Lincicomes"), thereby seeking a restraining order, preliminary injunction and permanent injunction upon the sale of the Lincicomes' residence by Sables, LLC, at public auction.

On November 8, 2018, the Court entered an Order temporarily enjoining and restraining Sables, LLC, from conducting a trustee's sale of the Lincicomes' residence, and set a hearing upon the application to occur on November 20, 2018.

ORDER

PAGE 1 OF 8

1 On November 14, 2018, Defendants Prof-2013 M4-Legal Title Trust, by U.S. Bank,  
2 N.A., as Legal Title Trustee (hereinafter "US Bank") and Fay Servicing, LLC (hereinafter "Fay  
3 Servicing"), filed their *Response to Application for Ex Parte Restraining Order, Preliminary*  
4 *Injunction and Permanent Injunction* (hereinafter "Response"). Defendants argued in their  
5 Response that Plaintiff's arguments lack merit because Plaintiffs had previously consented to  
6 foreclosure, and because violations of the applicable Homeowners Bill of Rights statute are  
7 not material.

8 On November 20, 2018, the Court held a hearing on the Application and Response.  
9 The Lincicomes attended with their attorney, Michael G. Millward, Esq., of Millward Law, Ltd.,  
10 and US Bank and Fay Servicing appeared through their counsel Ramir M. Hernandez, Esq., of  
11 Wright, Finlay & Zak, LLP. As well, Defendant Bank of America, N.A., (hereinafter "Bank of  
12 America") appeared telephonically through its counsel Scott Lachman, Esq., of Akerman,  
13 LLP.

14 Counsel at the hearing stipulated to the admission of the evidence presented in the  
15 Application and Response previously filed before the Court as well as documents presented  
16 at the hearing on behalf of the Lincicomes. Additionally, Counsel stipulated that the  
17 Lincicomes' respective Affidavits filed with the Application be considered as evidence by the  
18 Court as testimony.

19 The Court having considered the documentary evidence, testimony and arguments  
20 presented hereby makes the following FINDINGS OF FACT:

21 1. That on May 23, 2007, in connection with the purchase of the residence located  
22 at 70 Riverside Drive, Dayton, Nevada 89403, Vicenta Lincicome (hereinafter "Vicenta")  
23 executed a Promissory Note in favor of Sierra Pacific, and also a Deed of Trust (hereinafter  
24 "2007 DOT") in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter referred  
25 to as "MERS"), as the nominee for Sierra Pacific, to secure the mortgage loan;

26 2. That on or about July 11, 2009, Bank of America offered Vicenta a Loan  
27 Modification Agreement (hereinafter "LMA") which modified and extended the maturity date  
28

ORDER



1 of the 2007 DOT from June 1, 2037, to August 1, 2049 and further modified the interest rate  
2 applicable to the 2007 DOT by reducing the same from 6.875% to 4.875%;

3 3. That the LMA provided that on September 1, 2014, the interest rate applicable  
4 to the 2007 DOT would increase from 4.875% to 5.375%;

5 4. That the LMA capitalized existing arrears of September 1, 2009, and modified  
6 the principal balance owed under the 2007 DOT from \$381,150 to \$417,196.58;

7 5. That on July 31, 2009, Vicenta accepted Bank of America's offer to modify the  
8 2007 DOT, and executed the LMA and sent the document to Bank of America;

9 6. That on September 1, 2009, the Lincicomes made a payment of \$2,272.62 to  
10 Bank of America upon the 2007 DOT as modified by the LMA;

11 7. That on September 1, 2009, Bank of America accepted payment, but was  
12 unable to find the modified loan in its system;

13 8. That on October 1, 2009, Bank of America refused payment from the  
14 Lincicomes, because it did not have a record that the 2007 DOT had been modified by the  
15 LMA;

16 9. That the Lincicomes' requests to make payment on the 2007 DOT as modified  
17 by the LMA between October 1, 2009 and December 2011, were refused by Bank of  
18 America;

19 10. That the Lincicomes filed a petition for Chapter 13 Bankruptcy protection  
20 before the United States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case  
21 No. 10-51219, and listed Bank of America as a secured creditor;

22 11. That Bank of America did not file a claim or appear in the Lincicomes Chapter  
23 13 Bankruptcy case prior to confirmation of the Lincicomes' Chapter 13 Plan;

24 12. That on May 4, 2011, Bank of America recorded a fully executed copy of the  
25 July 11, 2009 LMA with the office of the Lyon County Recorder, as Document No. 475808;

26 13. That the Lincicomes were not made aware of the execution and recording of  
27 the LMA until 2017;

28 //

ORDER

1           14. That on November 26, 2014, Bank of America appeared in the Lincicomes'  
2 Chapter 13 Bankruptcy case and filed a Motion for Relief of Stay seeking relief from the  
3 automatic stay, pursuant to 11 U.S.C. § 362;

4           15. That Bank of America's Motion for Relief of Stay did not inform the Lincicomes  
5 or the Bankruptcy Court that the LMA had been executed and recorded;

6           16. That on June 15, 2015, the Bankruptcy Court Clerk granted the Lincicomes a  
7 discharge of all of their scheduled debts;

8           17. That on August 1, 2015, Bank of America transferred the servicing of the 2007  
9 DOT as modified by the LMA to Fay Servicing;

10          18. That all statements provided by Fay Servicing to the Lincicomes between  
11 August 10, 2015 and October 10, 2018, do not reflect that the terms of the 2007 DOT had  
12 been modified by the LMA.

13          19. All statements between August 10, 2015 and October 10, 2018, reported the  
14 principal balance owed, the applicable interest rate, the payment amount, the total  
15 arrearage owed, as well as the total number of payments remaining due;

16          20. That on November 10, 2015, Bank of America assigned its interest in the Deed  
17 of Trust to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title  
18 Trustee (hereinafter "US Bank");

19          21. That on November 3, 2017, Sables, LLC, as then acting Trustee under the 2007  
20 DOT, recorded its Notice of Breach and Default and of Election to Sell the Real Property  
21 under Deed of Trust (hereinafter "NOD") with the Lyon County Recorder as Document No.  
22 572258;

23          22. That the NOD provides that the "subject Deed of Trust was modified by Loan  
24 Modification Agreement recorded as Instrument 475808 . . . on 5/4/2011;"

25          23. That the NOD provides that all monthly installments from "9/1/2008" forward  
26 are due, instead of 9/1/2009 as required by the LMA;

27          24. That the NOD provides that the principal balance owed is \$381,150.00, instead  
28 of \$417,196.58 as provided in the LMA;

ORDER

1           25. That on October 12, 2018, Defendant Sables, LLC, recorded its Notice of  
2 Trustee's Sale with the Lyon County Recorder as Document No. 587470, providing that the  
3 Property would be sold by public auction on November 9, 2018, at 11:00 AM, at the Lyon  
4 County Court House on 31 S. Main Street, Yerington, Nevada 89447;

5           26. That under the circumstances the foreclosure of the Lincicome's residence  
6 would cause them irreparable injury;

7           27. The LMA appears to be a valid modification of the 2007 DOT;

8           28. That based on the record before the Court at the hearing neither Fay Servicing  
9 nor Sables has accurately reported the total balance owed Vicenta Lincicome under the 2007  
10 DOT as modified by the LMA;

11           29. That based on the record before the Court at the hearing neither Fay Servicing  
12 nor Sables has accurately reported the principal obligation owed by Vicenta Lincicome under  
13 the 2007 DOT as modified under the LMA;

14           30. That based on the record before the Court at the hearing neither Fay Servicing  
15 nor Sables has accurately reported the date through which 2007 DOT as modified under LMA  
16 is paid; and

17           31. That based on the record before the Court at the hearing neither Fay Servicing  
18 nor Sables has accurately reported the current interest rate effective under the 2007 DOT as  
19 modified under the LMA.

20           The Court hereby enters the following Conclusions of Law:

21           1. The Homeowners Bill of Rights codified under NRS 107.400 through NRS  
22 107.560 is applicable to this foreclosure matter;

23           2. That Plaintiffs established that irreparable injury would result if Defendant  
24 Sables, LLC, was permitted to exercise the power of sale and foreclose on the Plaintiffs' real  
25 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel  
26 Number 29-401-17;

27 //

28 //

ORDER

1           3.     That Plaintiffs have established that they will succeed on their claim that  
2 Defendants have violated NRS 107.500(1)(b) for failing to provide accurate information  
3 required to be provided prior to the Initiation of a foreclosure; and

4           4.     That Plaintiffs have established to the Court's satisfaction that they were likely  
5 to succeed on the merits of their claims pertaining to material violations of the Homeowner's  
6 Bill of Rights pursuant to NRS 107.400 through NRS 107.560.

7           THEREFORE, GOOD CAUSE APPEARING, the Court enters the following orders:

8           1.     That Sables, LLC, is hereby enjoined from selling at public auction the real  
9 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, and identified in the  
10 Notice of Trustee's Sale recorded with the Office of the Lyon County Recorder as Document  
11 No. 587470, until further order of the Court;

12          2.     That Plaintiffs shall post bond a bond in the amount of \$172,610.67 by  
13 December 20, 2018, and shall file with the Court and serve opposing counsel with a Notice of  
14 Bond filing;

15          3.     That the injunction shall be effective against Defendants so long as bond is  
16 posted and Plaintiffs post additional security in the sum of \$2,105.10 on January 20, 2019,  
17 and on the 20<sup>th</sup> day of each month thereafter with the Third Judicial District Court Clerk's  
18 office;

19          4.     Plaintiffs shall file a notice of compliance with the requirement to pay additional  
20 security with the Third Judicial District Court Clerk and shall contemporaneously serve the  
21 same upon Defendants after making payment of additional security as set forth above;

22          5.     That failure of Plaintiffs to timely post a bond and provide notice of bond by  
23 December 20, 2018, shall relieve Defendants of their duty to comply with this injunction  
24 enjoining the sale of 70 Riverside Drive, Dayton, Lyon County, Nevada, until a filing of notice  
25 of bond and a notice of compliance of Plaintiffs' satisfaction of the requirement to post  
26 additional security with the Third Judicial District Court Clerk in this matter are thereafter  
27 served upon Defendants; and

28     //

ORDER

6. That the Court's orders entered in the Court's November 8, 2018 Order and the Court's November 14, 2018 Corrected Order, pertaining to the cancellation of the Notice of Sale, are hereby set aside.

IT IS SO ORDERED.

Dated this 31<sup>st</sup> day of December, 2018

DISTRICT JUDGE

## AFFIRMATION

The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Reviewed, approved and submitted this 18 day of December, 2018

Michael G. Millward, Esq.  
Nevada Bar No. 11212  
Millward Law, Ltd.  
1591 Mono Ave.  
Minden, NV 89423

1 Reviewed, approved and submitted this 18<sup>th</sup> day of December, 2018.

2  
3 

4 Ramir M. Hernandez, Esq.  
5 Nevada Bar No. 13146  
6 Wright, Finlay & Zak  
7 7785 W. Sahara Ave., Suite 200  
8 Las Vegas, NV 89117  
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# **EXHIBIT 2**

# **EXHIBIT 2**

70 RIVERSIDE DR

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:  
Breckenridge Property Fund, 2016, LLC  
2320 Potosi St. Ste 130  
Las Vegas, NV 89146

Forward Tax Statements to  
the address given above

Recorded As An Accommodation  
Only Without Liability

**Doc #: 591393**

01/25/2019 08:21 AM Page: 1 of 2

**OFFICIAL RECORD**

Requested By: FIRST AMERICAN TITLE INSURANCE C

**Lyon County, NV**  
**Margie Kassebaum, Recorder**

Fee: \$38.00 RPTT: \$1,148.55

Recorded By: Inhumildad

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

### TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55  
The Grantee Herein WAS NOT the Foreclosing Beneficiary.  
The Amount of the Unpaid Debt was \$671,249.37  
The Amount Paid by the Grantee was \$294,000.01  
Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

#### Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

**THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:**

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:  
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

**EXCEPTING THEREFROM** all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.



A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:  
Breckenridge Property Fund, 2016, LLC  
2320 Potosi St. Ste 130  
Las Vegas, NV 89146

Recorded As An Accommodation  
Only Without Liability

Forward Tax Statements to  
the address given above

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397  
Order #: 160069595-NV-VOO

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#### Breckenridge Property Fund, 2016, LLC

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

## TRUSTEE'S DEED UPON SALE

T.S. #: 16-42397

Order #: 160069595-NV-VOO

Trustee having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Breach and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified return receipt mail, postage pre-paid to each person entitled to notice in compliance with Nevada Revised Statutes 107.080.

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 1/4/2019. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being \$ \$294,000.01, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, SABLES, LLC, a Nevada limited liability company, as Trustee, has this day, caused its name to be hereunto affixed.

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey  
Neal

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

On 1/15/2019 before me, the undersigned, J. Develasco Notary Public, personally appeared Geoffrey Neal 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.

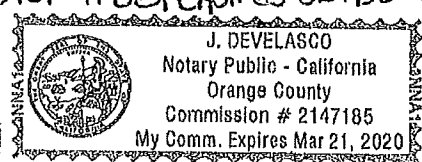
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

J. Develasco

(Seal)



STATE OF NEVADA  
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a) 029-401-17

b) \_\_\_\_\_

c) \_\_\_\_\_

d) \_\_\_\_\_

2. Type of Property:

- |  |   |
|--|---|
| a) <input type="checkbox"/> Vacant Land  | b) <input checked="" type="checkbox"/> Single Fam. Res. |
| c) <input type="checkbox"/> Condo/Twnhse | d) <input type="checkbox"/> 2-4 Plex                    |
| e) <input type="checkbox"/> Apt. Bldg    | f) <input type="checkbox"/> Comm'l/Ind'l                |
| g) <input type="checkbox"/> Agricultural | h) <input type="checkbox"/> Mobile Home                 |
| <input type="checkbox"/> Other _____     |   |

FOR RECORDER'S OPTIONAL USE ONLY

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

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

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

3. a. Total Value/Sales Price of Property

\$ \$294,000.01

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

( \_\_\_\_\_ )

c. Transfer Tax Value:

\$ \$294,000.01

d. Real Property Transfer Tax Due

\$ 1148.55

4. If Exemption Claimed:

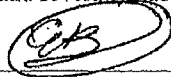
a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_

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 \_\_\_\_\_



Capacity AGENT

Signature \_\_\_\_\_

Capacity AGENT

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

Print Name: Sables, LLC, a Nevada limited liability company  
Address: 3753 Howard Hughes Parkway,  
Suite 200, Las Vegas, NV 89169

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

Print Name: Breckenridge Property Fund,  
2016, LLC  
Address: 2320 Potosi St. Ste 130  
Las Vegas, NV 89146

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

Print Name: First American Escrow #: ACCU  
Address: 10000 W. Charleston  
City: Las Vegas State: NV Zip: 89135

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

# **EXHIBIT 3**

# **EXHIBIT 3**

### THREE-DAY NOTICE TO QUIT

TO: VICENTA LINCICOME  
TENANT AND SUBTENANT AND ALL OCCUPANTS  
70 RIVERSIDE DR.  
DAYTON, NEVADA 89403

Or any occupants of the above-named property or any persons in possession of the above-mentioned property.

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.


YOU ARE HEREBY NOTIFIED AND DEMAND IS MADE that you surrender possession of the property to the undersigned at or before noon of the third (3) day after receipt of this Notice pursuant to Sections 40.255, 40.280, and 40.290 to 40.420 of the Nevada Revised Statutes.

YOU ARE HEREBY NOTIFIED that if you are a tenant of the prior owner of the Property, you are to refer to the Notice to Tenant which is attached as Exhibit A to this Three-Day Notice to Quit. If you need another copy of the Notice to Tenant, please contact the undersigned below.

UPON YOUR FAILURE TO VACATE OR SURRENDER THE PREMISES AS DEMANDED, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25<sup>th</sup> day of January, 2019.

WEDGEWOOD, LLC

  
CASEY J. NELSON, ESQ.  
Nevada Bar # 12259  
Office of the General Counsel  
2320 Potosi Street, Suite 130  
Las Vegas, Nevada 89146

*Attorney for Plaintiff  
Breckenridge Property Fund 2016, LLC*

# EXHIBIT A

# EXHIBIT A

## NOTICE TO TENANT

TO: VICENTA LINCICOME  
TENANT AND SUBTENANT AND ALL OCCUPANTS  
70 RIVERSIDE DR.  
DAYTON, NEVADA 89403

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED OF A CHANGE OF OWNERSHIP. The new owner of the property is BRECKENRIDGE PROPERTY FUND 2016, LLC, 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146.

YOU MUST CONTACT US AND ESTABLISH YOUR BONA FIDE TENANCY in the property **within three (3) business days** of receipt of this Notice.

IN ORDER TO ESTABLISH YOUR TENANCY, within three (3) business days of receipt of this Notice you must furnish a copy of your fully executed, current lease or rental agreement and proof of all past payments to Breckenridge Property Fund 2016, c/o the owner's attorney, Casey J. Nelson, Esq., at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Failure to produce valid documentation clearly demonstrating a bona fide tenancy will result in eviction proceedings immediately being brought against all occupants.

A LEASE OR TENANCY shall be considered bona fide only if:

- 1) The mortgagor/prior owner or the child, spouse, or parent of the mortgagor/prior owner under the contract is not the tenant or occupant;
- 2) The lease or tenancy was the result of an arms-length transaction; and
- 3) The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy

The new owner reserves the right to challenge the authenticity and validity of any purported lease or tenancy based upon other terms, conditions, or factors which appear fraudulent or which are not otherwise standard terms within residential leases in the geographic area.

YOU ARE HEREBY NOTIFIED that if you are a bona fide tenant or subtenant in the property, you must still vacate the property within either 1) 90 days of this notice; or 2) upon the expiration of the remainder of the term of your bona fide lease, whichever date is later.


**YOU ARE HEREBY NOTIFIED that you must continue to pay rent to the new owner throughout the remainder of your tenancy in order to avoid eviction proceedings being brought against you for non-payment of rent.**

Rent shall be remitted to BRECKENRIDGE PROPERTY FUND 2016, LLC at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Your failure to pay rent to the new owner throughout the notice period or comply with any other term of the agreement or applicable law shall constitute a breach of the lease or rental agreement and may result in eviction proceedings.

YOU ARE HEREBY NOTIFIED that upon your failure to timely establish your tenancy or upon your failure to fully vacate or surrender the premises as demanded, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25<sup>th</sup> day of January, 2019.

WEDGEWOOD, LLC

  
CASEY J. NELSON, ESQ.  
Nevada Bar # 12259  
Office of the General Counsel  
2320 Potosi Street, Suite 130  
Las Vegas, Nevada 89146

*Attorney for Plaintiff  
Breckenridge Property Fund 2016, LLC*



Attorney or Party without Attorney: Wedgewood, LLC Casey J. Nelson, Esq. (SBN 12259) 2320 Potosi Street, Suite 130 Las Vegas, NV 89146 Telephone No: (702) 305-9157 Attorney For: Plaintiff				<b>For Court Use Only</b>
Ref. No. or File No.: 70 RIVERSIDE DR.				
Insert name of Court, and Judicial District and Branch Court:				
Plaintiff: BRECKENRIDGE PROPERTY FUND 2016, LLC Defendant: VICENTA LINCICOME; TENANT AND SUBTENANT AND ALL OCCUPANTS				
<b>AFFIDAVIT OF SERVICE</b>	Hearing Date:	Time:	Dept/Div:	Case Number:

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Three-Day Notice to Quit, Notice to Tenant
3.
  - a. Party served: Vicenta Lincicome; Tenant and Subtenant and All Occupants
  - b. Person served: Posted
4. Address where the party was served: 70 Riverside Drive, Dayton, NV 89403
5. I served the party:
  - a. By Posting. On: Mon, Jan 28 2019 (2) at: 02:20 PM by posting a copy of the documents in a conspicuous place on the property.
  - b. By Mailing. On: Mon, Jan 28 2019 by mailing a copy of the documents, addressed as shown in item 4, via Certified Mail Issued by United States Post Office from: Las Vegas, NV.
6. Person Who Served Papers:
  - a. Toni Ruckman (R-052005, Washoe)
  - b. FIRST LEGAL  
2920 N. Green Valley Parkway, Suite 514  
Henderson, NV 89014
  - c. (702) 671-4002
  - d. The Fee for Service was:

Pursuant to NRS 53.045

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

01/29/2019

(Date)

*Toni L Ruckman*

(Signature)



AFFIDAVIT OF  
SERVICE

3012509  
(55105770)

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com).

DAYTON NV 89403-9055

**OFFICIAL USE**

Certified Mail Fee \$3.50

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.55

Total Postage and Fees \$6.85

Sent To VICENTA LINCICOME

Street or PO Box TENANT/SUBTENANT/ALL OCCUPANTS

City, State 70 RIVERSIDE DR.

PS Form DAYTON, NV 89403-9055

01/28/2019  
55105770

Postmark Here

Instructions

1520 500T 2000 DEPT 9101

INTENTIONALLY LEFT BLANK  
EXHIBIT PAGE ONLY

## EXHIBIT 8

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

FILED

2021 JUN 23 PM 4:07

TANYA SOEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tova

REPLY

Case No.: 18-CV-01332

Dept. No.: II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \*

ALBERT ELLIS LINCICOME, JR. and  
VICENTA LINCICOME,

Plaintiffs,

vs.

SABES, LLC, a Nevada limited liability company, as  
Trustee of the Deed of Trust given by Vicenta  
Lincicome and dated 5/23/2007; FAY SERVICING,  
LLC, a Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-2013 M4  
LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal  
Title Trustee; for BANK OF AMERICAN, N.A.;  
BRECKENRIDGE PROPERTY FUND 2016, A Utah  
limited liability company; NEWREZ, LLC, d/b/a  
SHELLPOINT MORTGAGE SERVICING, LLC  
substituted in for DOE 1; 1900 CAPITAL TRUST II,  
BY U.S. BANK TRUST NATIONAL ASSOCIATION,  
substituted in for DOE 2; MNCM-2018-NPL@,  
substituted in for DOE 3; and DOES 4-10.

Defendants.

**ORDER ON**  
**BRECKENRIDGE MOTION**  
**FOR SUMMARY**  
**JUDGMENT**

**I. STATEMENT OF THE CASE**

On March 18, 2021, Breckenridge Property Fund 2016, LLC ("Breckenridge") filed a Motion for Summary Judgment. On April 15, 2021, the Plaintiffs filed an Opposition. On May 10, 2021,

1 Breckenridge filed a Reply.

2 **II. ISSUE PRESENTED**

3 Should the Court grant Breckenridge's Motion for Summary Judgment?

5 **III. SUMMARY OF DECISION**

6 The Court finds that no genuine material issues of fact exist and Breckenridge is entitled to  
7 summary judgment as a matter of law.

9 **IV. PRINCIPLES OF LAW**

10 **A. Standard of Review**

11 NRCP 56(c) requires a court to enter summary judgment in favor of a party when the  
12 "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if  
13 any, show that there is no genuine issue as to any material fact and that the moving party is entitled to  
14 a judgment as a matter of law. " NRCP 56(c). A genuine issue of material fact exists where the  
15 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Posada v. City*  
16 *of Reno*, 109 Nev. 448 (1993).

18 When reviewing a motion for summary judgment, the evidence and all reasonable inferences  
19 drawn from the evidence, must be viewed in a light most favorable to the non-moving party. *Richards*  
20 *v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213 (2006). Summary judgment is appropriate and  
21 "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no  
22 "genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a  
23 matter of law. *Wood v. Safeway, Inc.*, 106 Nev. 601, 603 (1990).

26 **B. NRS 40.010**

1 NRS 40.010 states, "An action may be brought by any person against another who claims an  
2 estate or interest in real property, adverse to the person bringing the action, for the purpose of  
3 determining such adverse claim."

4 D. NRS 111.180

5 NRS 111.180 states:

6  
7 1. Any purchaser who purchases an estate or interest in any real property in good  
8 faith and for valuable consideration and who does not have actual knowledge,  
9 constructive notice of, or reasonable cause to know that there exists a defect in, or adverse  
10 rights, title or interest to, the real property is a bona fide purchaser.

11 2. No conveyance of an estate or interest in real property, or charge upon real  
12 property, shall be deemed fraudulent in favor of a bona fide purchaser unless it appears  
13 that the subsequent purchaser in such conveyance, or person to be benefited by such  
14 charge, had actual knowledge, constructive notice or reasonable cause to know of the  
15 fraud intended.

16 E. NRS 40.250

17 NRS 40.250 states:

18 A tenant of real property or a mobile home for a term less than life is guilty of an  
19 unlawful detainer when the tenant continues in possession, in person or by subtenant, of  
20 the property or mobile home or any part thereof, after the expiration of the term for  
21 which it is let to the tenant. In all cases where real property is leased for a specified  
22 term or period, or by express or implied contract, whether written or parol, the tenancy  
23 terminates without notice at the expiration of the specified term or period.

24 V. **FINDINGS OF FACT**

25 1. In May of 2007, Vicenta Lincicome financed a property known as 70 Riverside Drive,  
26 Dayton Nevada 89403 with a loan in the amount of \$381,150.00 secured by a recorded  
27 deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and  
28 Mortgage Electronic Registration Systems, Inc. "MERS" as the beneficiary and nominee of  
the lender. Vicenta Lincicome executed documents creating the deed of trust and note and  
understood she had a 30-year maturity date.

- 1       2. On August 15, 2011, MERS recorded an assignment of the deed of trust, transferring the  
2       interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans  
3       Servicing, LP FKA Countrywide Home Loans Servicing LP.
- 4       3. On November 25, 2015, BANA recorded an assignment of the deed of trust transferring its  
5       interest to U.S. Bank.
- 6       4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
- 7       5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
- 8       6. In July 2009, BANA offered the Plaintiffs a loan modification agreement "LMA." The new  
9       loan balance was \$417,198.58. The Plaintiffs were provided a post office box to send  
10      payments.  
11
- 12      7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch  
13      in Carson City on September 1, 2009. The Plaintiffs attempted to make the second  
14      payment at a BANA Branch but it was rejected as BANA's computer system did not  
15      recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their  
16      deposition testimony states they were aware of the breach at that time.  
17
- 18      8. The Plaintiffs made no other attempt to mail the payments. BANA then notified the  
19      Plaintiffs in October of 2009 stating that the loan had not been modified. However, then  
20      BANA signed the LMA and recorded it in March of 2011.  
21
- 22      9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the  
23      property at \$381,000. The Plaintiffs made no payments at the time of bankruptcy filing or  
24      during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.  
25  
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28

10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no payments on the offer. BANA offered another modification on April 2015 but the loan was service released to Fay Servicing prior to the final payment.
11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final decree was filed by the Bankruptcy Court in July of 2015.
12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of default.
13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank and Fay Servicing as interested parties.
14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make three payments of \$2462.30 as an offered trial period plan. The payments had to be made on April 1, 2018, May 1, 2018 and June 1, 2018.
15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in lieu of foreclosure. A certificate for foreclosure was issued.
16. The Plaintiffs did not place the required monthly payments in a bank account or escrow account. Plaintiffs spent all of their income on either items. Plaintiffs do not have sufficient funds to pay off what is owed under any theory as to what instrument controls the computation of what is owed.
17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that they could not afford to make payments on the mortgage. The Plaintiffs have never averred



1 to the Court that they are ready, willing, and able to perform on the original mortgage or  
2 subsequent modifications.

3 18. The foreclosing party recorded a Notice of Default and Notice of Sale against the subject  
4 property.

5 19. On November 7, 2018, the Plaintiffs filed a complaint for injunctive relief, contractual  
6 claims and declaratory relief regarding the foreclosure sale of the subject property.

7 20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and  
8 then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and  
9 Permanent Injunction with the Court.

10 21. On December 31, 2018, the Court entered an order enjoining the foreclosure sale if the  
11 Plaintiffs posted a bond in the amount of \$172,610.67 and additional security in the amount  
12 of \$2,105.10 per month thereafter. The Plaintiffs did not file the bond.

13 22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the  
14 property for \$294,000.01.

15 23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of  
16 the subject property was recorded.

## 17 VI. ANALYSIS

18 The Court incorporates the legal findings, factual findings and analysis contained in its  
19 separate "ORDER DENYING PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT/  
20 GRANTING MOTIONS FOR SUMMARY JUDGMENT FILED BY BANA, PROF-2013 M4  
21 LEGAL TRUST, US BANK AND FAY SERVICING LLC." As Breckenridge purchased the subject  
22 property at the foreclosure sale, Breckenridge is entitled to summary judgment regarding their claims  
23 to title of the property.  
24  
25  
26  
27  
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1 VII. CONCLUSIONS OF LAW

2 Breckenridge is entitled to a motion for summary judgment in its favor.  
3

4 ORDER

5 Therefore, good cause appearing, IT IS HEREBY ADJUDGED and ORDERED that  
6 Breckenridge's Motion for Summary Judgment is GRANTED.  
7

8 IT IS HEREBY FURTHER ORDERED that the hearing on Motions set for July 28, 2021 is  
9 VACATED. The Court found the pleadings sufficient to enter an order without argument.  
10

11  
12 DATED: This 23<sup>rd</sup> day of June, 2021.  
13

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16 \_\_\_\_\_  
17 HON. LEON ABERASTURI  
18 DISTRICT JUDGE  
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Certificate of Mailing

I hereby certify that I, Guo Thew, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

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DATED: This 23<sup>rd</sup> day of June, 2021.



Employee of Hon. Leon Aberasturi