

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

ALBERT ELLIS LINCIVOME, JR.  
AND VICENTA LINCICOM,

Appellants,

vs.

SABLES, LLC, AS TRUSTEE OF THE  
DEED OF TRUST GIVEN BY  
VICENTA LINCICOME AND DATED  
5/23/2007; FAY SERVICING, LLC;  
PROF-2013 M4 LEGAL TITLE TRUST  
BY U.S. BANK N.A., AS LEGAL TITLE  
TRUSTEE; BANK OF AMERICA, N.A.;  
BRECKENRIDGE PROPERTY FUND  
2016, LLC; NEWREZ, LLC, D/B/A  
SHELLPOINT MORTGAGE  
SERVICING, LLC; 1900 CAPITAL  
TRUST II, BY U.S. BANK TRUST  
NATIONAL ASSOCIATION; AND  
MCM-2018-NPL2

Respondents.

Supreme Court No. 83261

Electronically Filed  
Dec 29 2021 03:48 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

District Court Case No. 18-cv-01332

**APPEAL**

From the Third Judicial District Court, Department II  
The Honorable Leon Aberasturi, District Judge

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**BANK OF AMERICA, N.A.'S LIMITED OPPOSITION  
TO BRECKENRIDGE PROPERTY FUND 2016, LLC'S  
MOTION TO DISMISS APPEAL**

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Bank of America, N.A. (**BANA**) submits this limited opposition to Breckenridge Property Fund 2016, LLC's motion to dismiss appeal.

## **I. INTRODUCTION**

Albert Ellis Lincicome, Jr. and Vicenta Lincicome (**appellants**) appealed three district court orders: (1) summary judgment for BANA, Prof-2013 M4 Legal Trust, U.S. Bank, National Association as Legal Trustee (**U.S. Bank**), Shellpoint Mortgage Servicing, and Fay Servicing, LLC; (2) summary judgment for Breckenridge; and (3) non-monetary status of Sables, LLC. When BANA moved for summary judgment, it specifically requested the district court certify judgment as final pursuant to NRCP 54(b). U.S. Bank, Shellpoint, and Fay Servicing joined BANA's motion, and the district court certified the judgment using the talismanic NRCP 54(b) language. The judgment expressed in that order is therefore final as to BANA, U.S. Bank, Shellpoint, and Fay Servicing.

## **II. STANDARD OF REVIEW**

Pursuant to NRAP 3A(b)(1) an appeal may be taken from a "final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." A final judgment is one that disposes of all the issues presented in the case and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs. *Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Cmty. Ass'n*, 137 Nev. Adv. Op. 52, 495 P.3d 492,

496 (2021); *see Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment). The purpose is to promote judicial economy by avoiding piecemeal appellate review. *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 733 (1994).

NRCP 54(b) provides an exception to the final judgment rule when multiple parties are involved: "the court may direct the entry of a final judgment as to one or more but fewer than all of the parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." A properly certified final judgment pursuant to NRCP 54(b) is independently appealable. *See Hern v. Erhardt*, 113 Nev. 1330, 1334 n. 4, 948 P.2d 1195, 1197 n. 4 (1997); *Aldabe v. Evans*, 83 Nev. 135, 425 P.2d 598 (1967).

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

1. On May 23, 2007, appellants executed a note and deed of trust that was secured by the subject property. **Exhibit A.**
2. Appellants subsequently defaulted on that loan obligation resulting in a notice of default and notice of sale being recorded against the subject property. **Exhibits B & C.**
3. On November 7, 2018, appellants filed a complaint for injunctive relief, breach of contract, and declaratory relief regarding the scheduled foreclosure sale of the subject property.

4. On November 8, 2018, appellants recorded a *lis pendens* on the subject property and also filed an application for ex parte restraining order, preliminary injunction, and permanent injunction.
5. On December 31, 2018, the court entered an order enjoining the foreclosure on the subject property if appellants timely posted of a bond in the amount of \$172,610.67 and additional security in the amount of \$2,105.10 per month thereafter.
6. Appellants failed to post the bond, and the subject property went to foreclosure sale on or about January 4, 2019. Breckenridge purchased the subject property at the NRS 107 foreclosure. **Exhibit D.**
7. On May 30, 2019, the district court granted Sables, LLC's declaration of non-monetary status (**Sables Order**). **Exhibit E.**
8. On December 20, 2019, appellants filed their second amended complaint.
9. Breckenridge subsequently filed a counterclaim against appellants. **Exhibit F.**
10. All parties filed summary judgment motions.
11. BANA's summary judgment motion included a request to certify the judgment as final pursuant to NRCP 54(b).
12. U.S. Bank, Shellpoint, and Fay Servicing joined BANA's summary judgment motion.

13. On June 23, 2021, the district court granted Breckenridge's motion for summary judgment (**Breckenridge Order**). **Exhibit G**.
14. On June 23, 2021, the district court denied appellants' partial motion for summary judgment; granted the motions for summary judgment filed by BANA, U.S. Bank, Shellpoint, and Fay Servicing; and certified the judgment as final (**BANA Order**). **Exhibit H**.
15. On July 19, 2021, appellants noticed their appeal of the BANA Order, the Sables Order, and the Breckenridge Order.

#### **IV. ARGUMENT**

This court has jurisdiction over the parties included in the BANA Order. The district court entered a final judgment as to BANA, U.S. Bank, Shellpoint, and Fay Servicing. **Exhibit H**. The BANA Order directed the entry of a final judgment: "BANA's request for NRCP 54(b) certification as a final judgment is **GRANTED**." *Id.* at p. 17. The BANA Order also included an express determination that there is no just reason for delay: "The Court finds no just reason for the delay." *Id.*

This court has jurisdiction over the parties to the BANA Order (BANA, U.S. Bank Trust, Shellpoint, and Fay Servicing) since appellants appeal from a final judgment as to those parties. *See* NRAP 3A(b). BANA expresses no opinion on the finality of the Breckenridge Order or the Sables Order. **Exhibits E & G**.

## V. CONCLUSION

The court should allow the appeal to proceed as to BANA, U.S. Bank, Shellpoint, and Fay Servicing regardless of whether there is jurisdiction as to the Breckenridge Order or the Sables Order.

DATED the 29<sup>th</sup> day of December 2021.

### AKERMAN LLP

*/s/ Paige L. Magaster*

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**CERTIFICATE OF SERVICE**

I certify that I electronically filed on December 29, 2021, the foregoing **DEFENDANT BANK OF AMERICA, N.A.'S LIMITED OPPOSITION TO BRECKENRIDGE PROPERTY FUND 2016, LLC'S MOTION TO DISMISS APPEAL** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I further certify that all parties of record to this appeal are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List.

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

*/s/ Patricia Larsen*  
\_\_\_\_\_  
An employee of AKERMAN LLP

# **EXHIBIT A**





610 162304785 D2 001 002

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

DOC # 407150

(Not Compared to Original)

05/25/2007

04:34 PM

Official Record

Requested By

STEWART TITLE OF NEVADA

Lyon County - NV

Mary C. Milligan - Recorder

Loan No: 0000479436

[Space Above This Line For Recording Data]

## DEED OF TRUST

MIN: 1000703-0000479436-5

479436

LINCICOME

CFC-Bruce

162304785

### 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

(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.

## 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

[Type of Recording Jurisdiction]

[Name 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

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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.

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.

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.

Loan No: 0000479436



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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

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

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

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of 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. 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

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)  
VICENTA LINCICOME -Borrower

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

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

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

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

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

Loan No: 0000479436

STATE OF NEVADA, *Carson City*

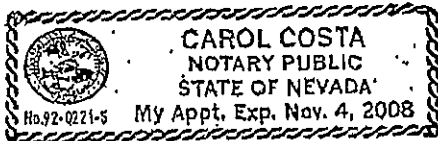
County ss: *May 23 2007*

This instrument was acknowledged before me on

*Vicenta Lincicome*

, by

*Carol Costa*  
My Commission Expires: *11-4-08*



NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS  
DRAW.MERS.NV.CVL.DT.13.WPF (010\DOCS\DEEDS\CVL\NV\_MERS.CVL)

Form 3029 1/01  
(page 13 of 15 pages)

WHEN RECORDED MAIL TO:

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

## **EXHIBIT B**

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

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**

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 **5/23/2007**, 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.**



**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.





572258

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

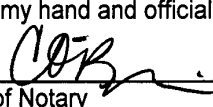
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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

**Affidavit of Authority**

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

Re: TS# 16-42397  
Borrower Name: VICENTALINCICOME  
Property Address: 70 RIVERSIDE DRIVE  
DAYTON, Nevada 89403

I, Veronica Talley, am the Foreclosure Specialist of 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)

(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

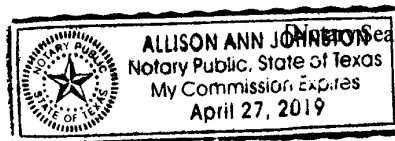
County of Denton

On October 5th 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.

Signature





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11/03/2017  
6 of 6

## Declaration of Mortgage Servicer Pursuant to NR 107.510

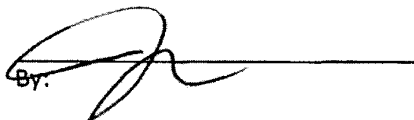
T.S. Number: 16-42397  
Borrower(s): VICENTA LINCICOME  
Mortgage Servicer: Fay Servicing, LLC  
Property Address: 70 RIVERSIDE DRIVE  
DAYTON, Nevada 89403

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. 

## **EXHIBIT C**

**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 RPTT: \$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

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.

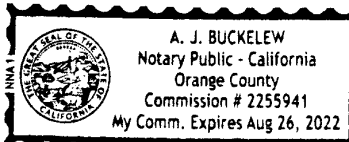
State of CALIFORNIA  
County of ORANGE

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.

## **EXHIBIT D**



**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

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

**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.

**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.

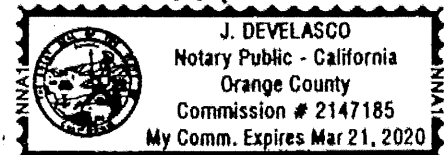
WITNESS my hand and official seal.

Signature

J. Develasco

(Seal)

J. Develasco



## **EXHIBIT E**

1 WRIGHT, FINLAY & ZAK, LLP

2 R. Samuel Ehlers, Esq.

3 Nevada Bar No. 9313

4 Ramir M. Hernandez, Esq.

5 Nevada Bar No. 13146

6 7785 W. Sahara Ave, Suite 200

7 Las Vegas, NV 89117

8 (702) 475-7964; Fax: (702) 946-1345

9 rhernandez@wrightlegal.net

10 *Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association,*  
11 *as Legal Title Trustee and Fay Servicing LLC*

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and  
15 VICENTA LINCICOME,

16 Plaintiffs,

17 vs.

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

27 Defendants.

Case No.: 18-cv-01332

Dept. No.: II

**NOTICE OF ENTRY OF ORDER**

28 TO: ALL INTERESTED PARTIES:

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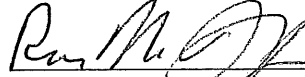
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1       **PLEASE TAKE NOTICE** that an Order was entered on 30<sup>th</sup> day of May, 2019, a file-  
2 stamped copy of which is attached hereto.

3       DATED this 12<sup>th</sup> day of June, 2019.

4                               WRIGHT, FINLAY & ZAK, LLP

5                               

6                               R. Samuel Ehlers, Esq.

7                               Nevada Bar No. 9313

8                               Ramir M. Hernandez, Esq.

9                               Nevada Bar No. 13146

10                              7785 W. Sahara Ave, Suite 200

11                              Las Vegas, NV 89117

12                              *Attorney for Defendants, Prof-2013 M4-Legal Title*  
13                              *Trust, by U.S. Bank, National Association, as Legal*  
14                              *Title Trustee and Fay Servicing LLC*  
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1 **AFFIRMATION**

2 **Pursuant to NRS 239B.03/603A.040**

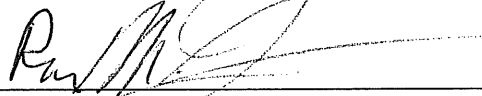
3 The undersigned does hereby affirm that the foregoing document does not contain any of  
4 the following information governed by NRS 239B.030 and NRS 603A.040:

- 5 1. Social Security Number;  
6 2. Driver License Number or Identification Card Number; or  
7 3. Account number, credit card number or debit card number, in combination with any  
8 required security code, access code or password that would permit access to the person's  
9 financial account.

10 The term does not include any publically available information that is lawfully made  
11 available to the general public.

12 DATED this 10th day of June, 2019.

13  
14 WRIGHT, FINLAY & ZAK, LLP

15 

16 R. Samuel Ehlers

17 Nevada Bar No. 9313

18 Ramir M. Hernandez, Esq.

19 Nevada Bar No. 13146

20 *Attorney for Defendants, Prof-2013 M4-Legal Title*  
21 *Trust, by U.S. Bank, National Association, as Legal*  
22 *Title Trustee and Fay Servicing LLC*  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,  
3 LLP, and that on this 12<sup>th</sup> day of June, 2019, I did cause a true copy of **NOTICE OF ENTRY**  
4 **OF ORDER** to be filed and served by depositing a true and correct copy in the United States  
5 Mail, addressed as follows:

6 Michael G. Millward, Esq.  
7 MILLWARD LAW, LTD.  
8 1591 Mono Ave.  
Minden, NV 89423

9 Shadd A. Wade, Esq.  
10 ZIEVE, BRODNAX & STEELE, LLP  
11 9435 West Russell Road, Suite 120  
Las Vegas, NV 89148

12 Darren T. Brenner, Esq.  
13 Scott R. Lachman, Esq.  
14 AKERMAN LLP  
15 1635 Village Center Circle, Ste. 200  
Las Vegas, NV 89134

16   
17 An Employee of WRIGHT, FINLAY & ZAK, LLP  
18  
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FILED

2019 MAY 30 AM 8:44

TANYA SCHEIDT  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Victoria Toran*

1 WRIGHT, FINLAY & ZAK, LLP

2 Christopher A.J. Swift, Esq.

3 Nevada Bar No. 11291

4 Ramir M. Hernandez, Esq.

5 Nevada Bar No. 13146

6 7785 W. Sahara Ave, Suite 200

7 Las Vegas, NV 89117

8 (702) 475-7964; Fax: (702) 946-1345

9 [rhernandez@wrightlegal.net](mailto:rhernandez@wrightlegal.net)

10 *Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association,*  
11 *as Legal Title Trustee and Fay Servicing LLC*

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and  
15 VICENTA LINCICOME,

Case No.: 18-cv-01332

Dept. No.: II

16 Plaintiffs,

17 vs.

**ORDER**

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

27 Defendants.

28 This matter having come on for hearing before the Court on April 15, 2019, at 1:30 PM.  
on the following Motions:

- 1) Sables, LLC's Motion to Set Aside Default to which Fay Servicing, LLC and Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee filed a Joinder. Plaintiffs filed an Opposition to this Motion;
- 2) Plaintiffs' Application for Entry of Default Judgment against Sables, LLC. Fay Servicing, LLC's and Prof-2013 M4-Legal Title Trust, by U.S. Bank, National



1 Association, as Legal Title Trustee filed an Opposition to the Application to which  
2 Sables, LLC filed a Joinder.

3 3) Fay Servicing, LLC's and Prof-2013 M4-Legal Title Trust, by U.S. Bank, National  
4 Association, as Legal Title Trustee's Motion for Rule 11 Sanctions against  
5 Plaintiffs. Plaintiffs filed an Opposition to this Motion;

6 4) Bank of America N.A.'s Motion to Dismiss Plaintiff's Complaint. Plaintiffs filed an  
7 Opposition to this Motion.

8 5) Sables, LLC's Declaration of Non-Monetary Status. Plaintiffs filed an Objection to  
9 the Declaration; and

10 6) Plaintiffs' Motion for Leave to file Amended Complaint to Substitute Parties and  
11 add Additional Claims for Relief. No party filed an Opposition to the Motion.

12 Plaintiffs, Albert Ellis Lincicome, Jr., and Vicenta Lincicome ("Plaintiffs") appeared  
13 through counsel, Michael G. Millward, Esq., of Millward Law, Ltd. Defendant, Sables, LLC  
14 ("Sables"), appeared through its counsel, Shadd Wade, Esq., of the law firm of Zieve, Brodnax  
15 & Steele, LLP. Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National  
16 Association, as Legal Title Trustee (the "Trust") and Fay Servicing LLC ("Fay") appeared  
17 through Ramir M. Hernandez, Esq., of the law firm of Wright, Finlay & Zak, LLP. Defendant,  
18 Bank of America, N.A. ("BANA") appeared through its counsel, Darren T. Brenner, Esq., of  
19 Akerman LLP.

20 The Court, having reviewed the parties' briefings and heard the parties' oral arguments,  
21 orders as follows:

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Sables' Motion to Set  
23 Aside Default is GRANTED, and that the default of Sables filed with the Court on December  
24 21, 2018 is SET ASIDE.

25 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs'  
26 Application for Entry of Default Judgment is DENIED.

27 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Trust and Fay's  
28 Motion for Rule 11 Sanctions against Plaintiffs is GRANTED. Plaintiff's Attorney will pay

1 the Trust and Fay their attorney's fees and costs for filing an Opposition to the Application for  
2 Entry of Default Judgment against Sables as well as the Rule 11 Motion. Fay and the Trust  
3 will be responsible for their travel costs for attending the hearing. Fay and the Trust are  
4 granted leave to file a Memorandum of Fees and Costs pursuant to the factors set forth in  
5 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

6 Plaintiffs will have ten days after the filing of the Memorandum of Fees and Costs to  
7 file an Objection. If an Objection is filed, Fay and the Trust will have ten days to file a Reply.  
8 When the matter is submitted, Fay and the Trust will submit a proposed order with the amount  
9 awarded in blank.

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Sables' Declaration  
11 of Non-Monetary Status is GRANTED.

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that BANA's Motion to  
13 Dismiss Plaintiffs' Complaint is GRANTED in part and DENIED in part. Any claims against  
14 BANA seeking injunctive relief are hereby dismissed. All other claims will be allowed to  
15 remain.

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that regarding Plaintiff's  
17 Motion for Leave to File Amended Complaint to Substitute Parties and Add Additional Claims  
18 For Relief, and based on the granting of Sables' Declaration of Non-Monetary Status, Plaintiff  
19 are GRANTED leave to file another Motion for Leave to File an Amended Complaint, but is  
20 not granted leave to amend its claims as to Sables. After the filing of the Motion, and  
21 oppositions thereto, the Court will then make a determination as to whether to grant leave to  
22 Plaintiffs to amend the Complaint.

23 /./

24 /./

25 /./

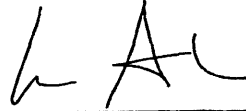
26 /./

27 /./

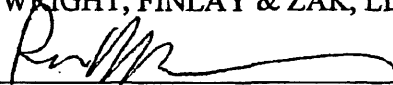


28 /./

1 IT IS SO ORDERED.

2 Dated this 30<sup>th</sup> day of May, 2019.

3  
4 

5 DISTRICT JUDGE

6 Respectfully submitted by:	Approved as to form and content by:
7 Dated this <u>23<sup>rd</sup></u> day of <u>May</u> , 2019	Dated this _____ day of _____, 2019
8 WRIGHT, FINLAY & ZAK, LLP	MILLWARD LAW, LTD.
9 	
10 Ramir M. Hernandez, Esq.	Michael Millward, Esq.
11 Nevada Bar No. 13146	Nevada Bar No. 11212
12 7785 W. Sahara Avenue, Suite 200	1591 Mono Ave.
13 Las Vegas, Nevada 89117	Minden, NV 89423
14 <i>Attorneys for Defendants, Prof-2013 M4-Legal</i>	<i>Attorneys for Plaintiffs</i>
15 <i>Title Trust, by U.S. Bank, National</i>	
16 <i>Association, as Legal Title Trustee and Fay</i>	
17 <i>Servicing LLC</i>	
18 Approved as to form and content by:	Approved as to form and content by:
19 AKERMAN LLP	ZIEVE, BRODNAX & STEELE, LLP
20 	
21 Darren T. Brenner, Esq.	Shadd A. Wade, Esq.
22 Nevada Bar No. 8386	Nevada Bar No. 11310
23 Scott R. Lachman, Esq.	9435 West Russell Road, Suite 120
24 Nevada Bar No. 12016	Las Vegas, NV 89148
25 1635 Village Center Circle, Ste. 200	Attorneys for Defendant, Sables, LLC
26 Las Vegas, Nevada 89134	
27 <i>Attorneys for Defendant Bank of America, N.A.</i>	
28	

1 IT IS SO ORDERED.

2 Dated this 23<sup>rd</sup> day of May, 2019.

3  
4  
5 DISTRICT JUDGE

6 Respectfully submitted by:

7 Dated this 23<sup>rd</sup> day of May, 2019

8 WRIGHT, FINLAY & ZAK, LLP

9  
10 Ramir M. Hernandez, Esq.  
11 Nevada Bar No. 13146  
12 7785 W. Sahara Avenue, Suite 200  
13 Las Vegas, Nevada 89117  
14 *Attorneys for Defendants, Prof-2013 M4-Legal  
Title Trust, by U.S. Bank, National  
Association, as Legal Title Trustee and Fay  
Servicing LLC*

Approved as to form and content by:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019

MILLWARD LAW, LTD.

Michael Millward, Esq.  
Nevada Bar No. 11212  
1591 Mono Ave.  
Minden, NV 89423  
*Attorneys for Plaintiffs*

15 Approved as to form and content by:

16 AKERMAN LLP

17  
18 5/11/19  
19 Darren T. Brenner, Esq.  
20 Nevada Bar No. 8386  
21 Scott R. Lachman, Esq.  
22 Nevada Bar No. 12016  
23 1635 Village Center Circle, Ste. 200  
24 Las Vegas, Nevada 89134  
25 *Attorneys for Defendant Bank of America, N.A.*

Approved as to form and content by:

ZIEVE, BRODNAX & STEELE, LLP

Shadd A. Wade, Esq.  
Nevada Bar No. 11310  
9435 West Russell Road, Suite 120  
Las Vegas, NV 89148  
*Attorneys for Defendant, Sables, LLC*

## **EXHIBIT F**

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  
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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 ///

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

4                                   **FOURTH CAUSE OF ACTION**  
5                                   **(Unjust Enrichment)**

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

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

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

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

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

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

23    ///

24    ///

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:

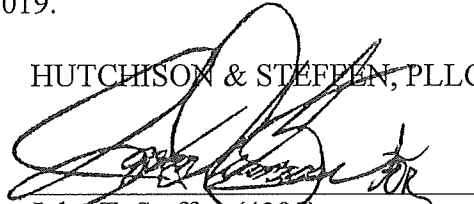
1. For damages against the Counterdefendants in an amount in excess of \$15,000.00;
2. For restitution and possession of the Subject Property;
3. For a Writ of Restitution without bond;
4. For the Court to quiet title to the Subject Property in favor of Counterclaimant;
5. For the Court to declare that 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                     John T. Steffen (4390)  
7                     Matthew K. Schriever (10745)  
8                     10080 W. Alta Dr., Suite 200  
                      Las Vegas, NV 89145

9                     Casey J. Nelson (12259)  
10                    WEDGEWOOD, LLC  
11                    Office of the General Counsel  
12                    2320 Potosi Street, Suite 130  
13                    Las Vegas, Nevada 89146

14                    *Attorney for Defendant in Intervention /*  
15                    *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.

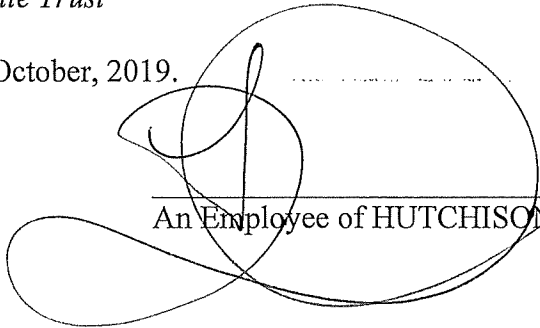
Michael G. Millward, Esq.  
MILLWARD LAW, LTD.  
1591 Mono Avenue  
Minden, NV 89423  
*Attorney for Plaintiffs*

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 G**

FILED

2021 JUN 23 PM 4: 07

TANYA SCORINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tovar

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.

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

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

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17 HON. LEON ABERASTURI  
18 DISTRICT JUDGE  
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**Certificate of Mailing**

I hereby certify that I, Quoc 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:

Michael G. Millward, Esq.  
Millward Law, Ltd.  
1591 Mono Ave.  
Minden, NV 89423

Shadd A. Wade  
Zieve, Brodnax & Steele, LLP  
9435 W. Russel Rd., Ste. 120  
Las Vegas, NV 89148

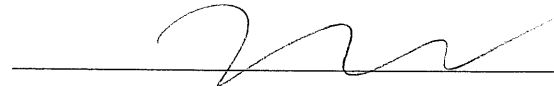
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Ramir M. Hernandez, Esq.  
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7785 W. Sahara Ave., Ste. 200  
Las Vegas, NV 89117

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



Employee of Hon. Leon Aberasturi

## **EXHIBIT H**

Case No.: 18-CV-01332

Dept. No.: II

FILED

2021 JUN 23 PM 4:13

TANYA SCERIF  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tovar DEPUTY

**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 DENYING  
PLAINTIFFS MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT/ GRANTING  
MOTIONS FOR SUMMARY  
JUDGMENT FILED BY  
BANA, PROF-2013 M4  
LEGALL TRUST, US BANK  
AND FAY SERVICING LLC**

**I. STATEMENT OF THE CASE**

On March 19, 2021, the Plaintiffs filed a Motion for Partial Summary Judgment. On April 19, 2021, Defendants, Prof-2013M4-Legal Trust, by U.S. Bank, National Association, as Legal Title trustee ("U.S. Bank Trust") and Fay Servicing LLC filed an Opposition. On May 5, 2021,

1 Breckenridge Property Fund 2016, LLC joined the Opposition. On May 6, 2021, Plaintiffs filed a  
2 Reply.

3 On March 25, 2021, Shellpoint Mortgage Servicing filed a Motion for Summary Judgment. On  
4 the same date Prof-2013 M4 Legal trust, U.S. Bank, National Association as Legal Trustee (“U.S.  
5 Bank Trust”) and Fay Servicing LLC, filed a Motion for Summary Judgment. On April 15, 2021, the  
6 Plaintiffs filed an Opposition. On May 6, 2021 Prof-2013 M4 Legal trust, U.S. Bank, National  
7 Association as Legal Trustee (“U.S. Bank Trust”) and Fay Servicing LLC, filed a Reply. On May 10,  
8 2021 Shellpoint Mortgage filed a Reply.

9 On March 17, 2021, Bank of America, hereinafter “BANA,” filed a Motion for Summary  
10 Judgment and request for discovery sanctions. On April 15, 2021, the Plaintiffs filed an Opposition.  
11 On May 5, 2021, BANA filed a Reply. Defendant Breckenridge Property Fund 2016, LLC  
12 (“Breckenridge”) joined in the Motion on March 29, 2021. Defendants Prof-2013 M4-Legal Title  
13 Trust, by U.S. Bank, National Association, as legal Title Trustee (U.S. Bank Trust”), Defendant Fay  
14 Servicing LLC (“Fay”) and Shellpoint Mortgage Servicing, LLC (“Shellpoint”) joined the Motion on  
15 April 19, 2021.

## 16 **II. ISSUE PRESENTED**

17 Should the Court sanction the Plaintiffs for discovery violations?

18 Should the Court grant the Plaintiffs’ Motion for Summary Judgment?

19 Should the Court grant the Defendants’ Motions for Summary Judgment?

## 20 **III. SUMMARY OF DECISION**

21 The Court finds that the Plaintiffs violated NRCP Rule 16.1 and sanctions are appropriate.

22 The Court finds that no genuine material issues of fact exist and Plaintiffs are not entitled to  
23 summary judgment as a matter of law.

24 The Court finds that no genuine material issues of fact exist and the Defendants are entitled to  
25 summary judgment as a matter of law.

## 26 **IV. PRINCIPLES OF LAW**

1 A. Standard of Review

2 NRCP 56(c) requires a court to enter summary judgment in favor of a party when the  
3 “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if  
4 any, show that there is no genuine issue as to any material fact and that the moving party is entitled to  
5 a judgment as a matter of law. “ NRCP 56(c). A genuine issue of material fact exists where the  
6 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Posada v. City*  
7 *of Reno*, 109 Nev. 448 (1993).  
8

9 When reviewing a motion for summary judgment, the evidence and all reasonable inferences  
10 drawn from the evidence, must be viewed in a light most favorable to the non-moving party. *Richards*  
11 *v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213 (2006). Summary judgment is appropriate and  
12 “shall be rendered forthwith” when the pleadings and other evidence on file demonstrate that no  
13 “genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a  
14 matter of law. *Wood v. Safeway, Inc.*, 106 Nev. 601, 603 (1990).  
15

16 B. Statutes of Limitation

17 NRS 11.190 states in relevant part:  
18

19 (1) Within 6 years:

20 (a) Except as otherwise provided in NRS 62B.420 and 176.275, an action upon a  
21 judgment or decree of any court of the United States, or of any state or territory within  
22 the United States, or the renewal thereof.

23 (b) An action upon a contract, obligation or liability founded upon an instrument in  
24 writing, except those mentioned in the preceding sections of this chapter.

25 C. Enforceability of FMA Agreement

26 The Supreme Court held in *Cain v Price*, 134 Nev. 193 195 (2018), that to be “legally  
27 enforceable, a contract “must be supported by consideration.” In *Jones v SunTrust Mtg., Inc.* 128 Nev.  
28

1 188, 191 (2012) the Nevada Supreme Court held that “Consideration is the exchange of a promise or  
2 performance, bargained for by the parties.” The *Jones* Court held:

3 A party's affirmation of a preexisting duty is generally not adequate consideration to  
4 support a new agreement. See *Cty. of Clark v. Bonanza No. 1*, 96 Nev. 643, 650, 615  
5 P.2d 939, 943 (1980). However, where a party's promise, offered as consideration,  
6 differs from that which it already promised, there is sufficient consideration to support  
7 the subsequent agreement. 3 *Williston on Contracts* § 7:41 (4th ed. 2008).

8 In *Jones*, the Nevada Supreme Court had to determine the validity of a signed agreement  
9 resulting from Nevada’s Foreclosure Mediation Program. The *Jones* Court held that, “when an  
10 agreement is reached as a result of an FMO mediation, the parties sign the agreement, and it otherwise  
11 comports with contract principles, the agreement is enforceable under District Court Rule 16.”*id.*

12 District Court Rule 16 states:

13 No agreement or stipulation between the parties in a cause or their attorneys, in respect  
14 to proceedings therein, will be regarded unless the same shall, by consent, be entered in  
15 the minutes in the form of an order, or unless the same shall be in writing subscribed by  
16 the party against whom the same shall be alleged, or by the party's attorney.

17 NRS 40.453 states:

18 Except as otherwise provided in NRS 40.495:

19 1. It is hereby declared by the Legislature to be against public policy for any  
20 document relating to the sale of real property to contain any provision whereby a  
21 mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness  
22 secured thereby, waives any right secured to the person by the laws of this state.

23 2. A court shall not enforce any such provision.

24 In *Lowe Enterprise Residential Partners, L.P. v Eighth Judicial District Court ex rel. County*  
25 *of Clark*, 118 Nev. 92, 104 (2002) the Nevada Supreme Court delved into the legislative history of  
26 NRS 40.453. The Court held that a “review of the legislative history reveals that NRS 40.453 was  
27 enacted to protect the rights created by Nevada's anti-deficiency legislation, not to protect the right to a  
28 jury trial.” This statute does not prohibit parties from agreeing to provide a deed in lieu of foreclosure.

#### 29 D. Claim Preclusion

1 The Nevada Supreme Court has adopted a three-part test to determine the availability of claim  
2 preclusion: “(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the  
3 subsequent action is based on the same claims or any part of them that were or could have been  
4 brought in the first case.” *G.C. Wallace, Inc. v Eighth Judicial District Court*, 127 Nev. 701, 706  
5 (2011), citing to *Five Star*, 124 Nev. at 1054, 194 P.3d at 713 (footnote omitted).

6  
7 E. Repudiation/Renunciation/Anticipatory Breach

8 17B C.J.S. Contracts § 718, *Acts constituting renunciation or repudiation*, states:

9 In order that the rule permitting the immediate institution of a suit on the renunciation  
10 or repudiation of a contract may apply, the renunciation or repudiation must be a  
11 present one. It must also be entire, or total, covering the entire performance to which  
12 the contract binds the promisor, or the refusal to perform must be of a covenant going  
13 to the whole consideration. Furthermore, the renunciation or repudiation must be  
14 absolute or unequivocal. It has also been said that in order to be effective for this  
15 purpose, the renunciation or repudiation must be clear, strict, positive, definite, specific,  
16 distinct, final, unqualified, or unconditional.

17 In order to constitute an absolute and unequivocal repudiation, no precise form of  
18 words is necessary. Whether an anticipatory repudiation has occurred is determined on  
19 a case-by-case basis, depending on the particular language used.

20 The repudiation or renunciation may be by language or act making it futile for the other  
21 party to proceed. An intent to repudiate may be expressly asserted or circumstantially  
22 manifested by conduct. However, a party's words and acts communicated to the other  
23 party, not its intention, should control. Thus, a mere expression of intention not to  
24 perform, or not to be bound, is not enough, nor is a mere threat to abandon, or a mere  
25 assertion that the party will be unable, or will refuse, to perform the contract. At the  
26 same time, a refusal to perform may itself be a repudiation of the contract, in spite of a  
27 party's words seeking to reassure the other party of its intent to perform in the future.

28 17B C.J.S. Contracts § 722, *Elections of remedies upon renunciation of executory contract-*  
*Acceptance or rejection of renunciation* states:

29 The party injured by an anticipatory breach has an election to accept or reject the  
30 refusal of performance. For the doctrine of breach by anticipatory repudiation to be  
31 applied, the nonrepudiating party must treat the repudiation as a breach. That is, it must  
32 accept and act on it. Moreover, it must also act promptly and within a reasonable  
33 time. However, the effect of an anticipatory repudiation is not nullified by the fact that  
34 the nonrepudiating party attempts to enforce performance.



1 The renunciation of a contract by the promisor before the time stipulated for  
2 performance is not effective unless such repudiation is unequivocally or affirmatively  
3 accepted by the promisee. If the promisee declines to accept the renunciation and  
4 continues to insist on the performance of the promise, as it may do, the contract remains  
5 in existence for the benefit, and at the risk, of both parties, and is binding on them, and,  
6 if anything occurs to discharge it from other causes, the promisor may take advantage  
7 of such discharge. Where the contract thus remains in existence, no actionable claim for  
8 damages arises until the time for performance expires. Furthermore, a repudiation not  
9 treated as an anticipatory breach is immaterial in an action thereafter brought to enforce  
10 the contract.

11 If, after the attempted renunciation by one party to the contract, the other party elects to  
12 treat the contract as still binding and to await the time for full performance, it is  
13 incumbent on the party making such election to perform such of the obligations as may,  
14 in the meantime, fall on it under the terms of the contract.

#### 15 F. Tender of Payments

16 § 47:1. Showing of readiness and willingness to perform, 15 Williston on Contracts § 47:1 (4th  
17 ed.) states:

18 A party to a contract who complains that the other party has breached the terms of the  
19 contract must prove performance of the contract on his or her own part or a valid and  
20 unconditional tender of performance rejected by the other party. Tender of performance  
21 in this regard combines readiness, willingness, and ability to perform. In order to be  
22 valid, tender of payment on a contract must be: (1) timely; (2) made to the person  
23 entitled to payment; (3) unconditional; (4) an offer to pay the amount of money due;  
24 and (5) coupled with an actual production of the money or its equivalent. The rules that  
25 govern tenders are strict and strictly applied; a tender must be one of full performance  
26 and unconditional to be valid; moreover, the party alleging an offer of tender must  
27 possess the ability to perform, and the tender must be made in good faith. Unlike the  
28 situation where performance by one party is a condition precedent to performance by  
the other, where conditions are concurrent, the allegation of tender need not be of  
absolute tender. A tender conditional on contemporaneous performance by the  
defendant is sufficient and necessary. It has sometimes been said that in such a case, an  
allegation of readiness and willingness on the part of the plaintiff is sufficient or even  
that this is not part of the plaintiff's case. However, while in suits for specific  
performance a different rule prevails in many jurisdictions to maintain an action for  
legal relief, the plaintiff must not only be ready and willing to perform but also must  
have manifested this before bringing the action, by some offer of performance to the  
defendant, for, otherwise, both parties might be ready and willing and each stay at  
home waiting for the other to come forward. While the situation is possible that each of  
two parties has a right to specific performance against the other, it is not possible that  
each shall have a right to damages for a total breach of the contract.

1 (Citations omitted).

2 In *Bank of America, N.A. v SFR Investment Pool 1, LLC* 134 Nev. 604, 610-11 (2018) the  
3 Nevada Supreme Court discussed the obligation of a tendering party. The Supreme Court stated:  
4

5 Whether a tendering party must pay the amount into court depends on the nature of the  
6 proceeding and the statutory and common law of the  
7 jurisdiction. *See* Annotation, *Necessity of Keeping Tender Good in Equity*, 12 A.L.R.  
8 938 (1921) (“Generally, there is no fixed rule in equity which requires a tender to be  
9 kept good in the sense in which that phrase is used at law.”); *see*  
10 *also* Restatement (Third) of Prop.: Mortgages § 6.4 (Am. Law Inst. 1997) (“The tender  
11 must be kept good in the sense that the person making the tender must continue at all  
12 times to be ready, willing, and able to make the payment.”). Where payment into court  
13 is not explicitly required, “avowment of a readiness and willingness to bring the money  
14 into court, and pay the same on the order of the court, is sufficient.”  
15 Annotation, *Necessity of Keeping Tender Good in Equity*, 12 A.L.R. 938 (1921). And,  
16 “the necessity of keeping a tender good and of paying the money into court has no  
17 application to a tender made for the purpose of discharging a mortgage lien.”  
18 Annotation, *Unaccepted Tender as Affecting Lien of Real Estate Mortgage*, 93 A.L.R.  
19 12 (1934) (explaining that such a tender would either immediately discharge the  
20 mortgage lien or the lien would remain unimpaired by the tender).

21 (Citations omitted).

22 If a party seeks to reinstate a loan having alleged a wrongful foreclosure occurred in that the  
23 party was not in default, then the party must still allege and prove the party performed and has the  
24 ability to tender any amounts in contention and to continue performing. *Turner v Seterus, Inc*, 27  
25 Cal.App 5<sup>th</sup> 516, 530-31 (Ct. App 3rd CA 2018).

26 G. Substantial Compliance and NRS 107.080

27 NRS 107.080 (5) through (8) states:

28 5. Every sale made under the provisions of this section and other sections of this  
chapter vests in the purchaser the title of the grantor and any successors in interest  
without equity or right of redemption. Except as otherwise provided in subsection 7, a  
sale made pursuant to this section must be declared void by any court of competent  
jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not substantially  
comply with the provisions of this section;

1 (b) Except as otherwise provided in subsection 6, an action is commenced in the  
2 county where the sale took place within 30 days after the date on which the trustee's  
3 deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder  
4 of the county in which the property is located; and

5 (c) A notice of lis pendens providing notice of the pendency of the action is  
6 recorded in the office of the county recorder of the county where the sale took place  
7 within 5 days after commencement of the action.

8 6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of  
9 subsection 4 to the grantor, to the person who holds the title of record on the date the  
10 notice of default and election to sell is recorded, to each trustor or to any other person  
11 entitled to such notice, the person who did not receive such proper notice may  
12 commence an action pursuant to subsection 5 within 90 days after the date of the sale.

13 7. Upon expiration of the time for commencing an action which is set forth in  
14 subsections 5 and 6, any failure to comply with the provisions of this section or any  
15 other provision of this chapter does not affect the rights of a bona fide purchaser as  
16 described in NRS 111.180.

17 8. If, in an action brought by the grantor or the person who holds title of record in  
18 the district court in and for the county in which the real property is located, the court  
19 finds that the beneficiary, the successor in interest of the beneficiary or the trustee did  
20 not comply with any requirement of subsection 2, 3 or 4, the court must award to the  
21 grantor or the person who holds title of record:

22 (a) Damages of \$5,000 or treble the amount of actual damages, whichever is  
23 greater;

24 (b) An injunction enjoining the exercise of the power of sale until the beneficiary,  
25 the successor in interest of the beneficiary or the trustee complies with the requirements  
26 of subsections 2, 3 and 4; and

27 (c) Reasonable attorney's fees and costs,  
28 unless the court finds good cause for a different award. The remedy provided in this  
subsection is in addition to the remedy provided in subsection 5.

In *Schleining v Cap One, Inc*, 130 Nev. 323, 327 (2014), the Supreme Court held that NRS  
107.080 does not require strict adherence. The Court focused upon the "does not substantially comply  
with" language. In *Dayco Funding Corporation v Mona*, 134 Nev. 929 (2018) the Nevada Supreme  
Court held that substantial compliance is found when the title holder "had actual knowledge of the  
default and the pending foreclosure sale" and "was not prejudiced by the lack of statutory notice." *Id.*  
citations omitted.

1 This Court found one decision which stated that inaccurate numbers regarding a deficiency was  
2 not grounds to find that a notice of default was not in substantial compliance. *Kehoe v Aurora Loan*  
3 *Services LLC*, 2010 WL 4286331 (US Dst. Ct D. Nev 2010).

4 H. Computation of Damages-NRCP Rule 16.1

5 NRCP Rule 16.1 (a) (1) (iv) requires an initial disclosure regarding the Plaintiff's computation  
6 of damages:

7  
8 (iv) a computation of each category of damages claimed by the disclosing party--who  
9 must make available for inspection and copying as under Rule 34 the documents or  
10 other evidentiary material, unless privileged or protected from disclosure, on which  
11 each computation is based, including materials bearing on the nature and extent of  
12 injuries suffered; ....

13 In *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 265 (2017), the Nevada Supreme Court  
14 held that NRCP Rule 37 (c) (1) "provides the appropriate analytical framework for district courts to  
15 employ in determining the consequence..." for a failure to comply with NRCP Rule 16.1. The party  
16 in violation must show a "substantial justification" or that the failure is harmless to avoid sanctions  
17 that include the exclusion of evidence. *Id.*

18 NRCP Rule 37 (b) (1) states:

19 (b) Sanctions for Failure to Comply With a Court Order.

20 (1) For Not Obeying a Discovery Order. If a party or a party's officer,  
21 director, or managing agent — or a witness designated under Rule 30(b)(6) or 31(a)(4)  
22 — fails to obey an order to provide or permit discovery, including an order under Rule  
23 35 or 37(a), the court may issue further just orders that may include the following:

24 (A) directing that the matters embraced in the order or other designated  
25 facts be taken as established for purposes of the action, as the prevailing party claims;

26 (B) prohibiting the disobedient party from supporting or opposing  
27 designated claims or defenses, or from introducing designated matters in evidence;

28 (C) striking pleadings in whole or in part;

(D) staying further proceedings until the order is obeyed;

(E) dismissing the action or proceeding in whole or in part;

(F) rendering a default judgment against the disobedient party; or

(G) treating as contempt of court the failure to obey any order except an  
order to submit to a physical or mental examination.

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## V. FINDINGS OF FACT

1. In May of 2007, Vicenta Lincicome financed a property known as 70 Riverside Drive, Dayton Nevada 89403 with a loan in the amount of \$381,150.00 secured by a recorded deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and Mortgage Electronic Registration Systems, Inc. "MERS" as the beneficiary and nominee of the lender. Vicenta Lincicome executed the documents that created the deed of trust and note and understood she had a 30-year maturity date.
2. On August 15, 2011, MERS recorded an assignment of the deed of trust, transferring the interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP.
3. On November 25, 2015, BANA recorded an assignment of the deed of trust transferring its interest to U.S. Bank.
4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
6. In July 2009, BANA offered the Plaintiffs a loan modification agreement "LMA." The new loan balance was \$417,198.58. The Plaintiffs were provided a post office box to send payments.
7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch in Carson City on September 1, 2009. The Plaintiffs attempted to make the second payment at a BANA Branch but it was rejected as BANA's computer system did not recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their deposition testimony states they were aware of the breach at that time.

- 1 8. The Plaintiffs made no other attempts to mail the payments. BANA then notified the  
2 Plaintiffs in October of 2009 stating that the loan had not been modified. However, then  
3 BANA signed the LMA and recorded it in March of 2011.
- 4 9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the  
5 property at \$381,000. The Plaintiffs made no payment at the time of bankruptcy filing or  
6 during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.
- 7 10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no  
8 payment on the offer. BANA offered another modification on April 2015 but the loan was  
9 service released to Fay Servicing prior to the final payment.
- 10 11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final  
11 decree was filed by the Bankruptcy Court in July of 2015.
- 12 12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of  
13 default.
- 14 13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation  
15 assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank  
16 and Fay Servicing as interested parties.
- 17 14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff  
18 Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All  
19 parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make  
20 three payments of \$2462.30 as an offered trial period plan. The payments had to be made  
21 on April 1, 2018, May 1, 2018 and June 1, 2018.
- 22 15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in  
23 lieu of foreclosure. A certificate for foreclosure was issued.
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- 1 16. The Plaintiffs did not place the required monthly payments in a bank account or escrow  
2 account. Plaintiffs spent all of their income on either items. Plaintiffs do not have  
3 sufficient funds to pay off what is owed under any theory as to what instrument controls the  
4 computation of what is owed.
- 5 17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that  
6 they could not afford to make payments on the mortgage. The Plaintiffs have never averred  
7 to the Court that they are ready, willing, and able to perform on the original mortgage or  
8 subsequent modifications.
- 9 18. A Notice of Default and Notice of Sale was filed against the subject property.
- 10 19. On November 7, 2018, the Plaintiffs filed a complaint for injunctive relief, contractual  
11 claims and declaratory relief regarding the foreclosure sale of the subject property.
- 12 20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and  
13 then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and  
14 Permanent Injunction with the Court.
- 15 21. On December 31, 2018, the Court entered an order enjoining the foreclosure sale if the  
16 Plaintiffs posted a bond in the amount of \$172,610.67 and additional security in the amount  
17 of \$2,105.10 per month thereafter. The Plaintiffs did not file the bond.
- 18 22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the  
19 property for \$294,000.01.
- 20 23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of  
21 the subject property was recorded.
- 22  
23  
24  
25

## 26 ANALYSIS

27 The gravamen of the Plaintiffs' causes of action is the alleged breach of the 2009 Loan  
28

1 Modification Agreement by Defendant BANA. The Plaintiffs allege that Vincenta Lincicome executed  
2 and mailed the application in July of 2009. The Court infers from these allegations that the Plaintiffs  
3 believe that the mailing of the application constituted an acceptance and the LMA was from that point  
4 on a binding contract between the parties.

5 After mailing the forms, BANA accepted a payment and informed the Plaintiffs that they  
6 would investigate whether the LMA was accepted. In October of 2009, the Plaintiffs received a  
7 mortgage statement indicating that BANA had not accepted the LMA and was using the terms of the  
8 original agreement. From these alleged facts, the Court cannot find an offer and acceptance of the  
9 LMA had occurred. BANA's conduct and statements clearly indicated the original agreement had not  
10 been modified.  
11

12 If the original agreement was still in place, then the Plaintiffs were legally obligated to perform  
13 as promised. No one argued that BANA had invited the Plaintiffs to apply for the modification which  
14 could be rejected. The Plaintiffs never received any notice from BANA that BANA accepted the  
15 LMA until March of 2011. It is unclear to the Court that the two year delay could constitute an  
16 acceptance nunc pro tunc, but as explained herein, it makes no difference to the Court's analysis.  
17

18 No issues of fact exist as to whether the Plaintiffs would have failed to make the required  
19 payments under any of the purported offers and alleged agreements. The Plaintiffs, admittedly, had no  
20 ability to pay and made no attempt to put any payments aside once BANA or other Defendants made a  
21 demand for payment. The Plaintiffs also admitted that they entered into different modification plans  
22 after the LMA based upon their inability to pay.  
23

24 The Plaintiffs rely on a theory that their performance was permanently excused by the failure  
25 of BANA to accept a single payment under the terms of the LMA. The Plaintiffs also rely on a theory  
26 that their performance was excused by the failure of Fay to accept a payment under a modification on  
27  
28



1 a subsequent modification. These theories fail under relevant law for several reasons.

2 If, as alleged, the LMA was effective upon mailing, then the breach occurred in 2009. If as  
3 alleged the LMA was effective in 2011, then the breach occurred in 2011. The Plaintiffs were told that  
4 BANA would not accept the modified payment in 2009. They understood BANA would not perform  
5 under the LMA in October of 2009. They failed to bring an action against BANA until November 7,  
6 2018. The six year statute of limitations in NRS 11.190 would apply. The date of the filing of the  
7 LMA had no impact on the date of the breach.  
8

9 Additionally, if the LMA or subsequent modification was effective, then the Plaintiffs' theory  
10 of excuse of performance also fails as contract law requires a non-breaching party to elect a remedy in  
11 a reasonable time. As stated in 17B C.J.S. Contracts § 722, the non-breaching party must accept the  
12 repudiation and elect a remedy. The non-breaching party must also act promptly and within a  
13 reasonable time. The Plaintiffs did nothing in either 2009 or 2011. Restitution to the lenders would  
14 also apply if the Plaintiffs had chosen to accept the repudiations and end the agreement.  
15

16 The theory of excuse put forth by the Plaintiffs also ignores the materiality and order of the  
17 performances under the agreement. A lender materially performs by providing the funds requested  
18 under the loan. A borrower must then materially perform by making the monthly payments. Further,  
19 the theory of excuse of performance may delay the need to perform but it does not discharge the duty  
20 to pay once the performance was demanded. Performance could be demanded as the Plaintiffs did not  
21 accept the repudiation.  
22

23 Contract and mortgage law would also require that the Plaintiffs remain ready, willing and able  
24 to perform each month. The deposition testimony clearly indicated that the Plaintiffs could not  
25 perform under any of the offers and modifications of the original agreement.  
26

27 The Plaintiffs entered into a bankruptcy after their incomes went down and they had an  
28

1 unanticipated tax bill. The bankruptcy filing indicates that the Plaintiffs believed they were under the  
2 original agreement and represented such to the bankruptcy court. The facts establish that the Plaintiffs  
3 did not have the ability to make the payments under any of the offers or alleged agreements. They  
4 have failed to pay for over a decade. The Plaintiffs had made no effort to tender the missed payments  
5 under any of the agreements.

6  
7 Additionally, as the Plaintiffs did not act upon the failure of BANA or its successors to accept  
8 the payment and repudiate the LMA or modification in a reasonable time, then subsequent agreements  
9 and the bankruptcy could act as an intervening event and excuse any breach of not accepting the  
10 original LMA payments. The subsequent modifications and agreement to provide a deed in lieu of  
11 foreclosure would have excused the original alleged breach.

12  
13 The failure of the Plaintiffs to repudiate the agreement also allowed BANA or its successors to  
14 demand at a later time that the Plaintiffs perform. Since their performance was merely delayed, the  
15 Plaintiffs became the breaching party once BANA and its successors made a demand for payment and  
16 payment did not occur. The Plaintiffs tendered very few payments over the course of a decade. The  
17 Plaintiffs should have offered the payments under the LMA if they believed it was in effect. They  
18 could have preserved any rights they believed they had under the LMA by making a tender after  
19 receiving the notice of default.

20  
21 Claim preclusion would also apply. The Plaintiffs are not entitled to switch theories depending  
22 upon what court they are in. BANA would be bound as well by any representations made in the  
23 bankruptcy proceedings.

24  
25 Disturbing to the Court, the Plaintiffs seem to believe that they can game the system to avoid  
26 repaying the money borrowed and to remain in a house rent free. Albert Ellis Lincicome, Jr.'s  
27 testimony clearly establishes that the Plaintiffs want more time to continue their free ride. If they have  
28

1 to abuse a mediation program to get more time then so be it. The Plaintiffs' signatures affirming that  
2 they would be bound by the agreement meant nothing. The Plaintiffs admit to engaging in bad faith.

3 Under *Jones*, the mediated agreement of deed in lieu of foreclosure is enforceable. The  
4 Plaintiffs admitted that they chose not to enter into the offered terms. The agreement settled all claims  
5 regarding the mortgage. The Plaintiffs have an obligation under the agreement to surrender the  
6 property. NRS 40.453 does not apply as argued in other motions.  
7

8 The foreclosing defendants substantially complied with NRS 107.080 notice requirements.  
9 The Plaintiffs were clearly noticed that they were in default and when the foreclosure sale would  
10 occur. The fact that they disputed the amount of the default did not create any prejudice to them as  
11 they never intended to make a tender of any amount. The notice provided them the opportunity to file  
12 an action to stop the foreclosure sale which they then did. They were given an opportunity to file a  
13 bond and then perform under the agreement they argued was in effect, but then failed to do so.  
14

15 Finally, the Court finds that the failure to provide a computation of damages as required by  
16 NRCF Rule 16 has not been justified. The Plaintiffs failure to provide the computation cannot be  
17 justified by their counsel's belief that to deal with damages at a later point in time is more economical.  
18 The epidemic and the Plaintiffs' hectic schedule has no impact on Counsel's determination of  
19 damages. The Plaintiffs had over two years to comply with the rule.  
20

21 The Court also notes that the Plaintiffs were supposed to negotiate in good faith during a  
22 settlement conference that was ordered. How they could do so without understanding their damages is  
23 perplexing. Is this just more bad faith? The Court believes that the appropriate sanction is to strike all  
24 allegations concerning monetary damages from the Complaint as the failure appears to be made in bad  
25 faith and in an effort to prolong this matter further.  
26

## 27 CONCLUSIONS OF LAW 28

1. Sanctions striking allegations the Plaintiffs have suffered monetary damages are appropriate as the Plaintiffs have not justified their failure to provide a computation of damages pursuant to NRCP Rule 16.1.
2. The Plaintiffs are not entitled to partial summary judgment.
3. The Defendants are entitled to summary judgment.

## VI. ORDER

Therefore, based upon the above and good cause appearing, **IT IS HEREBY ADJUDGED and ORDERED** that BANA's request for sanctions is **GRANTED**. The Court strikes all allegations in the Complaint that the Plaintiffs have suffered monetary damages.

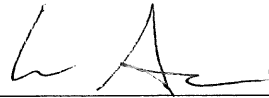
**IT IS HEREBY FURTHER ADJUDGED and ORDERED** that that Plaintiffs' Motion for Partial Summary Judgment is **DENIED**.

**IT IS HEREBY FURTHER ADJUDGED and ORDERED** that the Motions for Summary Judgment filed by BANA, Shellpoint Mortgage Servicing, Prof-2013 M4 Legal Trust, U.S. Bank, National Association as Legal Trustee ("U.S. Bank Trust") and Fay Servicing LLC., are **GRANTED**.

**IT IS HEREBY FURTHER ADJUDGED and ORDERED** that BANA's request for NRCP Rule 54(b) certification as a final judgment is **GRANTED**. The Court finds no just reason for the delay.

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

DATED: This 23rd day of June, 2021.



HON. LEON ABERASTURI  
DISTRICT COURT JUDGE

**Certificate of Mailing**

I hereby certify that I, Quoc Thai, 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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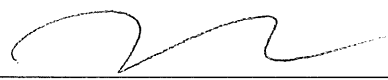
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DATED: This 23<sup>rd</sup> day of June, 2021.

  
Employee of Hon. Leon Aberasturi