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8 SUPREME COURT
9 STATE OF NEVADA

10
11 SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

CASE NO.: 82449

12 Appellant,

13 vs.

14 NATIONSTAR MORTGAGE LLC,

15
16 Respondent.
17

18 **APPELLANT'S APPENDIX VOLUME 13**
19
20

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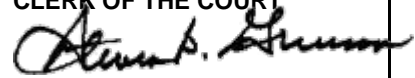
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9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

12 Plaintiff,

13 vs.

14 NATIONSTAR MORTGAGE, LLC; COOPER
15 CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY,

16 Defendants.

17 NATIONSTAR MORTGAGE, LLC

18 Counterclaimant,

19 vs.

20 SATICOY BAY LLC SERIES 4641
21 VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; DOES 1
22 through X; and ROE CORPORATIONS I
Through X, inclusive,

23 Counter-defendants.

CASE NO.: A-13-689240-C
DEPT NO.: XIV

24 **PLAINTIFFS OPPOSITION TO NATIONSTAR'S MORTGAGE, LLC'S**
25 **MOTION FOR SUMMARY JUDGMENT**

26 Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct., by and through its attorneys, The Law
27 Offices of Michael F. Bohn, Esq. Ltd., hereby opposes the motion for summary judgment filed by
28 AA001669

1 defendant counterclaimant Nationstar Mortgage, LLC on November 9, 2020. This opposition is based
2 upon the points and authorities contained herein.

3 DATED this 23rd day of November, 2020.

4 LAW OFFICES OF
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10 **INTRODUCTION**

11 Defendant Nationstar alleges it is entitled to summary judgment because of Federal Home Loan
12 Mortgage Corporation's ("Freddie Mac") interest in the first deed of trust preempted the HOA foreclosure
13 sale. On the other hand, defendant Nationstar has failed to provide admissible evidence that Freddie Mac
14 has an interest in the subject property. Throughout its motion defendant bank states it has contractual
15 authority to act on behalf of Freddie Mac, however, in the seven years since this case was initiated this
16 purported contract has not been disclosed.

17 It is well established Nevada law that the statute of frauds requires an interest in land to be created
18 by a conveyance, in writing and signed. Defendant has not provided the required writing that would
19 demonstrate Freddie Mac's its interest in the subject property. As a result, plaintiff respectfully request
20 this court enter an order denying defendant's renewed motion for summary judgment.

21 **PROCEDURAL HISTORY**

22 Plaintiff filed its complaint on September 25, 2013.

23 Defendant bank filed its amended answer and counterclaim on March 13, 2015.

24 On May 15, 2017, plaintiff filed its motion for summary judgment.

25 On February 26, 2018, a hearing was held on plaintiff's motion for summary judgment. At that
26 time the court granted plaintiff's motion for summary judgment. The court's findings of fact, conclusions
27 of law, and judgment granting quiet title was entered on December 11, 2018.

28 AA001670

1 Defendant timely filed its notice of appeal on January 7, 2019.

2 After reviewing the parties' appeal briefs, on April 10, 2020, the Supreme Court of Nevada filed
3 its order vacating and remanding.

4 In its decision, the Supreme Court of Nevada did not address plaintiff's arguments based on
5 Nevada's statute of frauds. Defendant Nationstar's has not provided a written document to demonstrate
6 Freddie Mac's interest in the property, as required by the statute of frauds.

7 FACTS

8 **Facts regarding the foreclosure sale.**

9 Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct. ("Saticoy Bay") is the owner of the real
10 property commonly known as 4641 Viareggio Court, Las Vegas, Nevada. ("the Property"). Saticoy Bay
11 acquired the property by foreclosure deed recorded September 6, 2013. A copy of the foreclosure deed
12 is Exhibit 1. The foreclosure deed arose from a delinquency in assessments due from the former owners
13 to the Naples Community Homeowners Association, pursuant to NRS Chapter 116.

14 Defendant Nationstar Mortgage, LLC ("defendant") is the beneficiary of a deed of trust that was
15 recorded as an encumbrance on the Property on January 25, 2007. A copy of the deed of trust is attached
16 as exhibit 2. Defendant obtained its interest by way of an assignment recorded on October 18, 2012. A
17 copy of the assignment is attached as exhibit 3.

18 On August 18, 2011, the HOA foreclosure agent sent the former owner the pre-lien letter and a
19 copy of the notice of lien. A copy of the letter and the proof of mailing is Exhibit 4.

20 On August 18, 2011, the foreclosure agent recorded the notice of lien. A copy of the recorded
21 notice of lien is attached as Exhibit 5.

22 On January 24, 2012, the foreclosure agent recorded the notice of default and election to sell. The
23 notice of default was mailed to the former owner, defendant's predecessor in interest, and other interested
24 parties. A copy of the notice of default and proof of mailing is attached as Exhibit 6.

25 On July 30, 2012, the foreclosure agent recorded a notice of foreclosure sale. A copy of the notice
26 of sale is attached as Exhibit 7. The foreclosure agent also mailed a copy of the notice of sale to the
27 former owner, defendant's predecessor in interest, and other interested parties. A copy of the proof of
28

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mailing is Exhibit 8.

The notice of foreclosure sale under the lien for delinquent assessments was also served upon the unit owner by posting a copy of the notice in a conspicuous place on the property. The notice of sale was also posted in three locations within the county. Copies of the Affidavit of Service and Affidavit of Posting Notice of Sale are Exhibit 9.

Additionally, the foreclosure agent published the notice of sale in Nevada Legal News on three dates. A copy of the affidavit of publication is Exhibit 10.

As reflected by the recitals in the foreclosure deed, plaintiff appeared at the public auction conducted on August 22, 2013, and entered the high bid of \$5,563.00 to purchase the Property. See exhibit 1.

The interest of each defendant has been extinguished by reason of the foreclosure resulting from a delinquency in assessment due from the former owners to the HOA pursuant to NRS Chapter 116.

POINTS AND AUTHORITIES

1. The integrity of the real property recording system is of utmost importance to the public.

NRS Chapter 116 is interpreted pursuant to general principles of law and equity, including the law of real property. See NRS 116.1108. The rules of recording and priority apply to any interpretation of any foreclosure conducted under this chapter.

The purpose of recording statutes is to provide notice to a subsequent purchaser. See SFR Investments v. First Horizon, 134 Nev. Adv. Op 4, 409 P.3d 891, 893 (2018); Allison Steel Mfg. Co v. Bentonite, Inc., 86 Nev. 494, 471 P.2d 666 (1970). The uncertainty of unrecorded or hidden interests threatens to disrupt an entire industry and hundreds of years of legal precedent regarding the priorities of recorded interests.

Since the days of the English Common Law, before the United States declared its independence, real estate transactions have been guided by a simple principle: all interests in real property must be recorded. The recording statutes were adopted when Nevada became a territory, and the Nevada real estate industry has relied upon these statutes and rules ever since.

The rules of recording and priorities which pertain to this case are simple.

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- 1 1. A deed of trust is a conveyance of real property, as defined by NRS 111.010.
- 2 2. The statute of frauds requires an interest in land to be created by a conveyance, in
- 3 writing and signed. NRS 111.205(1).
- 4 3. An unrecorded conveyance is void as to a bona fide purchaser. NRS 111.325.
- 5 4. A bona fide purchaser is a purchaser of real estate for value without actual or
- 6 constructive knowledge of any adverse rights, title or interest in the real property. NRS
- 7 111.180.

8 NRS 106.210 provides:

9 **Recording of assignments of mortgages or beneficial interests in deeds of trust;**
10 **constructive notice; effect of unrecorded assignments.**

11 1. Any assignment of a mortgage of real property, or of a mortgage of personal property

12 or crops recorded prior to March 27, 1935, and any assignment of the beneficial interest

13 under a deed of trust must be recorded in the office of the recorder of the county in which

14 the property is located, and from the time any of the same are so filed for record shall

15 operate as constructive notice of the contents thereof to all persons. A mortgage of real

16 property, or a mortgage of personal property or crops recorded prior to March 27, 1935,

17 which has been assigned may not be enforced unless and until the assignment is recorded

18 pursuant to this subsection. If the beneficial interest under a deed of trust has been

19 assigned, the trustee under the deed of trust may not exercise the power of sale pursuant

20 to NRS 107.080 unless and until the assignment is recorded pursuant to this subsection.

21 2. Each such filing or recording must be properly indexed by the recorder.

22 In the case of Edelstein v. Bank of New York Mellon, 128 Nev. 505, 514, 285 P.3d 249, 259

23 (2012), the court explained the 2011 amendment in a footnote:

24 FN5. Prior to 2011, Nevada law provided that any assignment of the beneficial interest

25 under a deed of trust “may” be recorded. Assembly Bill 284 amended this statute to now

26 require that “any assignment of the beneficial interest under a deed of trust *must* be

27 recorded.” NRS 106.210 (emphasis added); 2011 Nev. Stat., ch. 81, § 1, at 327.

28 The emphasis on the words “may” and “*must*” in the footnote is original in the opinion.

The court in the same opinion explained the purpose of the change in the statute:

Second, it is prudent to have the recorded beneficiary be the actual beneficiary and not just

a shell for the “true” beneficiary. In Nevada, the purpose of recording a beneficial interest

under a deed of trust is to provide “constructive notice ... to all persons.” NRS 106.210.

To permit an entity that is not really the beneficiary to record itself as the

beneficiary would defeat the purpose of the recording statute and encourage a lack

of transparency. (emphasis added)

Id.

In adhering to these rules, if Freddie Mac were to have any interest in the real property, that

interest must be in writing and signed. No such document has been produced or recorded and an

unrecorded conveyance is void as to a bona fide purchaser. Consequently, this court should rule that

AA001673

1 Freddie Mac does not have an interest in the deed of trust, as a result of the HOA foreclosure sale, and
2 the deed of trust was extinguished, in favor of Saticoy Bay LLC Series 4641 Viareggio Ct - the HOA
3 foreclosure sale purchaser.

4 **2. Freddie Mac did not comply with the statute of frauds in NRS 111.205(1).**

5 On page 11 of its motion, defendant bank's argument is labeled "Uncontradicted Evidence
6 Confirms Freddie Mac's Property Interest." On page 12 of its motion, defendant bank continues that
7 "Freddie Mac's business records show that Freddie Mac acquired ownership of the Loan in March 2007
8 and continued to own the Loan at the time of the HOA Sale in August 2013." On the other hand, the
9 subject "loan" is a promissory note secured by a deed of trust. The promissory note has a promisor and
10 a promisee, or payor and payee. No person or entity is designated as an "owner." Additionally, the
11 promissory note does not create any interest in the Property.

12 Similarly, the deed of trust has three parties: a trustor, a trustee and a beneficiary. None of these
13 parties are designated as "owner." The beneficiary of the deed of trust is the party that has the right to
14 enforce the deed of trust.

15 As part of its argument, on page 11 of the motion, defendant cites footnote 1 in CitiMortgage, Inc.
16 v. SFR Investments Pool 1, LLC, No. 70237, 2019 WL 289690, *1 and FN 1 (Nev. Jan. 18, 2019) but
17 in that case, the respondent did not "meaningfully contest" the district court's decision to consider
18 "deposition testimony of appellant's NRCP 30(b)(6) witness, affidavit, and relied-upon business records."
19 No such deposition testimony exists in the present case, and plaintiff objects to the declarations of Dean
20 Meyer in defendant bank's motion for summary judgment and the inadmissible screenshots upon which
21 the declarations are based. See motion, exhibit A.

22 NRS 51.135 requires that "a person with knowledge" make the data entries in the database upon
23 which a witness bases his testimony. In U-Haul Int'l, Inc. v. Lumbermens Mut. Cas. Co., 576 F.3d 1040
24 (9th Cir. 2009), the court stated that a "person familiar with the record keeping practices of the company"
25 must testify regarding "the computer system" and "the process of querying the computer system to create
26 the summaries admitted at trial." Id. at 1045.

27 In the present case, Mr. Meyer's declaration did not identify the person(s) who made the data
28 AA001674

1 entries in the database(s) upon which the declaration is based. Mr. Meyer was also required to confirm
2 the existence of the purchase agreement or the servicing agreement required by Section 1101.2(a)(i) of
3 the Guide before making the data entries upon which each declaration is based.

4 In SFR Investment Pool 1, LLC v. Green Tree Servicing, LLC, 432 P.3d 718 (Table), 2018 WL
5 6721370 (Nev. Dec. 17, 2018) (unpublished disposition), the Nevada Supreme Court stated that “[o]n
6 the same day that the trustee’s deed upon sale was recorded, so was an assignment of the deed of trust
7 to Fannie Mae.” Id. at *1. No such written assignment of the deed of trust to Freddie Mac exists in the
8 present case.

9 The federal court decisions cited by plaintiff bank are not binding interpretations of the
10 requirements under Nevada law for Freddie Mac to hold any interest in the subject deed of trust or the
11 Property. Because the subordinate deed of trust was the interest extinguished by the HOA foreclosure
12 sale, defendant had to prove that Freddie Mac held the beneficial interest in the deed of trust on August
13 22, 2013. Otherwise, there could not be any “property of the Agency” covered by 12 U.S.C. § 4617(j)(3).

14 It is impossible under Nevada law for Freddie Mac to hold the beneficial interest in the subject
15 deed of trust unless there is a “writing, subscribed by the party creating, granting, assigning, surrendering
16 or declaring the same.” Leyva v. National Default Servicing Corp., 255 P.3d at 1279. The Nevada
17 Supreme Court also stated that Wells Fargo “needed to provide a signed writing from MortgageIT
18 demonstrating that transfer of interest” and that “**the statement from Wells Fargo itself is insufficient**
19 **proof of assignment.**” Id. (emphasis added)

20 In Occhiuto v. Occhiuto, 97 Nev. 143, 147, 625 P.2d 568, 570 (1981), the Nevada Supreme Court
21 unequivocally stated:

22 The law of this state specifically precludes the creation of any interest in land except by
23 a properly executed written instrument. NRS 111.205(1).

24 The purpose of the statute of frauds is to prevent fraud. *See* Locken v. Locken, 98 Nev. 369, 372,
25 650 P.2d 803, 804 (1982); Roberts v. Hummel, 69 Nev. 154, 158, 243 P.2d 248, 250 (1952). In In Re
26 Faulkner, 594 B.R. 426, 436 (Bankr. D. Nev. 2018), The Honorable Judge Nakagawa reviewed the
27 history and purpose of the statute of frauds and stated:

AA001675

1 Appropriate to the instant case, the original Statute of Frauds enacted under English law
2 in 1677 was entitled “An Act for the Prevention of Frauds and Perjuries.” *See* Restat 2d
3 of Contracts, § Scope (2nd 1981), *citing* 29 Charles II, c.3. By requiring certain
4 agreements to be memorialized in writing, the statute was designed to prevent fraud from
being perpetrated through perjured testimony as to the existence and terms of an
agreement. Thus, **the primary purpose of the Statute of Frauds is evidentiary.** *See*
Restat 2d of Contracts, *supra*, § 132, comment a. (emphasis added)

5 NRCP 56(e) requires that “[s]upporting and opposing affidavits shall be made on personal
6 knowledge, shall **set forth such facts as would be admissible in evidence**, and shall show affirmatively
7 that the affiant is competent to testify to the matters stated therein.” (emphasis added) In the present case,
8 because Mr. Meyer did not state that he had ever seen the “writing” required by Nevada law before
9 Freddie Mac could hold any interest in the subject deed of trust or the Property, neither was competent
10 to testify that Freddie Mae “owned” the subject deed of trust.

11 For the same reason, the declaration by Mr. Meyer was also “insufficient proof of assignment”
12 of any interest in the deed of trust to Freddie Mac. Any transfer of any interest in the deed of trust to
13 Freddie Mac would necessarily be a “conveyance” as defined in NRS 111.010(1), which states:

14 “Conveyance” shall be construed to embrace every instrument in writing, except a last
15 will and testament, whatever may be its form, and by whatever name it may be known in
law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

16 Any interest in the subject deed of trust claimed to be held by Freddie Mac would also be an
17 unrecorded conveyance, which is void as to defendant. NRS 111.325.

18 For this reason Nationstar cannot rely on SFR Investment Pool 1, LLC v. Green Tree Servicing,
19 LLC, defendant has not proved that a written assignment of the subject deed of trust exists like the
20 “assignment of the deed of trust to Fannie Mae” that was recorded in Green Tree. 432 P.3d 718 (Table)
21 at *1.

22 Comment b to Restatement (Third) of Prop.: Mortgages, § 5.4, pg. 381 (1997), refers to
23 “[o]wnership of a contractual obligation” being transferred by a document of assignment. If such a
24 “document of assignment” existed for the subject loan, that “document of assignment” would be a
25 “writing” that falls within NRS 111.205(1), and Freddie Mac’s failure to record that writing as required
26 by NRS 111.315 would make that writing void against plaintiff pursuant to NRS 111.325.

27 Section 1101.2(a)(i) of Freddie Mac’s Guidelines require that there be an “applicable Purchase
28 AA001676

1 Contract” and “other Purchase Documents” for the subject loan. NRC 16.1(a)(1)(B) required that
2 defendant bank produce the “applicable Purchase Contract” and “other Purchase Documents” for the
3 subject loan even without plaintiff making a formal discovery request.

4 Defendant bank’s failure to produce these required documents creates a disputable presumption
5 that “evidence willfully suppressed would be adverse if produced.” NRS 47.250(3).

6 Likewise, to the extent that defendant claims that these unproduced and unrecorded documents
7 granted to Freddie Mac an interest in the deed of trust, NRS 111.325 makes those unrecorded documents
8 void as to plaintiff. Furthermore, if those documents gave Freddie Mac any interest in the subject deed
9 of trust, each such document would be a “conveyance” as defined in NRS 111.010(1) that must be
10 recorded as required by NRS 111.315 in order not to be void pursuant to NRS 111.325.

11 Mr. Myer did not include any factual statement that any person confirms the existence of the
12 “writing” required by NRS 111.205(1) before Freddie Mac is identified as the owner of a loan in MIDAS
13 database or that any person confirms the existence of the written servicing agreement required by Section
14 1101.2(a)(i) of the Guide before a particular bank is identified as a servicer of the loan in MIDAS.

15 In U-Haul Int’l, Inc. v. Lumbermens Mut. Cas. Co., 576 F.3d 1040 (9th Cir. 2009), “Matush
16 testified regarding the process of inputting data into the computer,” “Matush testified that he was familiar
17 with the record keeping practices of the company,” and Matush “testified regarding the process of
18 querying the computer system to create the summaries admitted at trial.” Id. at 1045. No such details
19 are contained in the declaration by Mr. Meyer.

20 The Nevada Supreme Court stated that “the statement from Wells Fargo itself is insufficient proof
21 of assignment.” Leyva v. National Default Servicing Corp., 255 P.3d at 1279. Instead of producing the
22 writing required by NRS 111.205(1), defendant bank asks this Court to accept the declaration made by
23 a person who has never seen the “writing” required by Nevada law for Freddie Mac to hold any interest
24 in the subject deed of trust or the Property.

25 The deed of trust recorded January 11, 2008 proved that both the note and deed of trust were held
26 by Nationstar on August 22, 2013 and not Freddie Mac. Defendant has not demonstrated that there has
27 been a subsequent assignment to Freddie Mac since the foreclosure sale. It is defendant that has failed
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AA001677

1 to identify or produce the “writing” required by Nevada law before Freddie Mac could hold any interest
2 in the deed of trust or the Property.

3 On pages 13 of its motion, defendant bank argues that the holding in In re Montierth (Montierth
4 v. Deutsche Bank), 131 Nev. Adv. Op. 55, 354 P.3d 648 (2015), is “that where the record beneficiary of
5 the deed of trust has contractual or agency authority to foreclose on the note owner’s behalf, the note
6 owner maintains a property interest in the collateral.” In that case, however, MERS was disclosed in the
7 recorded deed of trust “as nominee for Lender and Lender’s successors and assigns.”

8 Moreover, the Nevada Supreme Court only answered the limited question of whether the
9 recordation of the written assignment of the deed of trust to Deutsche Bank was a “ministerial act” that
10 would not violate the automatic stay. In the present case, no written assignment of the deed of trust to
11 Freddie Mac exists.

12 Like all of the unpublished orders cited by plaintiff, Nationstar Mortgage, LLC v. Guberland LLC-
13 Series 3, 2018 WL 3025919 (Nev. June 15, 2018) (unpublished disposition), “does not establish
14 mandatory precedent.” NRAP 36(c)(2). The Nevada Supreme Court also did not address the purchaser’s
15 argument that it was protected as a bona fide purchaser “because the district court did not address it.”
16 Id. at *2, n. 3.

17 In Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC, 396 P.3d 754 (2017), the Nevada
18 Supreme Court remanded the case to the district court to evaluate the exact evidence that defendant had
19 failed to produce in the present case.

20 On page 12 of its motion, defendant bank states “Freddie Mac’s business records show that
21 Freddie Mac acquired ownership of the Loan in March 2007,” but defendant does not identify the
22 “writing” required by Nevada law for this statement to be true.

23 Defendant bank also does not identify any evidence proving that the parties agreed “otherwise”
24 when the deed of trust recorded on January 25, 2007 indicated both the note and deed of trust were owned
25 by First Magnus Financial Corporation, Comment b to Restatement (Third) of Prop.: Mortgages, § 5.4,
26 pg. 381 (1997), expressly provides that “a good faith purchaser for value . . . is entitled to rely on the
27 record” where there has been an unrecorded transfer “of the obligation or the mortgage securing it.”

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1 Because the record does not contain that required “writing,” plaintiff bank did not prove that
2 Freddie Mac held any interest in the Property on August 22, 2013.

3 **3. Daisy Trust does not stand for the proposition that defendant does not have to prove an**
4 **agreement with Freddie Mac was in effect at the time of the HOA foreclosure sale.**

5 In the motion defendant bank argues that the evidence establishes Freddie Mac’s “ownership” of
6 the Loan. In its recent opinion in Daisy Trust v. Wells Fargo Bank, N.A., 135 Nev. Adv. Op. 30, 2019
7 WL 3366241(2019), the Nevada Supreme Court similarly identified the first issue as “whether Freddie
8 Mac must be identified as the beneficiary of the publicly recorded deed of trust to establish its ownership
9 interest in the subject loan.” 2019 WL 3366241 at *1.

10 The framing of the issue in this way, however, does not account for the controlling language in
11 NRS 111.205(1), NRS 111.315 and NRS 111.325 and defendant’s failure to produce or record the
12 “writing” required by Nevada law.

13 The “loan” is a promissory note secured by a deed of trust. The promissory note has a promisor
14 and a promisee, or payor and payee. No person or entity is designated as an “owner.” The promissory
15 note is not an interest in real property.

16 Furthermore, even if Freddie Mac did “own” loan on August 22, 2013, the HOA foreclosure sale
17 did not violate 12 U.S.C. § 4617(j)(3) because the foreclosure sale did not levy, attach, garnish, foreclose
18 or sell Freddie Mac’s “ownership” of the loan. The HOA foreclosure sale instead extinguished the
19 subordinate deed of trust in which Nationstar bank obtained its interest in the Property.

20 Section 1101.2(a)(i) of the Guide states that the servicer must be “in compliance with all
21 requirements of the Purchase Documents” and that the “the sale of Mortgages to Freddie Mac, the
22 Seller/Servicer agrees that each transaction is governed by the Guide, **the applicable Purchase Contract**
23 **and all other Purchase Documents.**”

24 This court cannot merely accept that the written contractual agreement required by the Guide
25 exists merely because defendant bank wants it to be so.

26 In Daisy Trust, the Nevada Supreme Court stated that for a document to be admissible “under
27 NRS 51.135’s business records exception to the hearsay rule,” a qualified witness must attest “that the

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1 database entries contained in the printouts were made (1) at or near the time of the event being recorded,
2 (2) **by a person with knowledge of the event**, and (3) in the course of the business's regularly conducted
3 activity.” (emphasis added)

4 The Court also stated: “The question of the sufficiency of the foundation witness’ knowledge
5 centers on the witness’ familiarity with the organization’s record keeping practices, not any particular
6 record.” *Id.* (quoting 30B Charles Alan Wright & Jeffrey Bellin, *Federal Practice and Procedure* § 6863
7 (2017))

8 NRCP 56(e) states that “[s]upporting and opposing affidavits shall be **made on personal**
9 **knowledge**, shall **set forth such facts** as would be admissible in evidence, and shall **show affirmatively**
10 **that the affiant is competent to testify** to the matters stated therein.” (emphasis added)

11 The declaration of Mr. Meyer did not include any statements of fact based on personal knowledge
12 that describe the “record keeping processes” used to record the information that is included in the
13 screenshots attached to the declarations.

14 In order to be “a person with knowledge of the event,” the person making the data entry in MIDAS
15 must have personal knowledge of the written contract for a particular loan. Defendant did not prove that
16 the unidentified person who made the data entries in MIDAS had that “personal knowledge.”

17 In the present case, the declaration of Mr. Meyer did not identify the person(s) who made the data
18 entries in the database(s) upon which the declaration is based. The declaration was also required to
19 confirm the existence of the purchase agreement or the servicing agreement required by Section
20 1101.2(a)(i) of the Guide before making the data entries upon which each declaration is based. Section
21 1101.2(a)(i) of the Guide contradicts the declarations of Mr. Meyer because Section 1101.2(a)(i) states
22 that the servicer must be “in compliance with all requirements of the Purchase Documents” and that the
23 “the sale of Mortgages to Freddie Mac, the Seller/Servicer agrees that each transaction is governed by the
24 Guide, **the applicable Purchase Contract and all other Purchase Documents.**” See renewed motion,
25 exhibit A, sub-exhibit 7, page 1. (emphasis added)

26 The facts in Saticoy Bay LLC Series 9641 Christine View v. Federal National Mortgage Ass’n,
27 134 Nev. Adv. Op. 36, 417 P.3d 363 (2018), are unlike the present case because Fannie Mae was a named
28

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1 party, and a written assignment of the deed of trust to Fannie Mae was recorded on October 19, 2012
2 before the HOA foreclosure sale was held in 2013.

3 On page 17 of its motion, defendant states “[t]he evidence in this case confirms that Freddie Mac
4 is the owner of the Loan,” but this “evidence” is only hearsay statements by Mr. Meyer based on
5 inadmissible computer screenshots for which defendant did not lay a proper foundation. The statements
6 made by Mr. Meyer are also conclusions of law that depend on facts for which there is no admissible
7 evidence in the record. The statements of Mr. Meyer do not support each other, they actually contradict
8 each other as to the interest of Freddie Mac in the Property. The declarations of Mr. Meyer undermine
9 each other, and defendant bank’s motion along with it. There is simply no evidence that Freddie Mac had
10 an interest in the property.

11 On page 14 of the motion, defendant argues “[i]n *Guberland II*, the Nevada Supreme Court
12 acknowledged that it had previously recognized that when there is a contractual relationship between the
13 note holder and the mortgage holder, ‘the loan holder maintains secured status under the deed of trust
14 even when not named as the deed’s record beneficiary.’” JPMorgan Chase Bank, N.A. v. Guberland LLC-
15 Series 2, 2019 WL 2339537, *1 (Guberland II). On the other hand, in JPMorgan Chase Bank, N.A. v.
16 Guberland LLC-Series 2, No. 73196, 2019 WL 2339537 (Nev. May 31, 2019)(Guberland I) (unpublished
17 disposition), the Nevada Supreme Court focused only on NRS 106.210 in relationship to NRS 111.325
18 and did not address the “writing” required by NRS 111.205(1) that must be recorded as required by NRS
19 111.315.

20 Instead of producing a declaration by a qualified person, defendant demands that this court
21 assume that the written contractual agreement required by the Guide exists even though no person with
22 personal knowledge stated that the written contractual agreement must exist before the data entries were
23 made in MIDAS.

24 **D. The failure to produce the Freddie Mac documents creates a disputable presumption**
25 **against the claim of Nationstar Mortgage, LLC.**

26 In Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC, 133 Nev., Adv. Op. 34, 396 P.3d
27 754, 758 (2017), the Nevada Supreme Court held that a mortgage servicer has standing to appear in court

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1 on behalf of the mortgage holder. In remanding the case, for the district court to determine if there was
2 a servicing agreement, the court also held that the servicer had to prove that it was the servicer, stating:

3 However, the district court did not determine whether Fannie Mae owned the loan in
4 question, or whether Nationstar had a contract with Fannie Mae or the FHFA to service
5 the loan in question. Rather, the district court held that Nationstar lacked standing in either
6 case. Therefore, we conclude that remand is appropriate so the district court may address
7 these factual inquiries in the first instance.

8 In keeping with the Nevada Supreme Court's decision, the first thing that Chase bank has to do
9 is prove that it had a contract with Freddie Mac. In the instant case, Freddie Mac's guidelines require a
10 servicing contract, but none has ever been produced. As defendant fails in its proof of a servicing
11 contract, it cannot assert the federal foreclosure bar on behalf of Freddie Mac.

12 Nationstar's detailed motion includes numerous references to Freddie Mac's Single-Family
13 Seller/Servicer Guide, is supported by a host of documents and asserts that it was "contractually"
14 obligated to Freddie Mac. Notably, however, neither the complaint, the proposed amended complaint,
15 the opposition to plaintiff's motion for summary judgment, nor defendant bank's discovery, evidence the
16 existence of written, stand-alone, contractual agreement-by and between Freddie Mac and Nationstar
17 which would comply with the statute of frauds.

18 Section 1101.2 of Freddie Mac's Guide, which governs the business relationship between a
19 Seller/Servicer and Freddie Mac relating to the sale and Servicing of Mortgages, makes plain that a
20 separate and distinct contractual document must necessarily exist - by and between Freddie Mac - to
21 establish a legally cognizable *servicer* or contractual relationship, providing in part:

22 A Seller/Servicer must service all Mortgages that the Seller/Servicer has sold to Freddie
23 Mac and/or has agreed to service for Freddie Mac in accordance with the standards set
24 forth in the Seller/Servicer's Purchase Documents. **All of a Seller/Servicer's obligations
25 to service Mortgages for Freddie Mac constitute, and must be performed pursuant
26 to the Servicing Contract, and the servicing obligations assumed pursuant to any contract
27 to sell Mortgages to Freddie Mac merged into, and must be performed pursuant to, such
28 Servicing Contract. See Exhibit A, sub-exhibit 5, pg. 5. (Emphasis added).**

29 NRS 47.250 is entitled "Disputable presumptions." Amongst the disputable presumptions in this
30 statute are:

- 31 3. That evidence willfully suppressed would be adverse if produced.
- 32 4. That higher evidence would be adverse from inferior being produced.

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1 This court should determine all inferences against defendant bank as a result of its failure to
2 produce probative evidence that: 1) there was a servicing agreement; and 2) Nationstar was the contracted
3 servicer. This court should find that Nationstar did not have a proper contract with Freddie Mac, and that
4 neither Nationstar, directly, nor Freddie Mac, indirectly, have any rights, which can be asserted against
5 plaintiff. This court should determine that defendant has provided insufficient proof that a justiciable
6 property interest existed, in favor of Freddie Mac, as recognized in Berezovsky v. Moniz, 869 F.3d 923
7 (9th Cir.2017) or otherwise. Consequently, the deed of trust was extinguished by the HOA foreclosure
8 sale and the federal foreclosure bar was not invoked.

9 **5. General principles of law and equity apply to sales under NRS Chapter 116.**

10 NRS 116.1108 provides:

11 **Supplemental general principles of law applicable.** The principles of **law and equity**,
12 including the law of corporations and any other form of organization authorized by law
13 of this State, the law of unincorporated associations, **the law of real property**, and the
14 law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud,
15 misrepresentation, duress, coercion, mistake, receivership, substantial performance, or
16 other
17 validating or invalidating cause supplement the provisions of this chapter, except to the
18 extent inconsistent with this chapter. (Emphasis added)

19 The principles of equity and “the law of real property” are applicable to this case. These
20 principles include the priority of recordings, and compliance with the statute of frauds.

21 **6. Freddie Mac has no “property” interest in the deed of trust.**

22 The “federal foreclosure bar” provides “[n]o property of the Agency shall be subject to levy,
23 attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary
24 lien attach to the property of the Agency.” 12 U.S.C. § 4617(j)(3). The question then becomes, what if
25 anything, is the property of Freddie Mac?

26 In the real estate foreclosure context, Freddie Mac claims to be “owner” of the loan, even though
27 the name of Freddie Mac does not appear on any document. The “loan” is a promissory note secured by
28 a deed of trust. It is the deed of trust that gets extinguished by foreclosure by a senior lien.

The promissory note has a promisor and a promisee, or payor and payee. No person or entity is
designated as an “owner.” Additionally, the promissory note is not an interest in real property.

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1 Similarly, a deed of trust has three parties, none of which are designated as “owner,” a trustor,
2 trustee and beneficiary. The beneficiary is the party entitled to enforce the deed of trust to satisfy the
3 terms of the note. However, the recorded, written documents in this case do not show Freddie Mac as
4 the beneficiary of the loan or the deed of trust.

5 The determination of property interests is determined by state law. Butner v. United States, 440
6 U.S. 48 (1979); United States v. View Crest Garden Apts., Inc., 268 F.2d 380 (9th Cir. 1959). Absent
7 a written assignment - created, signed and recorded - Freddie Mac does not have a property interest in the
8 deed of trust. The deed of trust is a conveyance of an interest in real property and any transfer of an
9 interest in the deed of trust must comply with the statute of frauds.

10 **7. 12 U.S.C. § 4617(j)(3) does not preempt Nevada’s recording laws that make Freddie Mac’s**
11 **alleged unrecorded interest in the Property void as to plaintiff.**

12 Because there is no “federal” law of real property, there cannot be a conflict between 12 U.S.C.
13 § 4617(j)(3) and Nevada’s bona fide purchaser laws. In Valle del Sol Inc. v. Whiting, 732 F.3d 1006,
14 1022-1023 (9th Cir. 2013), the Court of Appeals identified three classes of preemption: (1) express
15 preemption, (2) field preemption, and (3) conflict preemption.

16 In the present case, express preemption does not apply because no provision in Title 12 of the U.S.
17 Code purports to displace the recording laws of the State of Nevada. Field preemption does not apply
18 because “[p]roperty interests are created and defined by state law.” Butner v. United States, 440 U.S. 48,
19 55 (1979). Conflict preemption does not apply because compliance with the recording laws of the State
20 of Nevada does not make it impossible to comply with 12 U.S.C. § 4617.

21 NRS 111.325 protects plaintiff from Nationstar bank’s claims, on behalf of Freddie Mac, that it
22 held an unrecorded ownership interest in the Property. Instead, plaintiff was entitled to rely upon the
23 recorded deed of trust evidencing that Chase, itself, was the beneficiary solely as the nominee for the
24 Lender. If there was an unrecorded conveyance of the deed of trust to Freddie Mac, it has no effect under
25 Nevada law. NRS 111.325 specifically provides that an unrecorded conveyance is void as to bona fide
26 purchasers.

27 12 U.S.C. § 4617(j)(3) only protects “property of the Agency” and not property interests of

28 AA001684

1 Freddie Mac. 12 U.S.C. § 4617 does not purport to include an “unrecorded” interest that is “void” under
2 state law as an “asset” of the regulated entity.

3 Chase cites Skylights LLC v. Byron, 112 F. Supp. 3d 1145 (D. Nev. 2015), as authority that
4 pursuant to 12 U.S.C. § 4617(b)(2)(A)(i), the property of Freddie Mac effectively becomes the property
5 of FHFA once it assumes the role of conservator, and that property is protected by § 4617(j)’s
6 exemptions. In Skylights v. Byron, however, MERS recorded assignment of the deed of trust to
7 CitiMortgage on November 18, 2011, and CitiMortgage recorded an assignment of the deed of trust to
8 Fannie Mae on March 7, 2014. The HOA foreclosure sale did not take place until September 17, 2014.
9 (112 F. Supp. 3d at 1149) In the present case, on the other hand, no interest in the deed of trust was ever
10 publicly assigned to Freddie Mac.

11 In Skylights v. Byron, the joint motion for summary judgment was filed by defendant/counter-
12 plaintiff Freddie Mac and intervenor/counter-plaintiff FHFA, so the express condition in 12 U.S.C. §
13 4617(j)(1) was satisfied. 112 F. Supp. 3d at 1147. Similarly, in Berezovsky v. Moniz, 869 F.3d 923 (9th
14 Cir. 2017), FHFA “joined Freddie Mac’s counterclaim.” Id. at 926. In the present case, on the other
15 hand, FHFA and Freddie Mac are not parties to this case, and Chase has not proved that FHFA has
16 granted it the entitlement to assert rights granted only to FHFA.

17 In Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC, 133 Nev., Adv. Op. 34, 396 P.3d
18 754, 758 (2017), the Nevada Supreme Court held that “the servicer of a loan owned by a regulated entity
19 may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither Freddie Mac nor
20 the FHFA need be joined as a party.” In reaching this conclusion, the Court relied on 12 U.S.C. §
21 4617(b)(2)(B)(v) and 12 C.F.R. § 1237.3(a)(8) to conclude that “HERA explicitly allows the FHFA to
22 authorize a loan servicer to administer FHFA loans on FHFA’s behalf.” 396 P.3d at 757. The Court also
23 stated that the district court was required to determine “whether Nationstar had a contract with Freddie
24 Mac or the FHFA to service the loan in question,” and the Court remanded the case to the district court
25 to make that determination. Id. at 758. In the instant case, Chase has not produced admissible evidence
26 of any agreement that authorizes it to assert rights belonging to Freddie Mac or FHFA.

27 Because FHFA has never “acted” as a party in the present case either as “a conservator or a
28 AA001685

receiver,” the provisions in 12 U.S.C. § 4617(j), and in particular, 12 U.S.C. § 4617(j)(3), cannot support Nationstar’s motion or counterclaim or protect Nationstar’s alleged, unrecorded and unproved interest in the deed of trust from being extinguished by the HOA foreclosure sale.

8. The recorded instruments create two conclusive presumptions that Nationstar is the likely beneficiary of the deed of trust.

NRS 47.240 creates “Conclusive presumptions.” Two of the conclusive presumptions are:

2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

3. Whenever a party has, by his or her own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, the party cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

The deed of trust does not list Freddie Mac as a party. Additionally, there are no recorded assignments which convey interest in the deed of trust to any party other than Nationstar. The deed of trust document is conclusive presumed to be correct. In the absence of other recorded conveyances, Nationstar, not Freddie Mac was the beneficiary of the deed of trust, on the date of the foreclosure sale. Therefore, Freddie Mac has no enforceable interest in the deed of trust.

In Edelstein, the Nevada Supreme Court also found that it was bound by the written language in the deed of trust. The court stated:

The deed of trust also expressly designated MERS as the beneficiary; a designation we must recognize for two reasons. First, it is an express part of the contract that we are not at liberty to disregard, and it is not repugnant to the remainder of the contract. . . . Further, to the extent the homeowners argued that the lenders were the true beneficiaries, “the text of the trust deed contradicts [their] position.” *Id.* at 1161; *accord Reeves v. ReconTrust Co., N.A.*, 846 F.Supp. 2d 1149 (D.Or.2012). Similarly here, the deed of trust’s text, as plainly written, repeatedly designated MERS as the beneficiary, and we thus conclude that MERS is the proper beneficiary. 128 Nev. 505, 519.

Here, the deed of trust does not mention Freddie Mac, the deed of trust was never assigned to Freddie Mac and an instrument was never recorded in favor of Freddie Mac. Thus, under the rationale of Edelstein, as well as the conclusive presumptions regarding the truth of facts in written documents, the Court must conclude, in the absence of recordation, that Nationstar was the beneficiary at the time of the foreclosure sale - not Freddie Mac.

9. JP Morgan is not acting with a power of attorney.

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1 Both Nevada law and Freddie Mac's own guidelines require the servicer to act with a power of
2 attorney. This document has also not been produced. Freddie Mac's guidelines in section 8101.3 require
3 a power of attorney to execute documents on behalf of Freddie Mac, however, no such power of attorney
4 has been produced.

5 NRS 162A.480(2) provides:

6 2. Every power of attorney, or other instrument in writing, containing the power to
7 convey any real property as agent or attorney for the owner thereof, or to execute, as agent
8 or attorney for another, any conveyance whereby any real property is conveyed, or may
be affected, must be recorded as other conveyances whereby real property is conveyed or
affected are required to be recorded.

9 Any unwritten agreement between Nationstar and Freddie Mac regarding the real property under
10 Nevada law is invalid under Freddie Mac's own guidelines and this statute, NRS 162A.480(2).

11 **10. The statute of frauds is not discussed in Berezovsky or any unpublished decisions.**

12 The decision from the federal appeals court in Berezovsky v. Moniz 869 F.3d 923 (2017) does
13 not discuss or evaluate the statute of frauds.

14 Berezovsky, Id., acknowledges that Nevada law is controlling on this issue. The court stated:

15 Berezovsky maintains that even if the Federal Foreclosure Bar applies to his case and is
16 preemptive, the district court should not have granted summary judgment to Freddie Mac
17 because Freddie Mac did not prove beyond dispute that it holds an enforceable property
interest. Berezovsky faults Freddie Mac for never recording its interest, for "splitting" the
note from the deed of trust, and for pointing to insufficient evidence to establish its
interest for purposes of summary judgment.

18 Here, we look to the Nevada Supreme Court's resolution of these issues. *See Erie R. Co.*
19 *v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188 (1938) ("Except in matters
20 governed by the Federal Constitution or by acts of Congress, the law to be applied in any
case is the law of the state.").

21 The statute of frauds is controlling law. Once this issue is presented to the Nevada Supreme
22 Court, it is respectfully submitted that the high court, as well as this court, should find this statute
23 dispositive.

24 **11. Defendant is not entitled to equitable relief against plaintiff altering the legal effect of the
HOA foreclosure sale.**

25 This Court should imply FHFA's consent to the HOA foreclosure sale that extinguished the deed
26 of trust. In the present case, even though the public auction held on August 22, 2013 took place more

27 AA001687

1 than five (5) years after the effective date of 12 U.S.C. § 4617, July 30, 2008, FHFA had still failed to
2 adopt a procedure by which parties could apply for and receive “consent” from FHFA as directed by
3 Congress. In the present case, plaintiff also failed to make Freddie Mac’s alleged ownership of the deed
4 of trust publicly known.

5 On page 16 of its motion, defendant bank argues “the Federal Foreclosure Bar precluded [Saticoy
6 Bay LLC Series 4641 Viareggio Ct] from acquiring free-and-clear title unless it obtained FHFA’s consent
7 to extinguish Freddie Mac’s interest.” As a result, 12 U.S.C. § 4617(j)(3) does not “bar” an HOA
8 foreclosure sale. It only establishes a “consent” requirement.

9 Nothing in the statutory language reveals an intent by Congress to protect concealed property
10 interests (that are not recognized under state law) from being extinguished by a foreclosure sale. In
11 Cladianos v. Friedhoff, 69 Nev. 41, 240 P.2d 208, 210 (1952), this Court applied the “fundamental
12 principle of justice” that one who causes a failure of performance cannot take advantage of that failure:

13 The law is clear, however, that any affirmative tender of performance is excused when
14 performance has in effect been prevented by the other party to the contract. See: 3
15 Williston on Contracts (Rev. Ed.) 1952 (sec. 677), 2325 (sec. 832); 17 C.J.S. 986,
16 (Contracts, sec. 481); 12 Am. Jur. 889, (Contracts, sec. 333).

17 As is stated by Mr. Williston (supra, sec. 677): “It is a principle of fundamental justice
18 that if a promisor is himself the cause of the failure of performance, either of an obligation
19 due him **or of a condition upon which his own liability depends**, he cannot take
20 advantage of that failure.” (emphasis added)

21 Because Nationstar and Freddie Mac prevented plaintiff from knowing that Freddie Mac’s consent
22 was required, this Court should imply Freddie Mac’s consent to the public auction held on August 22,
23 2013.

24 In addition, under Nevada law, defendant bank’s deed of trust was extinguished because defendant
25 did not pay the superpriority portion of the HOA’s assessment lien. Even if Freddie Mac held an interest
26 in the deed of trust, Freddie Mac has an adequate remedy at law against Nationstar because Nationstar
27 failed to make the payments required by NRS 116.3116(2) and the Guide.

28 **12. The sale is presumed valid and the burden of proof is on defendant seeking to set the sale aside.**

In the case of Nationstar Mortgage v. Saticoy Bay LLC Series 2227 Shadow Canyon, 133 Nev.

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1 Adv. Op. 91, 405 P.3d 641 (2017), the court clarified several issues, including the burden of proof and
2 the presumption of validity. Under Shadow Canyon, the sale is presumed valid and the valid sale
3 extinguishes the deed of trust. The presumptions run in favor of the record title holder - Saticoy Bay LLC
4 Series 4641 Viareggio Ct. Therefore, the burden is on defendant seeking to set the sale aside or reinstate
5 the deed of trust. The court stated, in a published case:

6 Nationstar has the burden to show that the sale should be set aside in light of Saticoy
7 Bay's status as the record title holder, *see Brelant v. Preferred Equities Corp.*, 112 Nev.
8 663, 669, 918 P.2d 314, 318 (1996) (“[T]here is a presumption in favor of the record
9 titleholder.”), and the statutory presumptions that the HOA's foreclosure sale complied
10 with NRS Chapter 116's provisions, NRS 47.250(16) (providing for a rebuttable
11 presumption “[t]hat the law has been obeyed”); *cf.* NRS 116.31166(1)-(2) (providing for
12 a conclusive presumption that certain steps in the foreclosure process have been
13 followed).

14 Under Nevada law, the recitals in a foreclosure deed are sufficient and conclusive proof that the
15 HOA recorded, mailed, posted, and published all required notices. The controlling statute, NRS
16 116.31166(1) provides that the recitals in a foreclosure deed are “conclusive proof of the matters recited,”
17 and NRS 116.31166(2) provides that the foreclosure deed is “conclusive against the unit's former owner,
18 his or her heirs and assigns, **and all other persons.**” (emphasis added)

19 In Shadow Wood Homeowners Association v. New York Community Bancorp, Inc., 132 Nev.
20 Adv. Op. 5, 366 P.3d 1105 (2016), the Nevada Supreme Court recognized that “such recitals are
21 “conclusive, *in the absence of grounds for equitable relief.*” 366 P.3d at 1112. (*quoting Holland v.*
22 *Pendleton Mortg. Co.*, 61 Cal. App. 2d 570, 143 P.2d 493, 496 (Cal. Ct. App.1943). Therefore, until and
23 unless Nationstar sets forth grounds for equitable relief, the recitals in the deed are conclusive against it
24 and all other adverse claimants.

25 It is respectfully submitted that this court should find that the foreclosure deed received by Saticoy
26 Bay, at the time it obtained title to the Property, is conclusive and sufficient proof that the notices were
27 sent in compliance with the law. Furthermore, that title is now vested in Saticoy Bay and not subject to
28 attack from defendant bank. The presumption of validity and the public policy of finality are paramount.

NRS 116.31166, cited in Shadow Canyon provides in part:

**Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper
application of purchase money; title vested in purchaser without equity or right of**
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1 **redemption.**

2 1. **The recitals in a deed** made pursuant to NRS 116.31164 of:

3 (a) Default, the mailing of the notice of delinquent assessment, and the recording of
4 the notice of default and election to sell;
5 (b) The elapsing of the 90 days; and
6 (c) The giving of notice of sale,
7 are **conclusive proof of the matters recited.**

8 2. **Such a deed containing those recitals is conclusive against** the unit's former
9 owner, his or her heirs and assigns, **and all other persons.** The receipt for the purchase
10 money contained in such a deed is sufficient to discharge the purchaser from obligation
11 to see to the proper application of the purchase money.

12 ...
13 (emphasis added)

14 NRS 47.240, also cited in Shadow Canyon, provides in part:

15 **Conclusive presumptions.** The following presumptions, and no others, are conclusive:
16

17 6. Any other presumption which, by statute, is expressly made conclusive.

18 Pursuant to under NRS 116.31166, the recitals in the deed, between the foreclosure agent and the
19 purchaser at the foreclosure sale, are conclusive. The sole exception would be in the case of fraud or
20 other grounds for equitable relief. See Shadow Wood Homeowners Association v. New York
21 Community Bank, 132 Nev. Ad. Op. 5, 366 P.3d 1105 (2016).

22 **13. Burden of proof of bona fide purchaser.**

23 Under the holdings in the case of Wells Fargo v. Radecki 134 Nev. Adv. Op. 74, (2018), bona fide
24 purchaser doesn't even become an issue until the moving party proves there was a defect with the
25 foreclosure sale. The court stated:

26 The BFP doctrine provides an equitable remedy to protect innocent purchasers from an
27 otherwise *defective* sale; it does not provide an equitable basis to invalidate an otherwise
28 *valid* sale." (Italics original)

The burden of proof regarding bona fide purchaser is a simple one as explained in Miller & Starr,
California Real Estate §10.51 (4th Ed. 2016), which provides:

Evidence required. The person claiming to be a bona fide purchaser satisfies the burden
of proof when it is proved that he or she paid value for the title or lien. It is then
presumed that the lien or interest was received in good faith and without notice, and the
burden shifts to the other person to prove that the alleged bona fide purchaser had notice.

...

AA001690

1 In a commentary to this section, the treatise states:

2 As a practical matter, it makes little difference who has the burden of proof. The alleged
3 bona fide purchaser usually testifies that he or she did not have notice, and the other party
must prove that he or she did.

4 The treatise 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth,
5 *Real Estate Finance Law* (6th ed. 2014) has been cited by the Nevada Supreme Court in multiple reported
6 cases, including Shadow Wood and Shadow Canyon.

7 Section 7.21 of this treatise is entitled “defective power of sale foreclosure - “void - voidable”
8 distinction. The treatise explains there are three types of defects which may affect the validity of
9 foreclosure sales, void, voidable, or inconsequential.

10 The treatise then explains:

11 Most defects render the foreclosure voidable and not void. When a voidable error occurs,
12 bare legal title passes to the sale purchaser, subject to the redemption rights of those
13 injured by the defective foreclosure. Typically, a voidable error is “an irregularity in the
execution of a foreclosure sale” and must be “substantial or result in a probably
unfairness.”

14 If the defect only renders the sale voidable, the redemption rights can be cut off if a bona
15 fide purchase for value acquires the land. When this occurs, an action for damages against
the foreclosing mortgagee or trustee may be the only remaining remedy.

16 The treatise then goes on to explain who is a bona fide purchaser in a foreclosure context:

17 If the defective sale is only voidable, who is a bona fide purchaser? A mortgagee
18 purchaser should rarely, if every, qualify as a bona fide purchaser, because the mortgagee
19 or its attorney normally manages the power of sale foreclosure and should be responsible
20 for defects. The result should be the same when a deed of trust is foreclosed. Although
the trustee, rather than the lender, normally is in charge of the proceedings, the court
probably will treat the trustee as the lender’s agent for purposes of determining BFP
status. **If the sale purchaser paid value and is unrelated to the mortgagee, he should
take free of voidable defects if: (a) he has no actual knowledge of he defects; (b) he
is not on reasonable notice from recorded instruments; and (c) the defects are such
that a person attending the sale and exercising reasonable care would be unaware
of the defects....** (emphasis added, footnotes omitted)

23 Under these authorities, if there is a defect in the foreclosure process, but the purchaser is unaware
24 of the defect, he is a bona fide purchaser, and he takes clear title. With regard to plaintiff’s status as a
25 bona fide purchaser, defendant bank has not set forth any defect in the sales process or that the purchaser
26 knew of the defect in the sales process. From the three factors set forth, the purchaser would be a bona
27 fide purchaser.

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DATED this 23th day of November, 2020

By: /s/Nikoll Nikci, Esq.
MICHAEL F. BOHN, ESQ.
NIKOLL NIKCI, ESQ.
2260 Corporate Circle, Ste. 480
Henderson, Nevada 89074
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law Offices of Michael F. Bohn, Esq., Ltd., and on the 23rd day of November, 2020, an electronic copy of the PLAINTIFFS OPPOSITION TO NATIONSTAR'S MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Melanie D. Morgan, Esq.
Donna M. Wittig, Esq.
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

/s/ Marc Sameroff/
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

AA001693

EXHIBIT 1

EXHIBIT 1

AA001694

When recorded return to, and
Mail Tax Statements to:

Saticoy Bay LLC Series 4641 Viareggio Ct.
900 S. Las Vegas Blvd., Suite 810
Las Vegas, NV 89101

APN: 163-19-311-015

Inst #: 201309060000930
Fees: \$18.00 N/C Fee: \$25.00
RPTT: \$640.05 Ex: #
09/06/2013 09:03:24 AM
Receipt #: 1761079
Requestor:
RESOURCES GROUP
Recorded By: LEX Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

FORECLOSURE DEED

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION ("Naples"), pursuant to NRS 116.31164(3), does hereby grant and convey, but without covenant or warranty, express or implied regarding title, possession or encumbrances, to SATICOY BAY LLC SERIES 4641 VIAREGGIO CT. (herein called Grantee), the real property in the County of Clark, State of Nevada, described as follows:

Lot 70 in Block 1 of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Plat Book 93, Page 1, of the records of the County Recorder of Clark County, NV, more commonly known as: 4641 Viareggio Ct., Las Vegas, NV

This conveyance is made pursuant to the authority and powers vested to Naples by Chapter 116 of Nevada Revised Statutes and the provisions of the Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions, and Naples having complied with all applicable statutory requirements of the State of Nevada, and performed all duties required by such Declaration of Covenants, Conditions and Restrictions.

A Notice of Delinquent Assessment Lien was recorded on August 18, 2011 in Book 20110818, Instrument No. 02904 of the Official Records of the Clark County Recorder, Nevada, said Notice having been mailed by certified mail to the owners of record; a Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012 in Book 20120124, Instrument No. 00764 in the Official Records, Clark County, Nevada, said document having been mailed by certified mail to the owner of record.

AA001695

and all parties of interest, and more than ninety (90) days having elapsed from the mailing of said Notice of Default, a Notice of Sale was published once a week for three consecutive weeks commencing on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said Notice of Sale was recorded on July 30, 2012 in Book 20120730 as Instrument 01448 of the Official Records of the Clark County Recorder, Nevada, and at least twenty days before the date fixed therein for the sale, a true and correct copy of said Notice of Sale was posted in three of the most public places in Clark County, Nevada, and in a conspicuous place on the property located at 4641 Viareggio Ct., Las Vegas, NV

On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a Nevada Corporation, Front Entrance Lobby, 930 South 4th Street, Las Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its power of sale and did sell the above described property at public auction. Grantee, being the highest bidder at said sale, became the purchaser and owner of said property for the sum of FIVE THOUSAND FIVE HUNDRED SIXTY THREE (\$5,563.00) Dollars, cash, lawful money of the United States, in full satisfaction of the indebtedness secured by the lien of Naples.

IN WITNESS WHEREOF, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION caused its corporate name to be affixed hereto, and this instrument to be executed by its authorized agent.

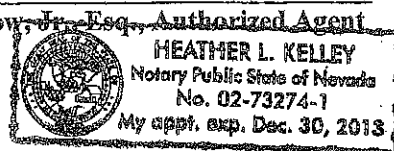
Dated 8/27/13

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By:

Kirby C. Gruchow, Jr., Esq., Authorized Agent

STATE OF NEVADA)
COUNTY OF CLARK)



On 8/27/13, before me, the undersigned, a Notary Public in and for said State, personally appeared KIRBY C. GRUCHOW, JR., known (or proven) to me to be the authorized agent of NAPLES COMMUNITY HOMEOWNERS ASSOCIATION, and executed the within Foreclosure Deed on behalf of the corporation therein named.

Heather L. Kelley
NOTARY PUBLIC

AA001696

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 163-19-311-015
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 125,057.00

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

c. Transfer Tax Value:

\$ 125,057.00

d. Real Property Transfer Tax Due

\$ 640.05

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature [Signature] 8/27/13
Kirby R. Gruchow, Jr., Esq.

Capacity: Agent for Seller

Signature _____ Capacity: Agent for Buyer

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Naples Community HOA
Address: c/o Leach Johnson Song & Gruchow
City: 8945 W. Russel Rd., Suite 330
State: Las Vegas, NV Zip: 89148

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: SATICOY BAY LLC
Address: Series 4641 Viareggio Ct.
City: 900 S. Las Vegas Blvd., #810
State: Las Vegas, NV Zip: 89101

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

Print Name: SATICOY BAY LLC SERIES 4641 Escrow # _____

Address: 900 S. Las Vegas Blvd., #810 Viareggio Ct

City: L.V.

State: NV Zip: 89101

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

AA001697

EXHIBIT 2

EXHIBIT 2

AA001698

21

20070125-0003583

Assessor's Parcel Number:
163-19-311-015
Return To:
FIRST MAGNUS FINANCIAL CORPORATION

603 N. WILMOT
TUCSON, AZ 85711

Prepared By:

FIRST MAGNUS FINANCIAL CORPORATION
603 N. WILMOT
TUCSON, AZ 85711

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

01/25/2007 13:30:50
T20070014336

Requestor:
GREAT AMERICAN TITLE

Debbie Conway KXC
Clark County Recorder Pgs: 27

~~Recording Requested By:~~
FIRST MAGNUS FINANCIAL CORPORATION

07-01-6578DH

[Space Above This Line For Recording Data]

4

DEED OF TRUST

LOAN NO.: 5040782241
ESCROW NO.: 07-01-6578DH

MIN 100039250407822414
MERS Phone: 1-888-679-6377

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
together with all Riders to this document.

JANUARY 17, 2007

(B) "Borrower" is
MONIQUE GUILLORY, A SINGLE WOMAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

Lender is a CORPORATION
organized and existing under the laws of ARIZONA

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
WITH MERS
V-6A(NV) (0510)

Page 1 of 15

LENDER SUPPORT SYSTEMS INC. MERS6ANV.NEW (04/06)
AA001699

Form 3029 1/01

Initials: M6

Lender's address is
603 North Wilmot Road, Tucson, AZ 85711

(D) "Trustee" is
GREAT AMERICAN TITLE

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

(F) "Note" means the promissory note signed by Borrower and dated JANUARY 17, 2007
The Note states that Borrower owes Lender

TWO HUNDRED FIFTY EIGHT THOUSAND FOUR HUNDRED AND NO/100 X X X X X X X X

Dollars

(U.S. \$ 258,400.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 01, 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"/> 1-4 Family Rider
<input type="checkbox"/> Graduated Payment Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> Biweekly Payment Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Rate Improvement Rider	<input type="checkbox"/> Second Home Rider
<input checked="" type="checkbox"/> Other(s) [specify]	INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER ADDENDUM TO ADJUSTABLE RATE 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. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

LEGAL DESCRIPTION ATTACHED HERETO AND MADE PART HEREOFAND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 163-19-311-015

which currently has the address of

4641 VIAREGGIO COURT [Street]
LAS VEGAS [City], Nevada 89147 [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 seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

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

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

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

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

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

Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

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

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

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

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** 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 Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

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

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

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

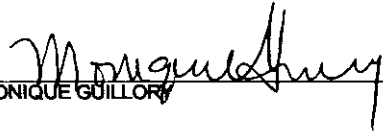
25. **Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$

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

Witnesses:

-Witness

-Witness


MONIQUE GUILLORY (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

AA001712

STATE OF NEVADA *California*
COUNTY OF *Los Angeles*

This instrument was acknowledged before me on *January 19, 2007* by
MONIQUE GUILLORY



Ashlee Lena Turner
Notary Public

Mail Tax Statements To:

CLARK COUNTY

PO BOX 551220
LAS VEGAS, NV 89155-0000

PLANNED UNIT DEVELOPMENT RIDER

LOAN NO.: 5040782241

MIN: 100039250407822414
MERS Phone: 1-888-679-6377

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 17th day of JANUARY, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

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

4641 VIAREGGIO COURT, LAS VEGAS, NV 89147
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

COVENANTS, CONDITIONS AND RESTRICTIONS.

(the "Declaration"). The Property is a part of a planned unit development known as CONQUISTADOR TOMPKINS

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

Initials 

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3150 1/01
V-7R (0411).01

Page 1 of 3

LENDER SUPPORT SYSTEMS INC. 7R.NEW (07/06)

AA001714

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

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

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

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

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

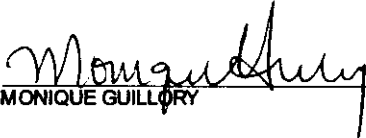
D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby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

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

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become

additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

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

 _____ MONIQUE GUILLORY	(Seal) -Borrower	_____	(Seal) -Borrower
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_____	(Seal) -Borrower	_____	(Seal) -Borrower
-------	---------------------	-------	---------------------

_____	(Seal) -Borrower	_____	(Seal) -Borrower
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_____	(Seal) -Borrower	_____	(Seal) -Borrower
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ADJUSTABLE RATE RIDER

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)
SEE "ADDENDUM TO ARM RIDER" ATTACHED HERETO AND MADE A PART HEREOF.
SEE "INTEREST-ONLY ADDENDUM TO ARM RIDER" ATTACHED HERETO AND MADE A PART HEREOF.
LOAN NO.: 5040782241 MIN: 100039250407822414
MERS Phone: 1-888-679-6377

THIS ADJUSTABLE RATE RIDER is made this 17th day of JANUARY, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

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

4641 VIAREGGIO COURT, LAS VEGAS, NV 89147
[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.375 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of FEBRUARY, 2012, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

Initials: M6

Form 3138 1/01

MULTISTATE ADJUSTABLE RATE RIDER - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) - Single Family - Fannie Mae Uniform Instrument

V-838R (0402).01

Page 1 of 4

LENDER SUPPORT SYSTEMS INC. 838R.NEW (09/06)

AA001717

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND THREE QUARTERS percentage points (2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 14.375 % or less than 8.375 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO AND 000/1000THS percentage points (2.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 14.375 % , or less than 8.375 %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

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

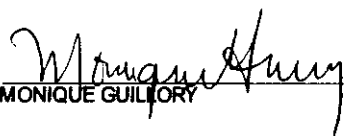
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales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

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

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

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

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

 MONIQUE GUILLORY	(Seal) -Borrower	(Seal) -Borrower
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_____	(Seal) -Borrower	(Seal) -Borrower
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_____	(Seal) -Borrower	(Seal) -Borrower
-------	---------------------	---------------------

_____	(Seal) -Borrower	(Seal) -Borrower
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**INTEREST-ONLY ADDENDUM
TO ADJUSTABLE RATE RIDER**

LOAN NO.: 5040782241

MIN: 100039250407822414
MERS Phone: 1-888-679-6377

PROPERTY ADDRESS: 4641 VIAREGGIO COURT, LAS VEGAS, NV 89147

THIS ADDENDUM is made this 17th day of JANUARY, 2007, and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date as this Addendum executed by the undersigned and payable to

FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

(the "Lender").

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

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

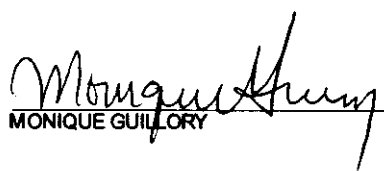
(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND THREE QUARTERS percentage point(s) (2.750 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

Initials: *MB*

AA001721


MONIQUE GUILLORY (Seal) _____ (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

AA001722

ADDENDUM TO ADJUSTABLE RATE RIDER

MIN: 100039250407822414
MERS Phone: 1-888-679-6377

LOAN NO.: 5040782241

This addendum is made JANUARY 17, 2007 and is incorporated into and deemed to amend and supplement the Adjustable Rate Rider of the same date.

The property covered by this addendum is described in the Security Instrument and located at:
4641 VIAREGGIO COURT, LAS VEGAS, NV 89147

AMENDED PROVISIONS

In addition to the provisions and agreements made in the Security Instrument, I/we further covenant and agree as follows:

ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 14.375 % or less than 8.375 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than TWO AND 000/1000THS percentage point(s) (2.000 %) from the rate of interest I have been paying for the preceding six (6) months. My interest rate will never be greater than 14.375 %. My interest rate will never be less than 8.375 %.

TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

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

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

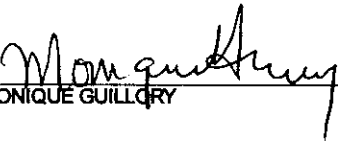
Initials: ME

AA001723

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.

In Witness Whereof, Trustor has executed this addendum.

Witness


MONIQUE GUILLORY

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

AA001724

EXHIBIT "A"

:
:
:

PARCEL ONE (1):

Lot Seventy (70) in Block One (1) of CONQUISTADOR/TOMPKINS-UNIT 2, as shown by map thereof on file in Book 93 of Plats, Page 1, in the Office of the County Recorder of Clark County, Nevada.

PARCEL TWO (2):

A non exclusive easement for ingress, egress and Public Utility Purposes on, over and Across the Private Streets on the Map Referenced Hereinabove, which easement is Appurtenant to parcel one (1).

AA001725

EXHIBIT 3

EXHIBIT 3

AA001726

Inst #: 201210180000833
Fees: \$17.00
N/C Fee: \$25.00
10/18/2012 08:07:07 AM
Receipt #: 1348388
Requestor:
CASTLE STAWIARSKI, LLC - NE
Recorded By: GILKS Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

Requested and Prepared by:
The Cooper Castle Law Firm

When Recorded Mail To:
Cooper Castle Law Firm, LLP
5275 S. Durango Drive
Las Vegas, NV 89113

A.P.N.: 163-19-311-015
TS NO: 12-08-45830-NV

Property Address: 4641 Viareggio Court
Las Vegas, NV 89147

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned corporation hereby grants, assigns, and transfers to: Nationstar Mortgage, LLC all beneficial interest under that certain Deed of Trust dated: January 17, 2007 executed by Monique Guillory, a single woman, as Trustor(s), Great American Title as Trustee, and recorded as 20070125-0003583 on January 25, 2007 of Official Records, in the office of the County Recorder of Clark County, Nevada, with all moneys now owing or that may hereafter become due or owing in respect thereof and also all rights accrued or to accrue under said Deed of Trust.

Date of Execution: 10-8-12

Nationstar Mortgage LLC, as attorney in fact for
Aurora Loan Services LLC

Sean McKenzie 10-8-12
By: Sean McKenzie
Title: Assistant Secretary

Acknowledgement:
State of Texas
County of Denton

On 10/8/12 before me Matthew J. Johnstone, personally appeared Sean McKenzie who provided 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 Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Matthew J. Johnstone

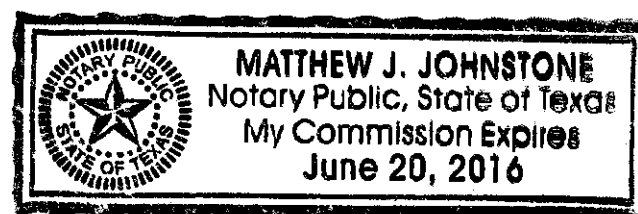


EXHIBIT 4

EXHIBIT 4

AA001728

**AFFIDAVIT OF MAILING NOTICE OF DELINQUENT
ASSESSMENT LIEN TO NEW ADDRESS**

DATE: December 1, 2011

PROPERTY ADDRESS: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

CHRISTIE VERNON being first duly sworn, deposes and says:

Affiant is a citizen of the United States of America, and is, and at the time of the mailing herein referred to, was of legal age, and not a party to the foreclosure proceedings referred to in a certain NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded in the Office of the County Recorder of Clark County, Nevada, on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904 (the "Notice"). Affiant deposited in the United States Mail, Certified Mail, Return Receipt Requested, and with postage prepaid on August 19, 2011, one (1) envelope at a cost of \$5.79, and Affiant also deposited in the United States Mail, first-class postage prepaid, one (1) envelope at a cost of \$0.44, with each envelope containing a copy of the Notice with such recordation information as set forth above, addressed to:

Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147


The Notice sent on August 19, 2011, by United States Mail, Certified Mail, Return Receipt Requested, and United States Mail, first-class postage prepaid was returned with a new forwarding address. Therefore, Affiant deposited in the United States Mail, Certified Mail, Return Receipt Requested, and with postage prepaid, one envelope at a cost of \$5.79, and Affiant also deposited in the United States Mail, first-class postage prepaid, one (1) envelope at a cost of \$0.44, with each envelope containing a copy of the Notice with such recordation information as set forth above and previously sent on August 19, 2011, addressed to:

AA001729

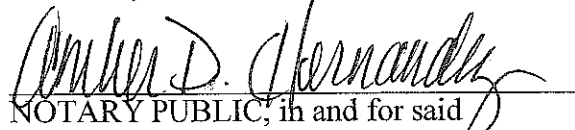
Monique Guillory
7605 Cruz Bay Court
Las Vegas, Nevada 89128-7283

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 1st day of December, 2011.


CHRISTIE VERNON, an employee of Leach
Johnson Song & Gruchow

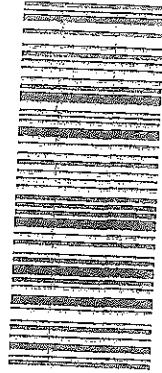
SUBSCRIBED and SWORN to before me
this 1st day of December, 2011.


NOTARY PUBLIC, in and for said
County and State

AA001730

John E. Leach, Esq.
Leach Johnson Song & Gruchow
8945 West Russell Road
Suite 330
Las Vegas, NV 89148

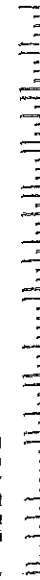
CERTIFIED MAIL™



5008 5111 0635 7310
RN RECEIPT REQUESTED

NIXIE 991 DE 1 00 08/09/11
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

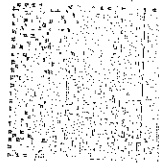
BC: 99148122760 *0694-05991-05-46



Monique Guillory
4641 Viareggio Ct
Las Vegas, NV 891

AA001731

UNITED STATES POSTAGE

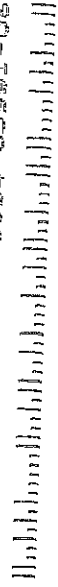


02 1P
0003819307 JUL-06 2011
MAILED FROM ZIP CODE 89148

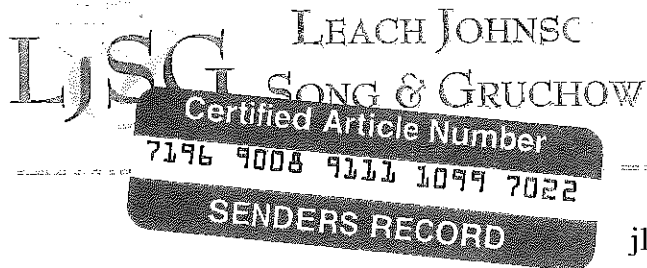
W7/8/11

991 NFE 1 C101 00 07/06/04C
NOTIFY SENDER OF NEW ADDRESS
GUILLORY, MONIQUE
7805 CRUZ BAY CT
LAS VEGAS NV 89128-7289

BC: 99128728905 *0694-05991-05-46



9914 99128728905



John E. Leach, Esq.

jleach@leachjohnson.com

August 18, 2011

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
2636 2517 AND U.S. MAIL

Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

Dear Ms. Guillory:

This office serves as legal counsel for Naples Community Homeowners Association (the "Association"). Enclosed you will find a copy of a NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded by the Association with the Clark County Recorder's Office on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904 (the "Notice").

If full payment on your account is not received by the Association within thirty (30) days of the date of the Notice, then this office has been instructed to commence foreclosure proceedings against the property located at 4641 Viareggio Court, Las Vegas, Nevada 89147, pursuant to Nevada Revised Statutes Chapter 116.

The creditor in this case is the Association and it is the Association to whom the foregoing debt is owed. Please contact John E. Leach, Esq. of the law firm of Leach Johnson Song & Gruchow at (702) 538-9074 for any questions regarding the payoff amount necessary to reinstate your membership account. You may dispute the validity of this notice/delinquency within thirty (30) days of your receipt of this letter. If you do not dispute the delinquency within said thirty (30) day period, then the debt will be assumed valid by the creditor. If you notify the Association, c/o Leach Johnson Song & Gruchow, Attn: John E. Leach, Esq., within thirty (30) days of your receipt of this notice, the Association will obtain any additional necessary verification of the delinquency and a copy of that verification will be mailed to you by the Association.

AA001732

Monique Guillory

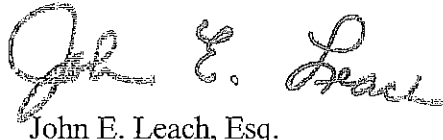
August 18, 2011

Page 2

Please contact either me or my assistant, Amber Hernandez, at (702) 538-9074 for the payoff amount necessary to reinstate your account, which payoff amount will need to be in the form of a **Money Order or Cashier's Check** made payable to "Leach Johnson Song & Gruchow". The Association wishes to resolve this matter amicably. However, the Association must receive the assessments and related charges in order to properly administer and operate the Association.

Your time and attention to this matter are very much appreciated. Should you have any questions or concerns, please do not hesitate to contact either me or my assistant, Amber Hernandez.

Sincerely,

A handwritten signature in cursive script that reads "John E. Leach".

John E. Leach, Esq.

JEL/ah

Encl.

AA001733

Inet #: 201108180002904
Fee: \$15.00
N/C Fee: \$0.00
08/18/2011 02:30:03 PM
Receipt #: 884554
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: MGM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

JOHN E. LEACH, ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of the Nevada Revised Statutes, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION claims a lien upon the real property and buildings, improvements or structures thereon, described in Paragraph 2 below, and states the following:

1. The amount of the assessment, late charge, interest, costs and penalties is \$1,288.86, as of August 17, 2011, and currently increases at the rate of \$40.00 per month for regular assessments, plus late charges for each late payment, plus interest on any delinquent amount, as well as additional attorney fees and fees of the agent for the management body, including such fees incurred in connection with preparation, recording and foreclosure of this lien and/or which may thereafter accrue.

2. The property against which the assessment is assessed is described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins –
Unit 2, as shown by map thereof on file in Book 93 of Plats,
Page 1, all in the Office of the County Recorder of Clark
County, Nevada, more commonly known as: 4641 Viareggio
Court, Las Vegas, Nevada 89147. AA001734

3. The name of the record owner(s) is: Monique Guillory, a single woman, as evidenced by a Grant, Bargain, Sale Deed, recorded January 25, 2007, in Book No. 20070125, as Instrument No. 0003582.

DATED this 17th day of August, 2011.

NAPLES COMMUNITY HOMEOWNERS
ASSOCIATION

By *John E. Leach*
JOHN E. LEACH, ESQ., as
Authorized Agent for Naples Community
Homeowners Association

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

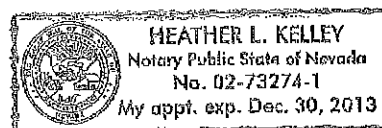
JOHN E. LEACH, ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for NAPLES COMMUNITY HOMEOWNERS ASSOCIATION in the above-entitled matter; that I have read the foregoing, Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

John E. Leach
JOHN E. LEACH, ESQ.

SUBSCRIBED and SWORN to before me
this 17th day of August, 2011.

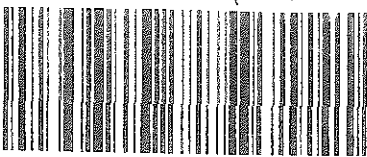
Heather L. Kelley
NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 02-73274-1
Notary Seal Expiration: December 30, 2013



AA001735

CERTIFIED MAIL™

Gruchow, Jr., Esq.
Song & Gruchow
Russell Road



7196 9008 9111 1099 7022

RETURN RECEIPT REQUESTED

Monique Guillory
7605 Cruz Bay Court
Las Vegas, NV

NIXIE

091 DE 1

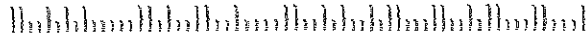
00 01/01/12

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

EC: 89148122780

*0694-01622-02-01

89148122780



AA001736

Naples/Guillory0254



LEACH JOHNSON
SONG & GRUCHOW

Certified Article Number

7196 9008 9111 2636 2517

John E. Leach, Esq.

SENDERS RECORD

jleach@leachjohnson.com

August 18, 2011

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
2636 2517 AND U.S. MAIL**

Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

Dear Ms. Guillory:

This office serves as legal counsel for Naples Community Homeowners Association (the "Association"). Enclosed you will find a copy of a NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded by the Association with the Clark County Recorder's Office on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904 (the "Notice").

If full payment on your account is not received by the Association within thirty (30) days of the date of the Notice, then this office has been instructed to commence foreclosure proceedings against the property located at 4641 Viareggio Court, Las Vegas, Nevada 89147, pursuant to Nevada Revised Statutes Chapter 116.

The creditor in this case is the Association and it is the Association to whom the foregoing debt is owed. Please contact John E. Leach, Esq. of the law firm of Leach Johnson Song & Gruchow at (702) 538-9074 for any questions regarding the payoff amount necessary to reinstate your membership account. You may dispute the validity of this notice/delinquency within thirty (30) days of your receipt of this letter. If you do not dispute the delinquency within said thirty (30) day period, then the debt will be assumed valid by the creditor. If you notify the Association, c/o Leach Johnson Song & Gruchow, Attn: John E. Leach, Esq., within thirty (30) days of your receipt of this notice, the Association will obtain any additional necessary verification of the delinquency and a copy of that verification will be mailed to you by the Association.

AA001737

Monique Guillory


August 18, 2011

Page 2

Please contact either me or my assistant, Amber Hernandez, at (702) 538-9074 for the payoff amount necessary to reinstate your account, which payoff amount will need to be in the form of a **Money Order or Cashier's Check** made payable to "Leach Johnson Song & Gruchow". The Association wishes to resolve this matter amicably. However, the Association must receive the assessments and related charges in order to properly administer and operate the Association.

Your time and attention to this matter are very much appreciated. Should you have any questions or concerns, please do not hesitate to contact either me or my assistant, Amber Hernandez.

Sincerely,



John E. Leach, Esq.

JEL/ah

Encl.

AA001738

inst #: 201108180002904
Fees: \$15.00
N/C Fee: \$0.00
08/18/2011 02:30:03 PM
Receipt #: 884554
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: MGM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

JOHN E. LEACH, ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of the Nevada Revised Statutes, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION claims a lien upon the real property and buildings, improvements or structures thereon, described in Paragraph 2 below, and states the following:

1. The amount of the assessment, late charge, interest, costs and penalties is \$1,288.86, as of August 17, 2011, and currently increases at the rate of \$40.00 per month for regular assessments, plus late charges for each late payment, plus interest on any delinquent amount, as well as additional attorney fees and fees of the agent for the management body, including such fees incurred in connection with preparation, recording and foreclosure of this lien and/or which may thereafter accrue.

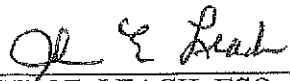
2. The property against which the assessment is assessed is described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins –
Unit 2, as shown by map thereof on file in Book 93 of Plats,
Page 1, all in the Office of the County Recorder of Clark
County, Nevada, more commonly known as: 4641 Virginia
Court, Las Vegas, Nevada 89147.

3. The name of the record owner(s) is: Monique Guillory, a single woman, as evidenced by a Grant, Bargain, Sale Deed, recorded January 25, 2007, in Book No. 20070125, as Instrument No. 0003582.

DATED this 17th day of August, 2011.

NAPLES COMMUNITY HOMEOWNERS
ASSOCIATION

By 
JOHN E. LEACH, ESQ., as
Authorized Agent for Naples Community
Homeowners Association

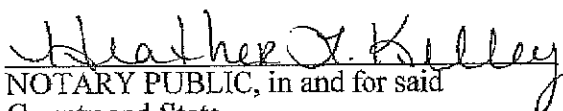
STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

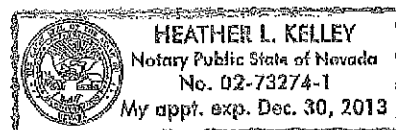
JOHN E. LEACH, ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for NAPLES COMMUNITY HOMEOWNERS ASSOCIATION in the above-entitled matter; that I have read the foregoing, Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.


JOHN E. LEACH, ESQ.

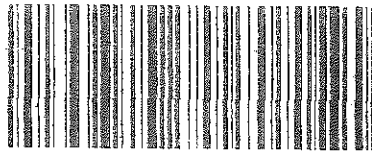
SUBSCRIBED and SWORN to before me
this 17th day of August, 2011.


NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 02-73274-1
Notary Seal Expiration: December 30, 2013



AA001740

CERTIFIED MAIL™



7196 9008 9111 2636 2517

RETURN RECEIPT REQUESTED

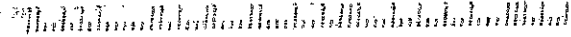
Handwritten: 1/10
8/20

Monique Guillory
4641 Viareggio Court
Las Vegas, NV 89147

UNC

Handwritten: 47-70
3-1-9

8914737208 0085



AA001741

Inst #: 201108180002904
Fees: \$15.00
N/C Fee: \$0.00
08/18/2011 02:30:03 PM
Receipt #: 884554
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: MGM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

JOHN E. LEACH, ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of the Nevada Revised Statutes, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION claims a lien upon the real property and buildings, improvements or structures thereon, described in Paragraph 2 below, and states the following:

1. The amount of the assessment, late charge, interest, costs and penalties is \$1,288.86, as of August 17, 2011, and currently increases at the rate of \$40.00 per month for regular assessments, plus late charges for each late payment, plus interest on any delinquent amount, as well as additional attorney fees and fees of the agent for the management body, including such fees incurred in connection with preparation, recording and foreclosure of this lien and/or which may thereafter accrue.

2. The property against which the assessment is assessed is described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins –
Unit 2, as shown by map thereof on file in Book 93 of Plats,
Page 1, all in the Office of the County Recorder of Clark
County, Nevada, more commonly known as: 4641 Viareggio
Court, Las Vegas, Nevada 89147. AA001742

3. The name of the record owner(s) is: Monique Guillory, a single woman, as evidenced by a Grant, Bargain, Sale Deed, recorded January 25, 2007, in Book No. 20070125, as Instrument No. 0003582.

DATED this 17th day of August, 2011.

NAPLES COMMUNITY HOMEOWNERS
ASSOCIATION

By *John E. Leach*
JOHN E. LEACH, ESQ., as
Authorized Agent for Naples Community
Homeowners Association

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

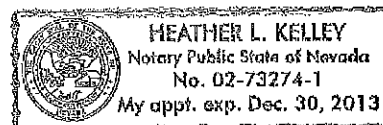
JOHN E. LEACH, ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for NAPLES COMMUNITY HOMEOWNERS ASSOCIATION in the above-entitled matter; that I have read the foregoing, Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

John E. Leach
JOHN E. LEACH, ESQ.

SUBSCRIBED and SWORN to before me
this 17th day of August, 2011.

Heather L. Kelley
NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 02-73274-1
Notary Seal Expiration: December 30, 2013



AA001743

EXHIBIT 5

EXHIBIT 5

AA001744

Inet #: 201108180002904
Fee: \$15.00
N/C Fee: \$0.00
08/18/2011 02:30:03 PM
Receipt #: 884554
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: MGM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

JOHN E. LEACH, ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of the Nevada Revised Statutes, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION claims a lien upon the real property and buildings, improvements or structures thereon, described in Paragraph 2 below, and states the following:

1. The amount of the assessment, late charge, interest, costs and penalties is \$1,288.86, as of August 17, 2011, and currently increases at the rate of \$40.00 per month for regular assessments, plus late charges for each late payment, plus interest on any delinquent amount, as well as additional attorney fees and fees of the agent for the management body, including such fees incurred in connection with preparation, recording and foreclosure of this lien and/or which may thereafter accrue.

2. The property against which the assessment is assessed is described as follows:

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins –
Unit 2, as shown by map thereof on file in Book 93 of Plats,
Page 1, all in the Office of the County Recorder of Clark
County, Nevada, more commonly known as: 4641 Viareggio
Court, Las Vegas, Nevada 89147. AA001745

3. The name of the record owner(s) is: Monique Guillory, a single woman, as evidenced by a Grant, Bargain, Sale Deed, recorded January 25, 2007, in Book No. 20070125, as Instrument No. 0003582.

DATED this 17th day of August, 2011.

NAPLES COMMUNITY HOMEOWNERS
ASSOCIATION

By *John E. Leach*
JOHN E. LEACH, ESQ., as
Authorized Agent for Naples Community
Homeowners Association

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

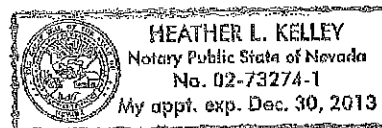
JOHN E. LEACH, ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for NAPLES COMMUNITY HOMEOWNERS ASSOCIATION in the above-entitled matter; that I have read the foregoing, Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

John E. Leach
JOHN E. LEACH, ESQ.

SUBSCRIBED and SWORN to before me
this 17th day of August, 2011.

Heather L. Kelley
NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 02-73274-1
Notary Seal Expiration: December 30, 2013



AA001746

EXHIBIT 6

EXHIBIT 6

AA001747

Inst #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that Naples Community Homeowners Association is the lienholder and beneficiary under a Notice of Delinquent Assessment Lien, executed by Kirby C. Gruchow, Jr., Esq., as Authorized Agent for Naples Community Homeowners Association, to secure certain obligations of Monique Guillory, record owner of the Property, in favor of Naples Community Homeowners Association, and recorded on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904, of the Official Records in the Office of the Recorder of Clark County, Nevada, describing land therein as:

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

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

AA001748

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

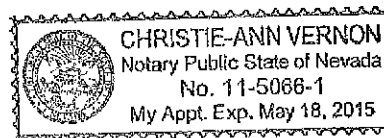
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



AA001749

**AFFIDAVIT OF MAILING NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY
TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN**

DATE: January 31, 2012
PROPERTY ADDRESS: 4641 Viareggio Court, Las Vegas, Nevada 89031
APN: 163-19-311-015

STATE OF NEVADA)
COUNTY OF CLARK) ss.

CHRISTIE-ANN VERNON, being first duly sworn, deposes and says:


Affiant is a citizen of the United States of America, and is, and at the time of the mailing herein referred to, was of legal age, and not a party to the foreclosure proceedings referred to in a certain NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded in the Office of the County Recorder of Clark County, Nevada, on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Notice"). Affiant deposited in the United States Mail, Certified Mail, Return Receipt Requested, and with postage prepaid, two (2) envelopes at the cost of \$5.75 per envelope for a total of \$11.50, and Affiant also deposited in the United States Mail, first-class postage prepaid, two (2) envelope at the cost of \$0.45, per envelope for a total of \$0.90, with each envelope containing a copy of the Notice with such recordation information as set forth above, addressed to:

Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147

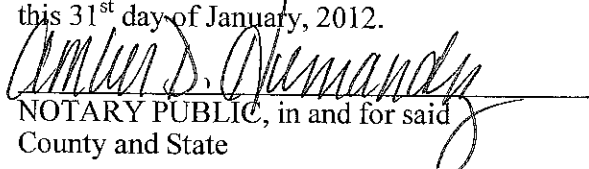
Monique Guillory
7605 Cruz Bay Court
Las Vegas, Nevada 89128-7283

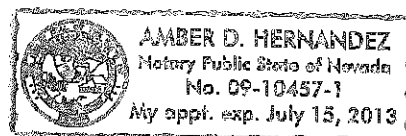
FURTHER AFFIANT SAYETH NAUGHT

DATED this 31st day of January, 2012.


CHRISTIE-ANN VERNON, an employee of Leach Johnson
Song & Gruchow

SUBSCRIBED and SWORN to before me
this 31st day of January, 2012.


NOTARY PUBLIC, in and for said
County and State



AA001750



LEACH JOHNSON
SONG & GRUCHOW

Certified Article Number

7196 9008 9111 0387 4910

Kirby C. Gruchow, Jr., Esq.

SENDERS RECORD

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4910 AND U.S. MAIL**

Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4927 AND U.S. MAIL**

Monique Guillory
7605 Cruz Bay Court
Las Vegas, Nevada 89128-7283

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

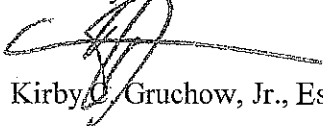
This office serves as legal counsel for Naples Community Homeowners Association (the "Association"). Enclosed you will find a copy of a NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded by the Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default").

If full payment on your Association account is not received within ninety (90) days of the date of this Default, then the Association may notice the sale of your Property and proceed with sale of your Property pursuant to Nevada Revised Statutes Chapter 116.

Please contact either me or my assistant, Christie Vernon, at (702) 538-9074 for the payoff amount necessary to cure this Default, which payoff amount will need to be in the form of a **Money Order or Cashier's Check** made payable to "Leach Johnson Song and Gruchow". The Association wishes to resolve this matter amicably. However, the Association must receive the assessments and related charges in order to properly administer and operate the Association.

Your time and attention to this matter are very much appreciated. Should you have any questions or concerns, please do not hesitate to contact either me or my assistant, Christie Vernon.

Sincerely,



Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

AA001751

Inst #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that Naples Community Homeowners Association is the lienholder and beneficiary under a Notice of Delinquent Assessment Lien, executed by Kirby C. Gruchow, Jr., Esq., as Authorized Agent for Naples Community Homeowners Association, to secure certain obligations of Monique Guillory, record owner of the Property, in favor of Naples Community Homeowners Association, and recorded on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904, of the Official Records in the Office of the Recorder of Clark County, Nevada, describing land therein as:

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

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

AA001752

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

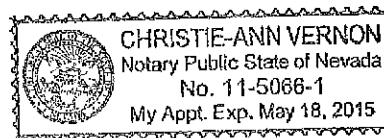
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

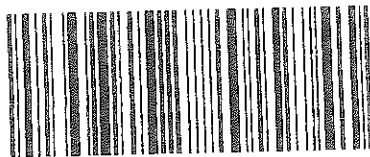
Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



AA001753

CERTIFIED MAIL™



7196 9008 9111 0387 4910

RETURN RECEIPT REQUESTED

Monique Guillory
4641 Viareggio Court
Las Vegas, NV 89147

X 891 NFE 1 C100 00 02/03/12
FORWARD TIME EXP RTN TO SEND
GUILLORY MONIQUE
7805 CRUZ BAY CT
LAS VEGAS NV 89120-7288

RETURN TO SENDER

8914001227
8914787208 0085



AA001754

Naples/Guillory0187

ruchow, Jr., Esq.
ison Song & Gruchow
Russell Road

, NV 89148

Monique Guillory
4641 Viareggio Court
Las Vegas, NV 89147

X 891 N7E 1 C10C 00 02/03/12
FORWARD TIME EXP RTN TO SEND
GUILLORY MONIQUE
7803 CRUZ BAY CT
LAS VEGAS NV 89129-7283

RETURN TO SENDER

89148@1227
89147-7283

Monique Guillory

AA001755

Naples/Guillory0188

Kirby C. Gruchow, Jr., Esq.

SENDERS RECORD

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4910 AND U.S. MAIL**

Monique Guillory
4641 Viareggio Court
Las Vegas, Nevada 89147

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4927 AND U.S. MAIL**

Monique Guillory
7605 Cruz Bay Court
Las Vegas, Nevada 89128-7283

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

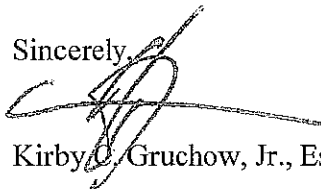
This office serves as legal counsel for Naples Community Homeowners Association (the "Association"). Enclosed you will find a copy of a NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded by the Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default").

If full payment on your Association account is not received within ninety (90) days of the date of this Default, then the Association may notice the sale of your Property and proceed with sale of your Property pursuant to Nevada Revised Statutes Chapter 116.

Please contact either me or my assistant, Christie Vernon, at (702) 538-9074 for the payoff amount necessary to cure this Default, which payoff amount will need to be in the form of a **Money Order or Cashier's Check** made payable to "Leach Johnson Song and Gruchow". The Association wishes to resolve this matter amicably. However, the Association must receive the assessments and related charges in order to properly administer and operate the Association.

Your time and attention to this matter are very much appreciated. Should you have any questions or concerns, please do not hesitate to contact either me or my assistant, Christie Vernon.

Sincerely,



Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

AA001756

Inet #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that Naples Community Homeowners Association is the lienholder and beneficiary under a Notice of Delinquent Assessment Lien, executed by Kirby C. Gruchow, Jr., Esq., as Authorized Agent for Naples Community Homeowners Association, to secure certain obligations of Monique Guillory, record owner of the Property, in favor of Naples Community Homeowners Association, and recorded on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904, of the Official Records in the Office of the Recorder of Clark County, Nevada, describing land therein as:

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

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

AA001757

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By KIRBY C. GRUCHOW, JR., ESQ., as Authorized Agent for Naples Community Homeowners Association

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

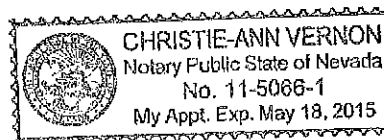
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

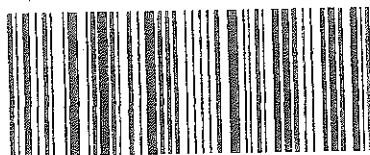
Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



AA001758

CERTIFIED MAIL™



7276 9008 9111 0387 4927

RETURN RECEIPT REQUESTED



Monique Guillory
7605 Cruz Bay Cou
Las Vegas, NV 891

NIXIE

891 SE 1

00 02/23/12

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 89148122780

*0679-12360-31-40



891481227
801227223

AA001759

Naples/Guillory0192

**AFFIDAVIT OF MAILING NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY
TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN**

DATE: January 31, 2012

PROPERTY ADDRESS: 4641 Viareggio Court, Las Vegas, Nevada 89031
APN: 163-19-311-015

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

CHRISTIE-ANN VERNON, being first duly sworn, deposes and says:

Affiant is a citizen of the United States of America, and is, and at the time of the mailing herein referred to, was of legal age, and not a party to the foreclosure proceedings referred to in a certain NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded in the Office of the County Recorder of Clark County, Nevada, on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Notice"). Affiant deposited in the United States Mail, Certified Mail, Return Receipt Requested, and with postage prepaid, four (4) envelopes at the cost of \$5.75 per envelope for a total of \$23.00, and Affiant also deposited in the United States Mail, first-class postage prepaid, four (4) envelopes at the cost of \$0.45, per envelope for a total of \$1.80, with each envelope containing a copy of the Notice with such recordation information as set forth above, addressed to:

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, Michigan 48501-2026

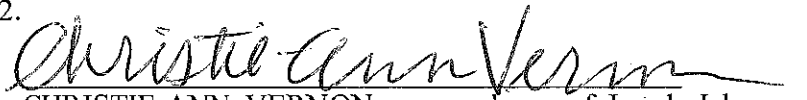
Mortgage Electronic Registration Systems, Inc.
1901 East Voorhees Street, Suite C
Danville, Illinois 61834

Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, Arizona 85711

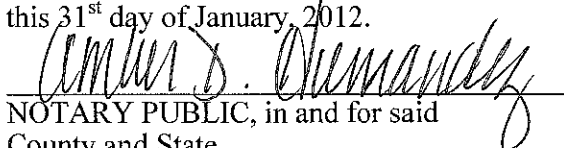
Mortgage Electronic Registration Systems, Inc.
c/o Clark County
Po Box 551220
Las Vegas, Nevada 89155

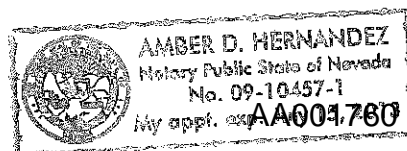
FURTHER AFFIANT SAYETH NAUGHT

DATED this 31st day of January, 2012.


CHRISTIE-ANN VERNON, an employee of Leach Johnson
Song & Gruchow

SUBSCRIBED and SWORN to before me
this 31st day of January, 2012.


NOTARY PUBLIC, in and for said
County and State





LEACH JOHNSON

Certified Article Number

7196 9008 9111 0387 4934

SENDERS RECORD

Kirby C. Gruchow, Jr., Esq.

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4934 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, Michigan 48501-2026

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4958 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, Arizona 85711

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4941 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
1901 East Voorhees Street, Suite C
Danville, Illinois 61834

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4965 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o Clark County
Po Box 551220
Las Vegas, Nevada 89155

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

A NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN was recorded by Naples Community Homeowners Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default"). An examination of title to said property shows you may have an interest in a Trustee's Sale Proceedings. Accordingly, a copy of the Default is provided to you herewith pursuant to NRS 116.31163.

Sincerely,

Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

AA001761

Inst #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

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Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

AA001762

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

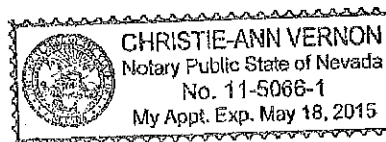
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



AA001763

2. Article Number



7196 9008 9111 0367 4934

3. Service Type **CERTIFIED MAIL™**4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Mortgage Electronic Registration Systems,
Inc.
P.O. Box 2026
Flint, MI 48501-2026

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

Linda Wilson

☐ Agent
☐ AddressD. Is delivery address different from item 1?
If YES, enter delivery address below:☐ Yes
☐ NoReference Information

Naples/Guillory

Christie Vernon

PS Form 3811, January 2005

Domestic Return Receipt

AA001764

Naples/Guillory0197



LEACH JOHNSON
SONG & GRUCHOW

Certified Article Number

7196 9008 9111 0387 4941

Kirby C. Gruchow, Jr., Esq.

SENDERS RECORD

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4934 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, Michigan 48501-2026

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4958 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, Arizona 85711

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4941 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
1901 East Voorhees Street, Suite C
Danville, Illinois 61834

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4965 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o Clark County
Po Box 551220
Las Vegas, Nevada 89155

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

A NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN was recorded by Naples Community Homeowners Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default"). An examination of title to said property shows you may have an interest in a Trustee's Sale Proceedings. Accordingly, a copy of the Default is provided to you herewith pursuant to NRS 116.31163.

Sincerely,

Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

AA001765

Inst #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

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Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

AA001766

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

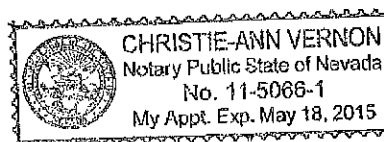
KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon

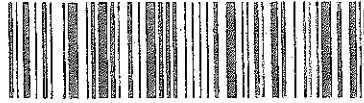
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



AA001767

2. Article Number



7196 9008 9111 0387 4941

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Mortgage Electronic Registration Systems,
Inc.
1901 East Voorhees Street, Suite C
Danville, IL 61834

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

Parul J Ray
X ☐ Agent
☐ Address

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

Reference Information

Naples/Guillory

Christie Vernon

PS Form 3811, January 2005

Domestic Return Receipt

AA001768

Naples/Guillory0201



LEACH JOHNSON

Certified Article Number

UCHOW

7196 9008 9111 0387 4958

SENDERS RECORD

Kirby C. Gruchow, Jr., Esq.

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4934 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, Michigan 48501-2026

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4958 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, Arizona 85711

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4941 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
1901 East Voorhees Street, Suite C
Danville, Illinois 61834

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4965 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o Clark County
Po Box 551220
Las Vegas, Nevada 89155

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

A NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN was recorded by Naples Community Homeowners Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default"). An examination of title to said property shows you may have an interest in a Trustee's Sale Proceedings. Accordingly, a copy of the Default is provided to you herewith pursuant to NRS 116.31163.

Sincerely,

Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

AA001769

Inst #: 201201240000764
Fees: \$18.00
N/C Fee: \$0.00
01/24/2012 09:27:49 AM
Receipt #: 1044083
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: LEX Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that Naples Community Homeowners Association is the lienholder and beneficiary under a Notice of Delinquent Assessment Lien, executed by Kirby C. Gruchow, Jr., Esq., as Authorized Agent for Naples Community Homeowners Association, to secure certain obligations of Monique Guillory, record owner of the Property, in favor of Naples Community Homeowners Association, and recorded on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904, of the Official Records in the Office of the Recorder of Clark County, Nevada, describing land therein as:

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

Lot Seventy (70) in Block One (I) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

AA001770

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

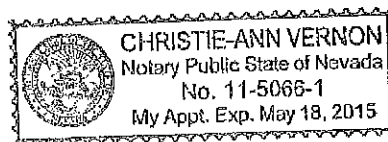
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

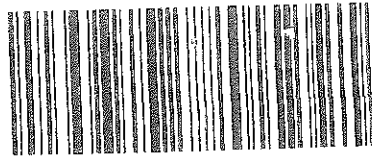
Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



AA001771

CERTIFIED MAIL™



7196 9008 9111 0387 4958

RETURN RECEIPT REQUESTED

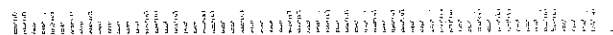


Mortgage Electronic Registration Systems,
Inc.

c/o First Magnus Financial
603 North Wilmot Road
Tucson, AZ 85711

NIXIE 850 DE 1 00 02/03/12
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
SC: 89148122780 *1314-05773-31-47

057113230880027



AA001772

ruchow, Jr., Esq.
ison Song & Gruchow
Russell Road

NV 89148

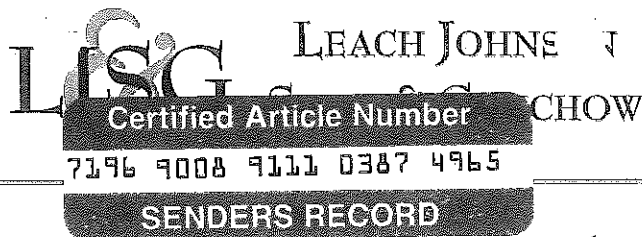
|||||
Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, AZ 85711

NIXIE 050 SE 1 GC 02/03/12
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
BC: 89148122780 *0679-12023-31-40

85711+293148@1227

|||||

AA001773



Kirby C. Gruchow, Jr., Esq.

kgruchow@leachjohnson.com

January 31, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4934 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, Michigan 48501-2026

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4958 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o First Magnus Financial Corporation
603 North Wilmot Road
Tucson, Arizona 85711

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4941 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
1901 East Voorhees Street, Suite C
Danville, Illinois 61834

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4965 AND U.S. MAIL**

Mortgage Electronic Registration Systems, Inc.
c/o Clark County
Po Box 551220
Las Vegas, Nevada 89155

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015**

To Whom It May Concern:

A NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN was recorded by Naples Community Homeowners Association with the Clark County Recorder's Office on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Default"). An examination of title to said property shows you may have an interest in a Trustee's Sale Proceedings. Accordingly, a copy of the Default is provided to you herewith pursuant to NRS 116.31163.

Sincerely,

Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

AA001774

Inst #: 201201240000764

Fees: \$18.00

N/C Fee: \$0.00

01/24/2012 09:27:49 AM

Receipt #: 1044083

Requestor:

LEACH JOHNSON SONG & GRUCHOW

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

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

Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of \$2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

AA001775

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

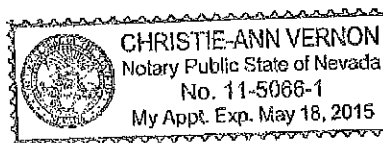
That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



AA001776

2. Article Number



7196 9006 9111 0387 4965

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Mortgage Electronic Registration Systems,
Inc.
c/o Clark County
P.O. Box 551220
Las Vegas, NV 89155

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

CLARK COUNTY MAIL SERVICE

C. Signature **309 SOUTH 3RD**

X LAS VEGAS, NV 89155 ☐ Agent ☒ Address:

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

Reference Information

Naples/Guillory

Christie Vernon

PS Form 3811, January 2005

Domestic Return Receipt

AA001777

Naples/Guillory0210

**AFFIDAVIT OF MAILING NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY
TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN**

DATE: January 31, 2012
PROPERTY ADDRESS: 4641 Viareggio Court, Las Vegas, Nevada 89031
APN: 163-19-311-015

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

CHRISTIE-ANN VERNON, being first duly sworn, deposes and says:

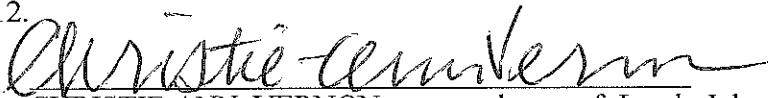
Affiant is a citizen of the United States of America, and is, and at the time of the mailing herein referred to, was of legal age, and not a party to the foreclosure proceedings referred to in a certain NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN, which was recorded in the Office of the County Recorder of Clark County, Nevada, on January 24, 2012, in Book No. 20120124, as Instrument No. 0000764 (the "Notice"). Affiant deposited in the United States Mail, Certified Mail, Return Receipt Requested, and with postage prepaid, two (2) envelopes at the cost of \$5.75 per envelope for a total of \$11.50, and Affiant also deposited in the United States Mail, first-class postage prepaid, two (4) envelopes at the cost of \$0.45, per envelope for a total of \$0.90, with each envelope containing a copy of the Notice with such recordation information as set forth above, addressed to:

Aurora Loan Services LLC
2617 College Park
Scottsbluff, Nebraska 69361

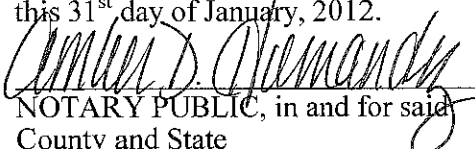
Aurora Loan Services LLC
c/o Assignment Prep
P.O. Box 1706
Scottsbluff, Nebraska 69363-1706

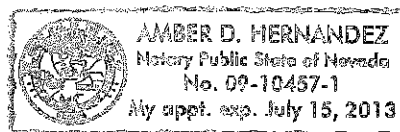
FURTHER AFFIANT SAYETH NAUGHT

DATED this 31st day of January, 2012.


CHRISTIE-ANN VERNON, an employee of Leach Johnson
Song & Gruchow

SUBSCRIBED and SWORN to before me
this 31st day of January, 2012.


NOTARY PUBLIC, in and for said
County and State



AA001778



LEACH JOHNSON
SONG & GRUCHOW

Certified Article Number

7196 9008 9111 0387 4972

Kirby C. Gruchow, Jr., Esq.

SENDERS RECORD

kgruchow@leachjohnson.com

January 31, 2012

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4972 AND U.S. MAIL

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4835 AND U.S. MAIL

Aurora Loan Services LLC
2617 College Park
Scottsbluff, Nebraska 69361

Aurora Loan Services LLC
c/o Assignment Prep
P.O. Box 1706
Scottsbluff, Nebraska 69363-1706

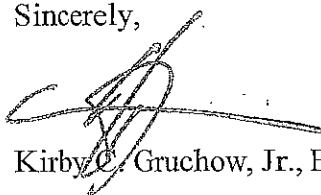
**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

Re: 4641 Viareggio Court, Las Vegas, Nevada 89147
APN: 163-19-311-015

To Whom It May Concern:

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Sincerely,



Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

AA001779

Inst #: 201201240000764
Fees: \$18.00
N/C Fee: \$0.00
01/24/2012 09:27:49 AM
Receipt #: 1044083
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: LEX Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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AA001780

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By

KIRBY C. GRUCHOW, JR., ESQ., as Authorized
Agent for Naples Community Homeowners
Association

STATE OF NEVADA)
)
COUNTY OF CLARK)

ss.

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

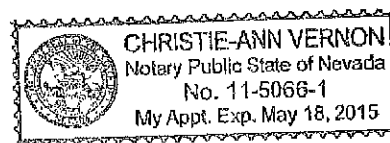
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KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State

Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



AA001781

2. Article Number



7196 9006 9111 0387 4972

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Aurora Loan Services LLC
2617 College Park
Scottsbluff, NE 69361

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

FEB 07 2012

C. Signature

X

Frank You

☐ Agent

☐ Address

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes

☐ No

Reference Information

Naples/Guillory

Christie Vernon

PS Form 3811, January 2005

Domestic Return Receipt

AA001782

Naples/Guillory0215



LEACH JOHNSON
SONG & GRUCHOW

Certified Article Number

7196 9008 9111 0387 4835

SENDER'S RECORD

Kirby C. Gruchow, Jr., Esq.

kgruchow@leachjohnson.com

January 31, 2012

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4972 AND U.S. MAIL

Aurora Loan Services LLC
2617 College Park
Scottsbluff, Nebraska 69361

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED – Article No.: 7196 9008 9111
0387 4835 AND U.S. MAIL

Aurora Loan Services LLC
c/o Assignment Prep
P.O. Box 1706
Scottsbluff, Nebraska 69363-1706

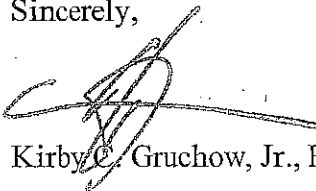
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Sincerely,



Kirby C. Gruchow, Jr., Esq.

KCG/cv
Encl.

AA001783

Inst #: 201201240000764
Fees: \$18.00
N/C Fee: \$0.00
01/24/2012 09:27:49 AM
Receipt #: 1044083
Requestor:
LEACH JOHNSON SONG & GRUCHOW
Recorded By: LEX Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

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AA001784

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By KIRBY C. GRUCHOW, JR., ESQ., as Authorized Agent for Naples Community Homeowners Association

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

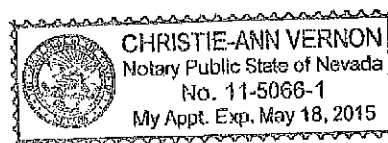
KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me this 23rd day of January, 2012.

Christie Ann Vernon
NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015



AA001785

2. Article Number



7196 9008 9111 0387 4835

3. Service Type **CERTIFIED MAIL™**4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Aurora Loan Services LLC
c/o Assignment Prep
P.O. Box 1706
Scottsbluff, NE 69361-1706

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

☐ Agent☐ AddressD. Is delivery address different from item 1?
If YES, enter delivery address below:☐ Yes☐ NoReference Information

Naples/Guillory

Christie Vernon

PS Form 3811, January 2005

Domestic Return Receipt

AA001786

Naples/Guillory0219

EXHIBIT 7

EXHIBIT 7

AA001787

3

A P N: 163-19-311-015

Inst #: 201207300001448

Fees: \$19.00

N/C Fee: \$0.00

07/30/2012 01:36:24 PM

Receipt #: 1251958

Requestor:

NATIONAL SEARCH SOLUTIONS

Recorded By: SAO Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

NOTICE OF FORECLOSURE SALE
UNDER NOTICE OF DELINQUENT
ASSESSMENT LIEN

Recording Requested by:

Pro Forma Lien & Foreclosure Services

Return to:

Pro Forma Lien & Foreclosure Services

P.O. Box 96807

Las Vegas, NV 89193

AA001788

NOTICE OF FORECLOSURE SALE
UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN

TS# 1079.005KCG

APN: 163-19-311-015

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL PRO FORMA LIEN & FORECLOSURE SERVICES AT 702-736-4237 OR KIRBY C. GRUCHOW, JR., ESQ., THE ATTORNEY FOR THE ASSOCIATION, AT 702-538-9074. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT LIEN RECORDED AUGUST 18, 2011 IN BOOK NO. 20110818, INSTRUMENT NO. 02904 OF THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN that real property situated in Clark County, Nevada, known as 4641 Viareggio Ct., Las Vegas, Nevada, and described as: Lot 70 in Block 1 of Conquistador/Tompkins - Unit 2, as shown in Plat Book 93, Page 1 of the records of the County Recorder of Clark County, Nevada, **WILL BE SOLD** at public auction at the front entrance to the Nevada Legal News, 930 South Fourth Street, Las Vegas, Nevada, 89101 on **October 18, 2012** at 10:00 a.m. to the highest bidder for cash or cashier's checks drawn on a savings association, or savings bank authorized to do business in Nevada, in the amount of \$3,647.16 as of June 21, 2012, including the total amount of unpaid balance and reasonably estimated costs, expenses and advances including the initial publication of this notice, plus any subsequent Association Dues, fees charges, expenses, and advances, if any, of the Homeowners Association and its Agent, under the terms of the Assessment Lien. ****The amount due as stated hereinabove does not include unpaid violations totaling \$350 as of June 1, 2012, which continue to accrue, and will be collected upon sale from any third-party bidder. The homeowner is entitled to cure the account without paying the violations, although the violations will continue to be assessed, and will remain as a debt against the property.***

AA001789

The sale will be made without covenant or warranty express or implied, regarding title, possession or encumbrance, against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded March 7, 2000, in Book 20000307 as Instrument No. 0911 Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions.

The Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012, in Book No. 20120124, Instrument No. 00764 in the Official Records of Clark County, Nevada. The purported owner(s): Monique Guillory

Dated: 4/24/12

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By 
KIRBY C. GRUCHOW, JR., ESQ., Authorized Agent

For payoff or redemption information call: 702-736-4237 Ref: Naples/Guillory
For sale information access www.priorityposting.com TS# 1079.005KCG

AA001790

EXHIBIT 8

EXHIBIT 8

AA001791

3

A P N: 163-19-311-015

Inst #: 201207300001448
Fees: \$19.00
N/C Fee: \$0.00
07/30/2012 01:36:24 PM
Receipt #: 1251958
Requestor:
NATIONAL SEARCH SOLUTIONS
Recorded By: SAO Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF FORECLOSURE SALE
UNDER NOTICE OF DELINQUENT
ASSESSMENT LIEN

Recording Requested by:

Pro Forma Lien & Foreclosure Services

Return to:

Pro Forma Lien & Foreclosure Services
P.O. Box 96807
Las Vegas, NV 89193

AA001792

NOTICE OF FORECLOSURE SALE
UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN

TS# 1079.005KCG

APN: 163-19-311-015

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL PRO FORMA LIEN & FORECLOSURE SERVICES AT 702-736-4237 OR KIRBY C. GRUCHOW, JR., ESQ., THE ATTORNEY FOR THE ASSOCIATION, AT 702-538-9074. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT LIEN RECORDED AUGUST 18, 2011 IN BOOK NO. 20110818, INSTRUMENT NO. 02904 OF THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

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AA001793

The sale will be made without covenant or warranty express or implied, regarding title, possession or encumbrance, against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded March 7, 2000, in Book 20000307 as Instrument No. 0911 Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions.

The Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012, in Book No. 20120124, Instrument No. 00764 in the Official Records of Clark County, Nevada. The purported owner(s): Monique Guillory

Dated: 6/29/12

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

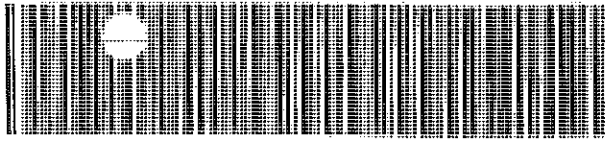
By 
KIRBY C. GRUCHOW, JR., ESQ., Authorized Agent

For payoff or redemption information call: 702-736-4237 Ref: Naples/Guillory
For sale information access www.priorityposting.com TS# 1079.005KCG

AA001794

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

PRO FORMA SERVICES
P.O. Box 96807
Las Vegas, NV 89193-6807



9171923920001000065713

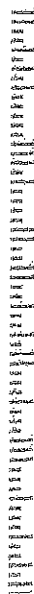
Monique Guillory
4641 Viareggio Ct.
Las Vegas, NV 89147

PRO FORMA SERVICES
P.O. Box 96807
Las Vegas, NV 89193-6807

Monique Guillory
4641 Viareggio Ct.
Las Vegas, NV 89147

ES14 78542846807

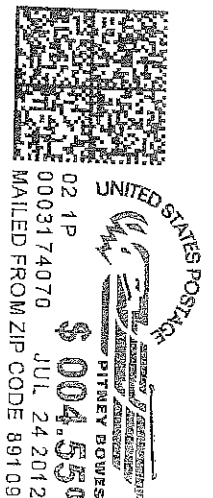
NIXIE
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
BC: 89193680707
0779-07448-24-45



9171923920001000065713



CERTIFIED MAIL™



AA001796

Naples/Guillory0143

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

✓
Monique Guillory
4641 Viareggio Ct.
Las Vegas, NV 89147

|
Monique Guillory
7605 Cruz Bay Ct.
Las Vegas, NV 89128

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

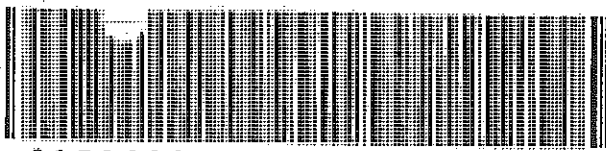
Public records disclose that you have an interest in the property being foreclosed. A copy of the NOTICE OF FORECLOSURE SALE UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN is enclosed for your information.

NOTICE REQUIRED BY 15 U.S.C. Section 1601, As Amended: This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to recover debts from anyone who has discharged the debt under the Bankruptcy laws of the United States.

If this sale is postponed for any reason it is your responsibility to determine the actual sale date and time of any postponed sale, and you may do this by personally appearing at the time and place set for the original sale date or postponed sale date. You may also call our office to determine postponed dates; however, to be certain you should personally appear at each scheduled sale date.

AA001797

PRO FORMA SERVICES
P.O. Box 96807
Las Vegas, NV 89193-6807



9 1 7 1 9 2 3 9 2 0 0 1 0 0 0 6 5 7 2 0

Monique Guillory
7605 Cruz Bay Ct.
Las Vegas, NV 89128

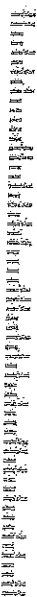
PRO FORMA SERVICES
P.O. Box 96807
Las Vegas, NV 89193-6807



9 1 7 1 9 2 3 9 2 0 0 1 0 0 0 6 5 7 2 0

CERTIFIED MAIL

89125189797



NIXIE
891 DE J SENDER
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
B.C. 89125189797
1314-01180-25-00

W 7/25/12
AA001798



02 1P
0003174070
MAILED FROM ZIP CODE 89109
\$004.550
JUL 24 2012

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

Monique Guillory
4641 Viareggio Ct.
Las Vegas, NV 89147

Monique Guillory
7605 Cruz Bay Ct.
Las Vegas, NV 89128

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

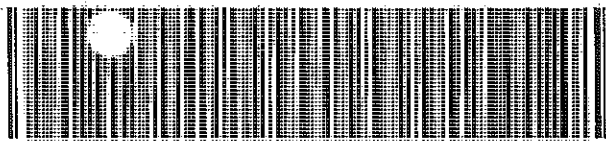
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AA001799

PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807



9 1 7 1 9 2 3 9 2 0 0 0 1 0 0 0 0 6 5 7 3 7

MERS
P.O. Box 2026
Flint, MI 48501

AA001800

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

✓ M.E.R.S.
P.O. Box 2026
Flint, MI 48501

M.E.R.S.
1901 E. Voorhees St., Suite C
Danville, IL 68134

M.E.R.S.
c/o Clark County
P.O. Box 551220
Las Vegas, Nv 89155

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

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AA001801



Date Produced: 07/30/2012

LAPPIN INC

The following is the delivery information for Certified Mail™ item number 7192 3920 0010 0006 5737. Our records indicate that this item was delivered on 07/27/2012 at 02:43 p.m. in FLINT, MI, 48502. The scanned image of the recipient information is provided below.

Signature of Recipient:

A scanned image of a signature, which appears to be "Richard Mullens", written in dark ink on a light background.

Address of Recipient:

A scanned image of a handwritten address, which appears to be "13200 2006 1 7000 100000".

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,

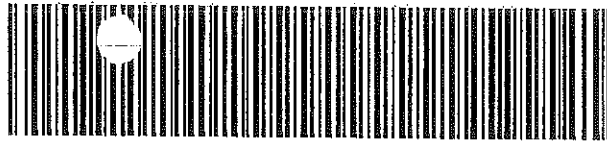
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 3116101 34354969

AA001802

PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807



9 1 7 1 9 2 3 9 2 0 0 0 1 0 0 0 6 5 7 4 4

MERS
1901 E. Voorhees St. Suite C
Danville, IL 61834

AA001803

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

M.E.R.S.
P.O. Box 2026
Flint, MI 48501

✓ M.E.R.S.
1901 E. Voorhees St., Suite C
Danville, IL 68134

M.E.R.S.
c/o Clark County
P.O. Box 551220
Las Vegas, Nv 89155

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
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INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

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AA001804



Date Produced: 07/30/2012

LAPPIN INC

The following is the delivery information for Certified Mail™ item number 7192 3920 0010 0006 5744. Our records indicate that this item was delivered on 07/27/2012 at 09:22 a.m. in DANVILLE, IL, 61834. The scanned image of the recipient information is provided below.

Signature of Recipient:

Delivery Section
re
d
Signature: *Pamela J. Ray*

Address of Recipient:

ry
1901-C E. Voorhees

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,

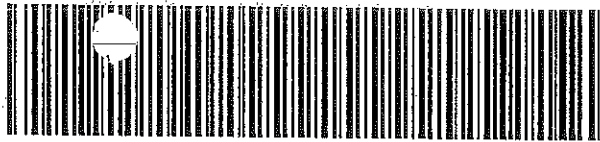
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 3116101 34354969

AA001805

PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807



9 1 7 1 9 2 3 9 2 0 0 0 1 0 0 0 6 5 7 5 1

MERS
c/o Clark County
P. O. Box 551220
Las Vegas, NV 89155

AA001806

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

M.E.R.S.
P.O. Box 2026
Flint, MI 48501

M.E.R.S.
1901 E. Voorhees St., Suite C
Danville, IL 68134

✓ M.E.R.S.
c/o Clark County
P.O. Box 551220
Las Vegas, Nv 89155

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY
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AA001807

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Track & Confirm

You entered: 917192392000100065751

Status: Delivered

Your item was delivered at 7:35 am on July 25, 2012 in LAS VEGAS, NV 89106.
Additional information for this item is stored in files offline.

You may request that the additional information be retrieved from the archives, and that we send you an e-mail when this retrieval is complete. Requests to retrieve additional information are generally processed momentarily.

I would like to receive notification on this request



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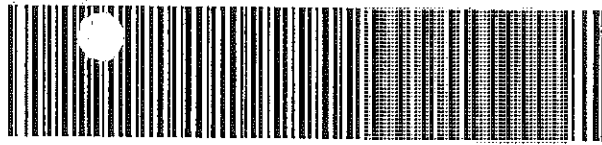
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AA001808

PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807



9 1 7 1 9 2 3 9 2 0 0 0 1 0 0 0 0 6 5 7 6 8

Aurora Loan Services LLC
2617 College Park
Scottsbluff, NE 69361

AA001809

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

Aurora Loan Services LLC
2617 College Park
Scottsbluff, NE 69361

Aurora Loan Services LLC
P.O. Box 1706
Scottsbluff, NE 69363

Original via certified mail
Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

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NOTICE REQUIRED BY 15 U.S.C. Section 1601, As Amended: This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to recover debts from anyone who has discharged the debt under the Bankruptcy laws of the United States.

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AA001810

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Track & Confirm

You entered: 9171923920001000065768

Status: Electronic Shipping Info Received

The U.S. Postal Service was electronically notified by the shipper on July 24, 2012 to expect your package for mailing. This does not indicate receipt by the USPS or the actual mailing date. Delivery status information will be provided if / when available. No further information is available for this item. Additional information for this item is stored in files offline.

You may request that the additional information be retrieved from the archives, and that we send you an e-mail when this retrieval is complete. Requests to retrieve additional information are generally processed momentarily.

I would like to receive notification on this request



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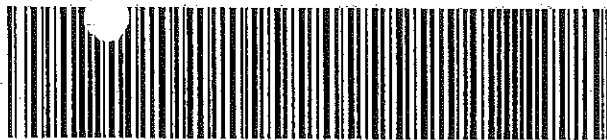
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AA001811

PRO FORMA SERVICES
P.O. Box 96807,
Las Vegas, NV 89193-6807



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Aurora Loan Services LLC
P. O. Box 1706
Scottsbluff, NE 69363

AA001812

PRO FORMA LIEN & FORECLOSURE SERVICES

State of Nevada Collection Agency License No CA10015

P.O. Box 96807, Las Vegas, NV 89193-6807

Tel: (702) 736-4237 • fax (702) 736-4239

July 24, 2012

Aurora Loan Services LLC
2617 College Park
Scottsbluff, NE 69361

Aurora Loan Services LLC
P.O. Box 1706
Scottsbluff, NE 69363

Original via certified mail

Copy via regular US mail

Property at: 4641 Viareggio Ct., Las Vegas, NV 89147
APN: 163-19-311-015

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

Public records disclose that you have an interest in the property being foreclosed. A copy of the NOTICE OF FORECLOSURE SALE UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN is enclosed for your information.

NOTICE REQUIRED BY 15 U.S.C. Section 1601, As Amended: This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to recover debts from anyone who has discharged the debt under the Bankruptcy laws of the United States.

If this sale is postponed for any reason it is your responsibility to determine the actual sale date and time of any postponed sale, and you may do this by personally appearing at the time and place set for the original sale date or postponed sale date. You may also call our office to determine postponed dates; however, to be certain you should personally appear at each scheduled sale date.

AA001813

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You may request that the additional information be retrieved from the archives, and that we send you an e-mail when this retrieval is complete. Requests to retrieve additional information are generally processed momentarily.

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AA001814

NOTICE OF FORECLOSURE SALE
UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN

TS# 1079.005KCG

APN: 163-19-311-015

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL PRO FORMA LIEN & FORECLOSURE SERVICES AT 702-736-4237 OR KIRBY C. GRUCHOW, JR., ESQ., THE ATTORNEY FOR THE ASSOCIATION, AT 702-538-9074. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT LIEN RECORDED AUGUST 18, 2011 IN BOOK NO. 20110818, INSTRUMENT NO. 02904 OF THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN that real property situated in Clark County, Nevada, known as 4641 Viareggio Ct., Las Vegas, Nevada, and described as: Lot 70 in Block 1 of Conquistador/Tompkins – Unit 2, as shown in Plat Book 93, Page 1 of the records of the County Recorder of Clark County, Nevada, **WILL BE SOLD** at public auction at the front entrance to the Nevada Legal News, 930 South Fourth Street, Las Vegas, Nevada, 89101 on **October 18, 2012** at 10:00 a.m. to the highest bidder for cash or cashier's checks drawn on a savings association, or savings bank authorized to do business in Nevada, in the amount of \$3,647.16 as of June 21, 2012, including the total amount of unpaid balance and reasonably estimated costs, expenses and advances including the initial publication of this notice, **plus** any subsequent Association Dues, fees charges, expenses, and advances, if any, of the Homeowners Association and its Agent, under the terms of the Assessment Lien. **The amount due as stated hereinabove does not include unpaid violations totaling \$350 as of June 1, 2012, which continue to accrue, and will be collected upon sale from any third-party bidder. The homeowner is entitled to cure the account without paying the violations, although the violations will continue to be assessed, and will remain as a debt against the property.*

AA001815

The sale will be made without covenant or warranty express or implied, regarding title, possession or encumbrance, against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded March 7, 2000, in Book 20000307 as Instrument No. 0911 Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions.

The Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012, in Book No. 20120124, Instrument No. 00764 in the Official Records of Clark County, Nevada. The purported owner(s): Monique Guillory

Dated: 4/29/12

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By 

KIRBY C. GRUCHOW, JR., ESQ., Authorized Agent

For payoff or redemption information call: 702-736-4237 Ref: Naples/Guillory
For sale information access www.priorityposting.com TS# 1079.005KCG

AA001816

EXHIBIT 9

EXHIBIT 9

AA001817

Priority Posting & Publishing
Order # P984264
TS # 1079.005KCG

AFFIDAVIT OF SERVICE

State of Nevada)
County of Clark)

I, Ryan Kronbetter, state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

I served **Monique Guillory** with a copy of the Notice of Sale, on 9/13/2012 at approximately 4:33 PM, by:

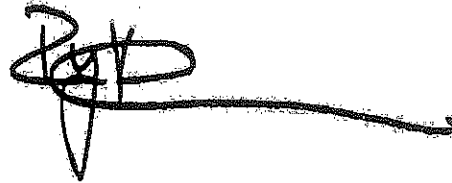
Attempting to personally serve the person(s) residing at the property, however no one answered the door. I thereafter posted a copy of the Notice of Sale on the property in the manner prescribed pursuant to NRS 107.087, in a conspicuous place on the property, upon information and belief, at least 15 days before the date of sale, which is located at:

**4641 Viareggio Court
Las Vegas NV 89147**

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

Dated 9/13/2012

Nevada Legal Support Services LLC



Ryan Kronbetter, 2520342
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NLN ID# 412664 58
COUNTY OF SERVICE: CLARK
SERVER: Ryan Kronbetter

AA001818

Priority Posting & Publishing
Order # P984264
TS # 1079.005KCG

AFFIDAVIT OF POSTING NOTICE OF TRUSTEE'S SALE

State of Nevada)
County of Clark)

I, Jessica Pruett, state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

On 9/13/2012, I posted a copy of the Notice of Trustee's Sale pursuant to NRS 107.080, concerning Trustee Sale 1079.005KCG, in a public place in the county where the property is situated, to wit:

NEVADA LEGAL NEWS, 930 S FOURTH ST, LAS VEGAS
CLARK COUNTY COURTHOUSE, 200 LEWIS ST, LAS VEGAS
CLARK COUNTY BUILDING, 309 S THIRD ST, LAS VEGAS

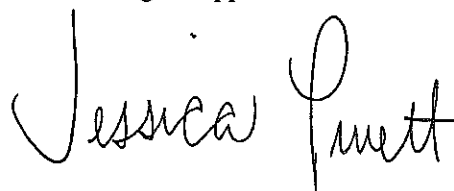
The purported owner and address of the property contained in the Notice of Trustee's Sale being:

Monique Guillory, 4641 Viareggio Court, Las Vegas NV 89147.

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

Dated 9/13/2012

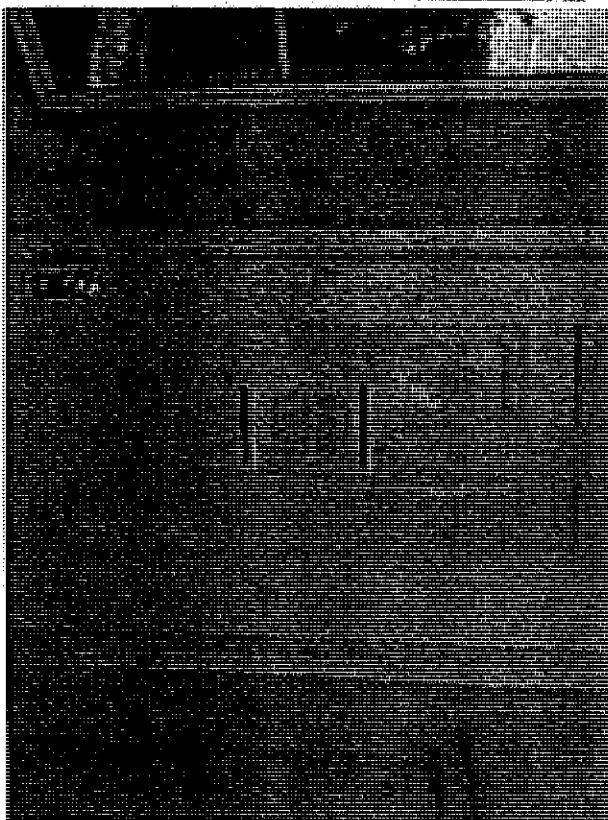
Nevada Legal Support Services LLC



Jessica Pruett
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NLN ID# 412664 58
COUNTY OF SERVICE: CLARK
SERVER: Jessica Pruett
PRO FORMA

AA001819



Photos taken by: Ryan Kronbetter County: CLARK 36
 Photo Date: 9/13/2012 Time: 4:33 PM NLN ID# 412664 Page 1 of 1
 Primary Borrower: Monique Guillory
 Property Address: 4641 Viareggio Court, Las Vegas NV 89147

Vegas Legal Support Services, Inc.
 930 S. 4th Street, Suite 200
 Las Vegas, NV 89101
 (702) 382-2747 Lic. 988 & 988A

Priority Posting & Publishing Order # P984264 TS#1079.005KCG

EXHIBIT 10

EXHIBIT 10

AA001821

Affidavit of Publication

STATE OF NEVADA }
COUNTY OF CLARK } SS


I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

Sep 20, 2012
Sep 27, 2012
Oct 04, 2012

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Oct 04, 2012



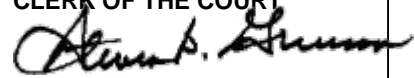
Rosalie Qualls

NOTICE OF FORECLOSURE SALE UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN TS# 1079.005KCG APN: 163-19-311-015 WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL PRO FORMA LIEN & FORECLOSURE SERVICES AT 702-736-4237 OR KIRBY C. GRUCHOW, JR., ESQ., THE ATTORNEY FOR THE ASSOCIATION, AT 702-538-9074. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY. YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT LIEN RECORDED AUGUST 18, 2011 IN BOOK NO. 20110818, INSTRUMENT NO. 02904 OF THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAYBE SOLD AT PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER. NOTICE IS HEREBY GIVEN that real property situated in Clark County, Nevada, known as 4641 Viareggio Ct., Las Vegas, Nevada, and described as: Lot 70 in Block 1 of Conquistador/Tompkins - Unit 2, as shown in Plat Book 93, Page 1 of the records of the County Recorder of Clark County, Nevada, WILL BE SOLD at public auction at the front entrance to The Nevada Legal News located at 930 So. Fourth St., Las Vegas, NV 89101 on 10/18/2012 at 10:00 a.m. to the highest bidder for cash or cashier's checks drawn on a savings association or savings bank authorized to do business in Nevada, in the amount of \$3,647.16 as of June 21, 2012, including the total amount of unpaid balance and reasonably estimated costs, expenses and advances at the time of initial publication of this notice, plus any subsequent quarterly Association Dues, fees charges, expenses, and advances, if any, of the Homeowners Association and its Agent, under the terms of the Assessment Lien. *The amount due as stated hereinabove does not include unpaid violations totaling \$350 as of June 1, 2012, which continue to accrue, and will be collected upon sale from any third-party bidder. The homeowner is entitled to cure the account without paying the violations, although the violations will continue to be assessed, and will remain as a debt against the property. The sale will be made without covenant or warranty express or implied, regarding title, possession or encumbrance, against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded March 7, 2000, in Book 20000307 as Instrument No. 0911 Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions. The Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on 1/24/2012, in Book No. 20120124, Instrument No. 00764 in the Official Records of Clark County, Nevada. The purported owner(s): Monique Guillory. Dated: 6/29/2012 NAPLES COMMUNITY HOMEOWNERS ASSOCIATION By KIRBY C. GRUCHOW, JR., ESQ., Authorized Agent For payoff or redemption information call: 702-736-4237 Ref: Naples/Guillory For information access www.priorityposting.com TS# 1079.005KCG P984264 9/20, 9/27, 10/04/2012

04106278 00333943

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AA001822



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Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
CUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**NATIONSTAR MORTGAGE LLC'S
REPLY SUPPORTING ITS SUMMARY
JUDGMENT MOTION**

Hearing Date: December 15, 2020

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

AA001823

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///

INTRODUCTION

The Nevada Supreme Court and the Ninth Circuit have held the Federal Foreclosure Bar preempts Nevada's State Foreclosure Statute, NRS 116.3116, and protects any deed of trust owned by Freddie Mac from extinguishment through an HOA foreclosure sale.¹ This case is controlled by that precedent: unrefuted and reliable evidence proves Freddie Mac was the owner of the Loan at the time of the HOA Sale while its contractually authorized servicer—Nationstar—appeared as the recorded beneficiary of the Deed of Trust. *See, e.g., Daisy Trust v. Wells Fargo, N.A.*, 445 P.3d 846 (Nev. 2019); *Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417 P.3d 363 (Nev. 2018); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017). Consequently, the Federal Foreclosure Bar protected Freddie Mac's Deed of Trust and precluded Saticoy Bay from acquiring title to the Property free and clear of Freddie Mac's Deed of Trust.

Binding Nevada Supreme Court precedent forecloses each argument Saticoy Bay raises in its opposition brief. *First*, Saticoy Bay incorrectly contends Freddie Mac lacked an interest in the Property because its name did not appear in a recorded document. *Second*, Saticoy Bay wrongly claims the evidence is insufficient to prove Freddie Mac's interest in the Property for purposes of granting summary judgment. *Third*, Saticoy Bay improperly claims the Statute of Frauds invalidated Freddie Mac's acquisition of the loan, even though Saticoy Bay was not a party to that transaction and the transaction closed long ago without objection. *Fourth*, Saticoy Bay erroneously asserts it is a bona fide purchaser, despite both notice of Freddie Mac's Deed of Trust and the preemptive effect of federal law. *Finally*, Saticoy Bay ignores controlling case law to argue that FHFA's consent to the extinguishment of Freddie Mac's interest should be implied.

Accordingly, Nationstar respectfully asks the Court to follow binding Nevada Supreme Court authority, find the HOA Sale did not extinguish Freddie Mac's Deed of Trust, and grant Nationstar's summary judgment motion.

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AA001824

¹ Terms not defined herein shall take on the definition in Nationstar's summary judgment motion.

ARGUMENT**I. The Federal Foreclosure Bar Prevented the HOA Sale From Extinguishing Freddie Mac's Deed of Trust****A. *Daisy Trust* and *Montierth* Confirm that Freddie Mac Had a Property Interest at the Time of the HOA Sale**

Saticoy Bay argues Freddie Mac lacked a property interest recognized by Nevada law because Freddie Mac's name never appeared in a recorded document. *See, e.g.,* Opp. at 4-6. But Saticoy Bay misunderstands controlling law: Freddie Mac has a property interest as the *owner* of the note and Deed of Trust, even while its contractually authorized servicer appears as record beneficiary of that Deed of Trust. *See Daisy Trust*, 445 P.3d at 849-50; *In re Montierth*, 354 P.3d 648 (Nev. 2015) (en banc); Restatement (Third) of Property: Mortgages § 5.4 (1997) ("Restatement").

Montierth established that where a security interest is "attached and . . . perfected"—i.e., properly recorded—the fact that a deed of trust names a party besides the loan owner does not necessarily "alter the interests of the parties" or "render[] either instrument void." 354 P.3d at 651 (reaffirming Nevada's adoption of the entirety of the approach to the ownership and transfer of mortgages taken by the Restatement). In order for the note owner to remain a "secured creditor" under those circumstances, there must be either "a principal agent relationship between the note holder and the mortgage holder, or the mortgage holder 'otherwise has authority to foreclose in the [note holder]'s behalf.'" *Id.* (citing Restatement § 5.4 cmts. c, e).

In *Daisy Trust*, the Nevada Supreme Court confirmed that *Montierth*'s holding applies in a case involving materially the same facts and identical legal issues as here, rejecting any claim that an Enterprise must appear in the land records for it to have a property interest under Nevada law.² *Daisy Trust*, 445 P.3d at 849-50. Daisy Trust made many of the flawed arguments Saticoy Bay now

² For this reason, the Nevada Supreme Court found it unnecessary to address an issue that Saticoy Bay raises here—whether the Federal Foreclosure Bar preempts Nevada's recording statutes, Opp. at 16-18. *Daisy Trust*, 445 P.3d at 849. This sensible conclusion also reflects that the Enterprises and servicers have never suggested that the Federal Foreclosure Bar preempts Nevada's recording statutes. Rather, the Enterprises and servicers have always complied with Nevada's recording statutes as interpreted by countless Nevada Supreme Court opinions. As *Daisy Trust* and other decisions demonstrate, it is possible under these statutes for a loan owner to have a contractually authorized representative appear as record beneficiary while the loan owner retains a secured property interest.

1 presents to this Court. But the Nevada Supreme Court examined evidence materially identical to
2 that presented here and entered summary judgment in favor of the Enterprise’s servicer, rejecting *all*
3 of the arguments Saticoy Bay repeats here about Freddie Mac’s property interest. Moreover, on
4 September 12, 2019, the Nevada Supreme Court issued 22 unpublished decisions in favor of FHFA,
5 the Enterprises, and their servicers based on the holdings of *Daisy Trust* in cases that were materially
6 identical to the facts and evidence of this case. *See, e.g., CitiMortgage, Inc. v. Saticoy Bay, LLC*
7 *Series 3084 Bellavista Lane*, 448 P.3d 573 (Nev. 2019) (unpublished disposition); *TWT Invs., LLC v.*
8 *Nationstar Mortg., LLC*, 448 P.3d 549 (Nev. 2019) (unpublished disposition).

9 Even before *Daisy Trust*, the Nevada Supreme Court had repeatedly applied *Montierth* to
10 cases similar to this one. For example, the Nevada Supreme Court confirmed a “loan holder
11 maintains [a] secured status under the deed of trust even when not named as the deed’s record
12 beneficiary” when “the mortgage holder ‘otherwise has authority to foreclose in the [note holder]’s
13 behalf.” *JPMorgan Chase Bank, N.A. v. Guberland LLC-Series 2* (“*Guberland 2*”), 2019 WL
14 2339537, at *1 (Nev. 2019) (unpublished disposition) (quoting *Montierth*, 354 P.3d at 651). In that
15 case the Nevada Supreme Court reversed the district court’s order, which had erroneously ruled that
16 “Freddie Mac did not have a security interest in the property because . . . no recorded assignment of
17 the deed of trust to Freddie Mac existed.” *Id.* In another case earlier last year, the Nevada Supreme
18 Court confirmed “the record beneficiary need not be the actual owner of the loan,” reversing a
19 judgment adverse to an Enterprise servicer. *CitiMortgage, Inc. v. TRP Fund VI, LLC*, 2019 WL
20 1245886, at *1 (Nev. 2019) (unpublished disposition) (citing *Montierth*, 354 P.3d at 650-51). And
21 in yet another case, the Nevada Supreme Court held “[an authorized representative’s] status as the
22 recorded deed of trust beneficiary does not create a question of material fact regarding whether
23 Fannie Mae owns the subject loan, as [the Nevada Supreme Court] has recognized that such an
24 arrangement is acceptable and common.” *CitiMortgage, Inc. v. SFR Invs. Pool 1, LLC*, 2019 WL
25 289690, at *1 (Nev. 2019) (unpublished disposition) (citing *Montierth*, 354 P.3d at 651).

26 The law in Nevada is undisputed—an Enterprise retains a secured property interest when its
27 contractually authorized servicer appears as the beneficiary of record for the deed of trust. Saticoy
28 Bay’s attempts to suggest that these authorities are distinguishable, Opp. at 10, 11-13, fail because

1 Saticoy Bay ignores the Nevada Supreme Court’s *en banc* decision in *Daisy Trust*. For example,
2 Saticoy Bay contends the Nevada Supreme Court failed to consider bona fide purchaser protections
3 in *Guberland 3*, 2018 WL 3025919, *id.* at 10, but in *Daisy Trust*—a precedential and binding
4 decision on this Court—the Nevada Supreme Court held that it was not “necessary to address [the]
5 argument that [the purchaser] is protected as a bona fide purchaser from the Federal Foreclosure
6 Bar’s effect” because “Nevada’s recording statutes did not require Freddie Mac to publicly record its
7 ownership interest as a prerequisite for establishing that interest.” *Daisy Trust*, 445 P.3d at 849.

8 The Ninth Circuit similarly has applied *Montierth*’s principles and concluded that “Nevada
9 law . . . recognizes that . . . a note owner remains a secured creditor with a property interest in the
10 collateral even if the recorded deed of trust names only the owner’s” contractually authorized
11 servicer. *Berezovsky*, 869 F.3d at 932. Thus, “[a]lthough the recorded deed of trust here omitted
12 Freddie Mac’s name, Freddie Mac’s property interest is valid and enforceable under Nevada law.”
13 *Id.*; *see also FHFA v. SFR Invs. Pool 1*, 893 F.3d 1136, 1149 (9th Cir. 2018), *cert. denied*, No. 18-
14 670, 2019 WL 1886041 (U.S. Apr. 29, 2019). More recently, the Ninth Circuit explained that, in
15 accordance with *Daisy Trust*, “Nevada’s recording statutes do not require that Fannie Mae ‘be
16 identified as the beneficiary on the publicly recorded deed of trust to establish its ownership interest
17 in the subject loan.’” *Ditech Fin., LLC v. SFR Invs. Pool 1, LLC*, 793 F. App’x 490, 492 (9th Cir.
18 2019) (quoting *Daisy Trust*, 445 P.3d at 847) (“*Ditech v. SFR*”).

19 The law is clear: Nationstar’s appearance as beneficiary of record of the Deed of Trust at the
20 time of the HOA Sale does not undermine Freddie Mac’s property interest. When Freddie Mac
21 purchased the Loan, it acquired ownership of both the note and the Deed of Trust. Under Nevada
22 law, Freddie Mac maintained its property interest at the time of the HOA Sale while its servicer,
23 Nationstar, served as record beneficiary of the associated Deed of Trust.

24 Saticoy Bay misses the mark when it argues that “the recorded instruments create two
25 conclusive presumptions that Nationstar is the likely beneficiary of the deed of trust” at the time of
26 the foreclosure sale. Opp. at 18 (citing NRS 47.240 and *Edelstein v. Bank of N.Y. Mellon*, 286 P.3d
27 249, 259-60 (Nev. 2012)). Nationstar does not dispute that it was the beneficiary of record, but as
28 explained above, Nevada law does not require a loan owner like Freddie Mac to also be the record

1 beneficiary. Instead, it can maintain its ownership interest so long as it is in a contractual
2 relationship with the record beneficiary. *See Berezovsky*, 869 F.3d at 932-33. Thus, while the
3 assignment to Nationstar transferred the beneficial interest under the Deed of Trust, the assignment
4 does not contradict Freddie Mac’s ownership of the Deed of Trust. When Freddie Mac acquired the
5 Loan, MERS served as beneficiary of the Deed of Trust “solely as nominee for Lender and Lender’s
6 successors and assigns.” Nationstar’s MSJ, Ex. B, at 2. MERS had only a beneficial interest in the
7 Deed of Trust to transfer to Aurora, and Aurora had only that beneficial interest to transfer to
8 Nationstar. The principle of *nemo dat quod non habet*—i.e., one cannot give what one does not
9 have—confirms that the use of any particular assignment language could not enlarge the property
10 rights MERS had and could transfer to Aurora and subsequently that Aurora could transfer to
11 Nationstar. *See Mitchell v. Hawley*, 83 U.S. 544, 550 (1872). Indeed, an “assignee stands in the
12 shoes of the assignor and ordinarily obtains only the rights possessed by the assignor at the time of
13 the assignment, and no more.” 6A C.J.S. Assignments § 111.³

14 Saticoy Bay also repeatedly contends Nevada’s recording statutes required Freddie Mac’s
15 ownership of the Loan to be expressly reflected in the public records. *See, e.g., Opp.* at 5-8 (citing
16 NRS 106.210, 111.010, 111.315, and 111.325). Specifically, Saticoy Bay argues that the creation of
17 Freddie Mac’s interest was required to be recorded under NRS 111.205(1) in order to be enforceable
18 against third parties under NRS 111.315 and 111.325. But *Daisy Trust* explicitly rejected that
19 argument holding that there is “no requirement that any assignment to [an Enterprise] be recorded.”
20 *Daisy Trust*, 445 P.3d at 849. Even though the court did not expressly cite NRS 111.315, its holding
21 was clear: as there was “no requirement that any assignment to [the Enterprise] needed to be
22 recorded,” these statutes are not to the contrary. *Id.*; *see also DMVH, LLC v. JPMorgan Chase*
23 *Bank, N.A.*, 2020 WL 403671, at *1 (Nev. 2020) (unpublished disposition).

24
25
26 ³ Moreover, Saticoy Bay “cannot invoke” the statutory presumptions of NRS 47.240(2)
27 because it “was not party either to the deed of trust or its subsequent transfer” *Fannie Mae v.*
28 *Saticoy Bay LLC Series 6671 W. Tropicana 103*, No. 19-17133, 2020 WL 7075503, at *2 (9th Cir.
Dec. 3, 2020) (rejecting NRS 42.240(2) argument made by Saticoy Bay under analogous
circumstances).

B. Undisputed Evidence Supports Freddie Mac's Ownership of the Loan

Saticoy Bay argues Freddie Mac's declarations and business records are insufficient to establish Freddie Mac's ownership of the Loan and that Nationstar must produce a servicing contract or other writing to prove Freddie Mac's servicing relationships with Nationstar. Opp. at 6, 8-9, 11-12, 12-15. These arguments fail. The evidence before the Court includes a recorded Deed of Trust, business records from Freddie Mac, the sworn declaration of an employee of Freddie Mac, and Freddie Mac's Single-Family Seller/Servicer Guide. This evidence undisputedly proves the material facts of this case—Freddie Mac owned the Loan on the date of the HOA Sale while its contractually authorized servicer appeared as the record beneficiary of the Deed of Trust.

Daisy Trust held declarations from employees of the servicer and the Enterprise, in conjunction with business records and the Guide, "sufficiently demonstrated that Freddie Mac owned the loan on the date of the foreclosure sale" and sufficiently attested to the servicer-Freddie Mac relationship such that the servicer had "authority to assert the Federal Foreclosure Bar on Freddie Mac's behalf." *Id.* at 849-50. The court cited *Berezovsky*, where "similar evidence was sufficient," *id.* at 850, and, like the Ninth Circuit in *Berezovsky*, took judicial notice of the Guide and the fact that it "contemplates Freddie Mac being the note holder while its loan servicer remains the recorded deed of trust beneficiary." *Id.* at 848 n.2. The court also explained why Enterprise and servicer business records, supported by an employee declaration, satisfied the business records exception to the hearsay rule. *Id.* at 850-51. Accordingly, to prevent the entry of summary judgment, the HOA sale purchaser "bore the burden of showing that their declarations or the printouts were not trustworthy." *Id.* at 851. The court also held that the servicer "did not need to produce the loan servicing agreement or the original promissory note" to warrant entry of summary judgment, because other business records constituted "sufficient evidence of Freddie Mac's ownership." *Id.* at 849-50. Similarly and more recently, the Ninth Circuit held that a "summary judgment motion with business records, employee declaration, and [the Enterprise]'s Servicing Guide" is the type of evidence "sufficient to obtain summary judgment in other cases applying the Federal Foreclosure Bar." *Ditech v. SFR*, 793 F. App'x at 492. The evidence introduced in these cases was materially identical to that in the record here.

1 Saticoy Bay makes various attempts to create a genuine issue of material fact, but each
2 argument fails as a matter of law.

3 *First*, Saticoy Bay contends the declaration submitted by Freddie Mac’s employee to explain
4 and introduce its business records is insufficient to admit them. Opp. at 6, 8-9, 11-12. But Saticoy
5 Bay ignores this declaration is materially identical to the declaration in *Daisy Trust* that the Nevada
6 Supreme Court held was sufficient to render the business records admissible under the business
7 records exception to the hearsay rule. *Daisy Trust*, 445 P.3d at 850. In addition, Saticoy Bay’s
8 contention that the declarant must identify “the person(s) who made the data entries in the
9 database(s) upon which the declarations are based,” Opp. at 12, is incorrect; there is no requirement
10 that a declarant introducing business records individual identify those who entered the data. *See*
11 *Daisy Trust*, 445 P.3d at 850.

12 *Second*, Saticoy Bay contends Freddie Mac’s failure to produce Nationstar’s “power of
13 attorney” from Freddie Mac also undermines Freddie Mac’s interest in the Property. Opp. at 18-19.
14 This argument also fails. As noted above, all that is necessary to establish an Enterprise’s property
15 interest under Nevada law are business records, a supporting declaration, and relevant sections of the
16 Guide. A power of attorney is unnecessarily cumulative. A power of attorney is also irrelevant.
17 While the Guide may require Freddie Mac’s servicer to have a power of attorney to “execute
18 documents,” there is no relevant or material fact in this case that Nationstar executed a document on
19 behalf of Freddie Mac making production of the power of attorney necessary. Similarly, Saticoy
20 Bay’s reliance on NRS 162A.480(2) is unavailing because Freddie Mac is not using Nationstar as its
21 agent to convey real property. *See Nationstar Mortg., LLC v. Eldorado Neighborhood Second*
22 *Homeowners Ass’n*, No. 2:15-cv-00064, 2019 WL 4120797, at *4 (D. Nev. Aug. 29, 2019).

23 *Finally*, Saticoy Bay claims Freddie Mac must produce the “applicable Purchase Contract”
24 between Freddie Mac and Nationstar in order to establish their contractual relationship. Opp. at 8-9,
25 11-12. But the Nevada Supreme Court expressly held such documentation is unnecessary to
26 establish an Enterprise-servicer relationship; the Enterprises’ records, employee affidavits, and the
27 Enterprise Guides suffice. *See Daisy Trust*, 445 P.3d at 850. Indeed, the Nevada Supreme Court
28 previously held that a servicer “[is] not required to introduce the actual servicing contract . . .

1 [r]ather, the evidence that appellant was Fannie Mae’s loan servicer, combined with the
2 authorizations in the Fannie Mae Servicing Guide,” established the Enterprise-servicer relationship.
3 *CitiMortgage v. SFR*, 2019 WL 289690, at *1. The same is true here.

4 Relatedly, Saticoy Bay contends Freddie Mac’s failure to disclose a purchase contract or
5 power of attorney created a disputable presumption that those documents would be adverse if
6 produced. Opp. at 8-9, 13-15 (citing Nev. R. Civ. P. 16.1(a)(1)(B) and NRS 47.250(3)). Those
7 arguments fail. In the absence of contrary evidence, Freddie Mac was not required to submit
8 cumulative supportive evidence. Rule 16.1(a) did not require Freddie Mac to produce the purchase
9 documents; the Rule requires only that each party provide “a copy—or a description by category and
10 location—of all documents ... that the disclosing party ... may use to support its claims and
11 defenses.” NRCP 16.1(a)(1)(A). Freddie Mac did not and does not intend to use the purchase
12 documents to support its claims. If Saticoy Bay had wanted disclosure of such documents, it could
13 have sought them in discovery; it failed to do so. Where there is no obligation to produce a
14 document—nor any attempt by Freddie Mac to resist appropriate discovery requests—no
15 presumption can be made of Freddie Mac’s decision to only rely upon those documents the Nevada
16 Supreme Court has held are sufficient for entry of summary judgment in related cases. *E.g., Daisy*
17 *Trust*, 445 P.3d at 848-50.⁴

18 At bottom, Saticoy Bay fails to explain how any of its objections relate to the core material
19 fact of this case: whether Freddie Mac owned the Loan on the date of the HOA Sale in August 2013.
20 Instead, each of Saticoy Bay’s objections lack supporting relevant evidence, are based on
21 speculation, and fail the Nevada Supreme Court’s most basic test that a party opposing summary
22 judgment “bears the burden to ‘do more than simply show that there is some metaphysical doubt’ as
23 to the operative facts.” *Wood v. Safeway*, 121 P.3d 1026, 1031 (Nev. 2005) (quoting *Matsushita*
24 *Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)).

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27 ⁴ Similarly, Saticoy Bay’s attempt to distinguish this case from one of the dozens of Nevada Supreme
28 Court decisions rejecting its arguments on the basis that there was a deposition of Freddie Mac’s witness in
that case fails. See Opp. at 6. Saticoy Bay could have, but did not, notice depositions in this case. Its failure
to utilize the discovery period cannot undermine Nationstar’s evidence.

1 C. The Statute of Frauds Does Not Impugn Freddie Mac's Ownership of the Loan

2 Saticoy Bay also contends throughout its brief that the statute of frauds precludes Freddie
3 Mac from having an interest in the Property because there is no writing in the record demonstrating
4 Freddie Mac's purchase of the Loan. *See* Opp. 6-11, 15, 19. But the statute of frauds has no bearing
5 whatsoever on these issues. It applies only "where there is a definite possibility of fraud." *Azevedo*
6 *v. Minister*, 471 P.2d 661, 663 (Nev. 1970). There is none in this case; no one besides Freddie Mac
7 claims to own the Loan, and Saticoy Bay has presented no evidence that another entity claims to
8 own the Loan.

9 In any event, Saticoy Bay lacks standing to raise a statute of frauds defense because it was
10 not party to the purchase of the Loan. In *Harmon*, the Nevada Supreme Court held a "stranger to
11 [an] alleged agreement" could not challenge the legal sufficiency of the writings purportedly making
12 up that agreement because "[t]he defense of the statute of frauds is personal, and available only to
13 contracting parties or their successors in interest." *Harmon v. Tanner Motor Tours of Nev., Ltd.*, 377
14 P.2d 622, 628 (Nev. 1963); *see also Easton Bus. Opportunities, Inc. v. Town Exec. Suites*, 230 P.3d
15 827, 832 n.4 (Nev. 2010) (declining to apply statute of frauds *sua sponte* because obligor of assigned
16 right was not party to the agreement); *In re Circle K Corp.*, 127 F.3d 904, 908 (9th Cir. 1997) (citing
17 Restatement (Second) of Contracts § 144 (1982)).⁵

18 As a result, the Ninth Circuit and Nevada federal district courts have both held that HOA
19 purchasers at HOA foreclosure sales like Saticoy Bay cannot rely on the Statute of Frauds in Federal
20 Foreclosure Bar cases such as this one. *See Ditech Fin. LLC v. Saticoy Bay Series 8829 Cornwall*
21 *Glen*, No. 18-16199, 2020 WL 838108, at *1 (9th Cir. Feb. 7, 2020) (unpublished disposition)
22 (citing *Easton* and finding that the "argument[] that Fannie Mae did not have a valid property
23 interest due to Nevada's statute of frauds...[is] unavailing."); *Wells Fargo Bank, N.A. v. Pine*
24 *Barrens St. Trust*, No. 2:17-cv-1517-RFB-VCF, 2019 WL 1446951, at *5 (D. Nev. Mar. 31, 2019)
25 ("Because Pine Barrens was not a party to the sale of the loan to Fannie Mae, it cannot assert a

26
27 ⁵ Saticoy Bay falsely claims "the statute of frauds is not discussed in ... any unpublished decisions."
28 Opp. at 19. While Nationstar is barred from citing unpublished decisions of the Nevada Court of Appeals by
Nev. R. App. P. 36(c), Nationstar will not be silent while Saticoy Bay makes false representations about them.
The Nevada Court of Appeals has in *twelve* appeals rejected the statute of frauds argument, in many cases
brought by Saticoy Bay itself, citing to the *Harmon* and *Easton* decisions referenced above.

1 defense based on the statute of frauds.”); *Saticoy Bay LLC Series 452 Crocus Hill v. Green Tree*
2 *Servicing LLC*, No. 2:15-cv-00977, 2019 WL 2425669, at *4 (D. Nev. Jun. 10, 2019) (similar).
3 Saticoy Bay was not a party to the sale of the Loan to Freddie Mac, so it cannot seek to invalidate
4 that transaction on statute-of-frauds grounds.

5 Saticoy Bay is also barred from invoking the statute of frauds for a separate and independent
6 reason: the writing requirement does not apply to transactions that have been fully performed by at
7 least one party. *See* NRS 104.2201(3)(c); *accord Forsythe v. Brown*, No. 3:10-cv-716, 2011 WL
8 5190673 (D. Nev. Oct. 27, 2011); *Edwards Indus., Inc. v. DTE/BTE, Inc.*, 923 P.2d 569, 574 (Nev.
9 1996); *Azevedo*, 471 P.2d at 664; *Micheletti v. Fugitt*, 134 P.2d 99, 103 (Nev. 1943). That is because
10 the purpose of the statute of frauds is to ensure that the parties intended a transaction to close, and a
11 transaction’s actual closing establishes that intention conclusively. However, to allow the statute of
12 frauds to operate as a defense when one party has partially or fully performed would in effect turn
13 the doctrine into “an instrument of fraud.” *Evans v. Lee*, 12 Nev. 393, 398 (Nev. 1877). In this case,
14 Freddie Mac’s acquisition of the Loan closed long ago, and the evidence confirms that all parties to
15 that transaction performed as if the transaction were completed.

16 **D. Saticoy Bay Is Not a Bona Fide Purchaser, But Even If It Were, the Federal**
17 **Foreclosure Bar Still Applies**

18 Saticoy Bay argues Nevada’s bona fide purchaser laws protect it from any claim based on
19 Freddie Mac’s interest in the Property. *See e.g.*, *Opp.* at 10, 16-18, 22-23. But not only is Saticoy
20 Bay *not* a bona fide purchaser, but if state law were reinterpreted to make it such, the Federal
21 Foreclosure Bar would preempt those bone fide purchaser statutes.

22 **1. Saticoy Bay’s Notice Precludes It From Claiming Bona Fide Purchaser Status**

23 Saticoy Bay is not a bona fide purchaser because it had “actual knowledge, constructive
24 notice of, or reasonable cause to know that there exists . . . adverse rights, title, or interest to, the real
25 property.” NRS 111.180. The Deed of Trust was recorded prior to the HOA Sale, labelled as a
26 “NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS,”
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27 (Nationstar's MSJ, Ex. B), giving Saticoy Bay notice that the instrument was drafted to facilitate its
28 potential sale to an Enterprise. In light of similar “publicly recorded language” in a deed of trust, the

1 Nevada Supreme Court found that it could not “conclude that [the purchaser] purchased the property
2 without notice of [an Enterprise]’s potential interest in the property such that [the purchaser] should
3 be afforded protection under [Nevada’s bona fide purchaser statute].” *CitiMortgage v. TRP*, 2019
4 WL 1245886, at *1; *Guberland I*, 2018 WL 3025919, at *1 n.2; *JPMorgan Chase Bank, N.A. v.*
5 *GDS Fin. Servs.*, No. 2:17-cv-2451, 2018 WL 2023123, at *3 n.1 (D. Nev. May 1, 2018).

6 In addition, the Deed of Trust was recorded prior to the HOA Sale and stated that the note,
7 along with the Deed of Trust, “can be sold one or more times without prior notice to Borrower.”
8 Nationstar’s MSJ, Ex. B at 11. Thus, Saticoy Bay was on notice that unnamed other parties might
9 have an interest in the Property. In this case, Freddie Mac had such an interest.

10 Furthermore, Saticoy Bay could and should have anticipated there was a significant chance
11 that a property purchased at an HOA foreclosure sale was subject to an interest owned by one of the
12 Enterprises. Freddie Mac and Fannie Mae have a large, well-publicized, and well-known role in the
13 national housing market, especially in the aftermath of the recent housing crisis. In 2008, the
14 Enterprises’ “mortgage portfolios had a combined value of \$5 trillion and accounted for nearly half
15 of the United States mortgage market.” *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 599-600
16 (D.C. Cir. 2017). Since 2012, “Fannie and Freddie, among other things, collectively purchased at
17 least 11 million mortgages.” *Id.* Accordingly, “[t]he position held in the home mortgage business
18 by Fannie Mae and Freddie Mac make[s] them *the dominant force* in the market.” *Town of Babylon*
19 *v. FHFA*, 699 F.3d 221, 225 (2d Cir. 2012) (emphasis added); *see also FHFA v. Nomura Holding*
20 *Am., Inc.*, 873 F.3d 85, 105 (2d Cir. 2017) (same). Any purchaser of a property sold at an HOA sale
21 in recent years should expect that there is a significant likelihood that Freddie Mac or Fannie Mae
22 own the loan secured by the deed of trust that the purchaser hopes to secure in the course of the
23 HOA sale.

24 Saticoy Bay cannot avoid the duty to inquire imposed before one can claim bona fide
25 purchaser status. Saticoy Bay is presumed to know the law, and at the time of the HOA Sale the
26 Federal Foreclosure Bar had been enacted, providing that HOA foreclosure sales could *not*
27 extinguish the property of Freddie Mac or Fannie Mae during conservatorship without FHFA
28 consent. *See Atkins v. Parker*, 472 U.S. 115, 130 (1985) (“All citizens are presumptively charged

1 with knowledge of the law.”). Therefore, a buyer of property at such a foreclosure sale (or a
2 subsequent purchaser) would have been, at a minimum, on inquiry notice that under prevailing
3 law—state as well as federal—would result in the Deed of Trust continuing to encumber the
4 Property following an HOA foreclosure sale. Indeed, parties engaged in a regulated business are
5 particularly unable to claim ignorance of any relevant law. *See del Junco v. Conover*, 682 F.2d
6 1338, 1342 (9th Cir. 1982).

7 **2. If Interpreted as Saticoy Bay Suggests, the Bona Fide Purchaser Statutes Would**
8 **Be Preempted by the Federal Foreclosure Bar**

9 Even if Nevada’s bona fide purchaser statutes were read to protect Saticoy Bay from Freddie
10 Mac’s property interest because Freddie Mac’s servicer appeared as the Deed of Trust’s record
11 beneficiary, the Federal Foreclosure Bar would preempt the bona fide purchaser statutes. The
12 Nevada Supreme Court has addressed this point, recognizing that “authority suggest[s] that the
13 Federal Foreclosure Bar would preempt Nevada’s law on bona fide purchasers.” *Nationstar Mortg.,*
14 *LLC v. Guberland LLC-Series 3*, 2018 WL 3025919, at *2 n.3 (Nev. 2018) (unpublished
15 disposition). Federal courts in Nevada have held as much in similar cases. *E.g., JPMorgan Chase*
16 *Bank, N.A. v. GDS Fin. Servs.*, No. 2:17-cv-02451-APG-PAL, 2018 WL 2023123, at *3 (D. Nev.
17 May 1, 2018); *U.S. Bank Home Mortg. v. Jensen*, No. 3:17-cv-0603-MMD-VPC, 2018 WL
18 3078753, at *2 (D. Nev. June 20, 2018); *Saticoy Bay LLC Series 452 Crocus Hill*, 2019 WL
19 2425669, at *5.

20 The conflict between the Federal Foreclosure Bar and the bona fide purchaser statutes, as
21 Saticoy Bay would interpret them, is obvious. The Federal Foreclosure Bar automatically bars any
22 nonconsensual extinguishment through foreclosure of any interest in property held by Freddie Mac
23 while in conservatorship. However, Saticoy Bay’s reinterpreted bona fide purchaser laws would
24 allow state HOA foreclosure sales to extinguish Freddie Mac’s property interests whenever the
25 associated deed of trust appeared in the name of Freddie Mac’s nominee or servicer, an arrangement
26 otherwise permitted under Nevada law. Where an Enterprise’s servicer appears as record
27 beneficiary as the case is here, the Nevada Supreme Court has held that under Nevada law it is not
28 “necessary to address [the] argument that [a purchaser was] protected as a bona fide purchaser from

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1 the Federal Foreclosure Bar’s effect.” *Daisy Trust*, 445 P.3d at 849. Federal law precludes what
2 state law would otherwise possibly permit: extinguishment of Freddie Mac’s Deed of Trust.

3 **E. The Court Cannot Imply FHFA’s Consent to the Extinguishment of Freddie Mac’s**
4 **Property Interest**

5 Saticoy Bay asks this Court to imply FHFA’s consent to the purported extinguishment of
6 Freddie Mac’s interest as a result of the HOA Sale. Opp. at 19-20. Relatedly, Saticoy Bay argues
7 Freddie Mac cannot prevail because it “failed to make Freddie Mac’s alleged ownership of the deed
8 of trust publicly known.” *Id.* at 20. Saticoy Bay’s assertions are premised on a fundamental
9 misunderstanding of the Federal Foreclosure Bar. The Federal Foreclosure Bar plainly states that
10 none of FHFA’s property “shall be subject to ... foreclosure ... without the consent of *the Agency*,”
11 meaning FHFA. 12 U.S.C. § 4617(j)(3) (emphasis added). Only FHFA—not Freddie Mac, or any
12 other party—has authority to waive the Federal Foreclosure Bar or consent to the extinguishment of
13 the Deed of Trust. The Federal Foreclosure Bar thus protects FHFA’s and the Enterprises’ property
14 interests automatically without requiring any action by FHFA, the Enterprises, or their servicers.

15 The Ninth Circuit and Nevada Supreme Court have held the Federal Foreclosure Bar cannot
16 be waived absent the explicit, affirmative consent of FHFA. *See, e.g., Berezovsky*, 869 F.3d at 929;
17 *Christine View*, 417 P.3d at 368. If FHFA itself cannot “implicitly” consent to extinguishment of the
18 Enterprises’ property interests, it defies logic that an Enterprise or servicer could do so on FHFA’s
19 behalf. Any purported inaction by Freddie Mac to notify third party bidders at HOA foreclosure
20 sales is irrelevant to the applicability and operation of the Federal Foreclosure Bar. Saticoy Bay has
21 not suggested nor can it show that it received affirmative consent from FHFA.

22 Saticoy Bay also asks this Court to “imply FHFA’s consent” to the extinguishment of
23 Freddie Mac’s property interest because, at the time of the HOA Sale, FHFA “had still failed to
24 adopt a procedure by which parties could apply for and receive ‘consent’ from FHFA[.]” Opp. at
25 19-20. Saticoy Bay compares the lack of a formal process to a “failure of performance” under a
26 contract, of which FHFA “cannot take advantage.” *Id.* at 20 (citing *Cladianos v. Friedhoff*, 240 P.2d
27 208, 210 (Nev. 1952)). But Saticoy Bay cites no statutory basis for the supposed requirement for a
28 consent procedure, nor does it address the fact that FHFA is a federal agency that the public can

1 easily contact through normal channels of communication with questions or requests. Nothing in
2 HERA requires FHFA to establish a formal procedure for others to request its consent, nor did
3 Congress express any intent for the Agency to prescribe a particular process or means of
4 communication. *See* 12 U.S.C. § 4617(j)(3).⁶

5 **F. Nationstar May Invoke the Federal Foreclosure Bar**

6 Finally, Saticoy Bay argues Nationstar lacks standing to assert the Federal Foreclosure Bar
7 for two reasons: (1) “FHFA has never ‘acted’ as a party in the present case,” making HERA
8 inapplicable, *Opp.* at 17-18; and (2) the record does not contain evidence proving that Nationstar had
9 a contract to service the loan for Freddie Mac,” *Opp.* at 14. Neither argument can succeed in light of
10 the Nevada Supreme Court’s clear precedent.

11 Saticoy Bay’s objection to standing based on FHFA’s non-participation in the case is easily
12 dismissed. The Nevada Supreme Court and Ninth Circuit have repeatedly rejected the argument that
13 the Federal Foreclosure Bar applies only when FHFA or an Enterprise is a party. *See, e.g.,*
14 *Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 396 P.3d 754 (Nev. 2017)); *Christine View*, 417
15 P.3d at 366; *JPMorgan Chase Bank, N.A. v. 7290 Sheared Cliff Lane Un 102 Tr.*, 804 F. App’x 488,
16 491 (9th Cir. 2020); *Ditech v. SFR*, 793 F. App’x at 492; *Saticoy Bay, LLC, Series 2714 Snapdragon*
17 *v. Flagstar Bank, FSB*, 699 F. App’x 658, 658-59 (9th Cir. 2017). Under those decisions, Nationstar
18 “has standing to assert a claim of federal preemption” because, as “the loan servicer, [Nationstar]
19 acts as” Freddie Mac’s authorized representative. *Flagstar*, 699 F. App’x at 659.

20 Saticoy Bay’s arguments that Nationstar lacks standing because it failed to establish its
21 servicing relationship with Freddie Mac similarly fail. Specifically, Saticoy Bay contends that
22 Nationstar cannot prove the Freddie Mac-Nationstar servicing relationship without providing the
23 master servicing contract. *Id.* at 34. But in *Daisy Trust*, the Nevada Supreme Court expressly held
24 that production of a servicing agreement was unnecessary to establish a servicer’s standing to assert
25 the Federal Foreclosure Bar in light of similar evidence. 445 P.3d at 849-50. As the Ninth Circuit
26 explained, Enterprise servicers may establish their servicing relationship with an Enterprise through

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27 ⁶ *Cladianos* has no bearing on this case; it describes a contractual principle of excusing performance
28 that has effectively been prevented by the actions of the other party. Here, there is no contractual duty
between FHFA and Saticoy Bay.

1 evidence substantially similar to that submitted here—authenticated Enterprise business records, a
2 declaration by an Enterprise employee, and Guide excerpts. *E.g., Berezovsky*, 869 F.3d at 932-33;
3 *Fed. Home Loan Mortg. Corp. v. SFR Invs. Pool I, LLC*, 810 F. App'x 589, 590-91 (9th Cir. 2020).

4 As discussed above, the evidence in this case is virtually identical to the evidence submitted
5 in *Daisy Trust*. Nationstar submitted Freddie Mac's business records and declaration testimony
6 explaining how those records prove the current servicer of the Loan for Freddie Mac is Nationstar.
7 Nationstar also submitted relevant excerpts from Freddie Mac's Guide, which establishes the
8 obligations Nationstar has to Freddie Mac while servicing the Loan, including in the context of
9 bringing actions in court related to the Loan. That uncontroverted evidence conclusively establishes
10 the Freddie Mac-Nationstar servicing relationship and Nationstar's standing to assert the Federal
11 Foreclosure Bar.

12 CONCLUSION

13 Nationstar respectfully requests that the Court grant its summary judgment motion

14 DATED this 8th day of December, 2020.

15 **AKERMAN LLP**

16 /s/ Scott R. Lachman

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26 AA001838

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 8th day of December, 2020, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE LLC'S REPLY SUPPORTING SUMMARY JUDGMENT MOTION**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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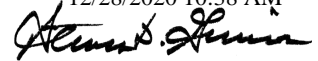
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I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena

An employee of AKERMAN LLP

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17 **EIGHTH JUDICIAL DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 SATICOY BAY LLC SERIES 4641
20 VIAREGGIO CT,

21 Plaintiffs,

22 v.

23 NATIONSTAR MORTGAGE LLC, COOPER
24 CASTLE LAW FIRM, LLP; and MONIQUE
25 CUILLORY,

26 Defendants.

27 NATIONSTAR MORTGAGE LLC,

28 Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**ORDER DENYING SATICOY BAY LLC
SERIES 4641 VIAREGGIO CT'S
SUMMARY JUDGMENT MOTION**

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On October 22, 2020, Saticoy Bay LLC Series 4641 Viareggio Ct's (**Saticoy Bay**) motion for summary judgment came for hearing before the Court following remand by the Nevada Court of Appeals. Melanie D. Morgan, Esq. of Akerman LLP appeared on behalf of Nationstar and Nikoll Nikci of the Law Offices of Michael F. Bohn, Esq. appeared on behalf of Saticoy Bay. The Court having reviewed the summary judgment briefs and the Nevada Court of Appeals' order, and heard arguments by counsel hereby makes the findings of facts, conclusions of law, and orders as follows:

FINDINGS OF FACT

1. A deed of trust listing Monique Guillory as the borrower ("Borrower"), First Magnus Financial Corporation as the lender ("Lender"), and MERS, as beneficiary solely as nominee for Lender and Lender's successors and assigns, was executed on January 19, 2007, and recorded on January 25, 2007 (the "Deed of Trust"). The Deed of Trust granted Lender a security interest in real property known as 4641 Viareggio Court, in Las Vegas (the "Property") to secure the repayment of a loan in the original amount of \$258,400.00 to the Borrower (the promissory note and Deed of Trust together are the "Loan").

2. In March 2007, Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased the Loan, thereby acquiring ownership of the Deed of Trust. Freddie Mac maintained its ownership interest in the Deed of Trust at the time of the HOA Sale on August 22, 2013.

3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which established the Federal Housing Finance Agency ("FHFA") to regulate Freddie Mac, the Federal National Mortgage Association, and the Federal Home Loan Banks.

4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

5. On February 11, 2011, MERS, as nominee for Lender and Lender's successors and assigns, recorded an assignment of the Deed of Trust to Aurora Loan Services LLC ("Aurora").

6. On October 18, 2012, Aurora recorded an assignment of the Deed of Trust to Nationstar.

AA001841

7. At the time of the HOA Sale on August 22, 2013, Nationstar was the record beneficiary of the Deed of Trust.

1 8. On July 30, 2007, Naples Community Homeowners Association (the "HOA"), by its
2 foreclosure agent, Red Rock Financial Services ("Red Rock") initiated a non-judicial foreclosure by
3 recording a Lien for Delinquent Assessments.

4 9. On November 9, 2007, a Release of Lien for Delinquent Assessments was recorded,
5 which stated the Lien for Delinquent Assessments recorded on July 30, 2007, was released and
6 satisfied.

7 10. On August 18, 2011, the HOA, by its foreclosure agent, Leach Johnson Song &
8 Gruchow (the "HOA Trustee") initiated a second non-judicial foreclosure by recording a Notice of
9 Delinquent Assessment Lien.

10 11. On January 24, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of
11 Default and Election to Sell against the Property.

12 12. On July 30, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of
13 Foreclosure Sale against the Property.

14 13. On August 22, 2013, the HOA sold the property to Saticoy Bay for \$5,563.00 A
15 foreclosure deed was recorded against the property on September 6, 2013.

16 14. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie
17 Mac's interest in the Property. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr.
18 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)
19 [Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

20 15. Saticoy Bay's motion for summary judgment was previously granted by this Court by
21 order entered December 11, 2018, ruling that the Federal Foreclosure Bar did not protect Freddie
22 Mac's interest in the Deed of Trust because, among other reasons, no interest of Freddie Mac or FHFA
23 was recorded in the county records. Nationstar appealed the decision, and in the interim, the Nevada
24 Supreme Court's *Daisy Trust v. Wells Fargo Bank* decision held that a deed of trust need not be
25 assigned to its owner, such as Freddie Mac in this case, in order for the owner to own the secured loan.
26 135 Nev. 230, 233-34, 445 P.3d 846, 849 (2019). This Court did not have the benefit of the *Daisy*
27 *Trust* decision when it entered its prior summary judgment order. The Nevada Court of Appeals
28 remanded this matter by order dated April 10, 2020. Remittitur issued on June 16, 2020.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

2. Nevada's recording statutes do not require that Freddie Mac be identified as the beneficiary on the publicly recorded deed of trust to establish its ownership interest in the subject loan. *Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 230, 445 P.3d 846, 847 (2019).

3. Freddie Mac's loan servicer is not required to produce the actual loan servicing agreement or the original promissory note to establish Freddie Mac's ownership interest in a loan where properly authenticated business records establish that interest. *Id.* at 233, 445 P.3d at 847.

4. NRS 51.135, the business records exception to the hearsay rule, provides:

A memorandum, report, record or compilation of data, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, as shown by the testimony or affidavit of the custodian or other qualified person, is not inadmissible under the hearsay rule unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

5. Under *Daisy Trust v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 445 P.3d 846, 847 (2019), there is a genuine issue of material fact as to whether Saticoy Bay's claim is preempted by the Federal Foreclosure Bar. Freddie Mac did not record the conveyance of the Deed of Trust from First Magnus Financial Corporation. However, the Deed of Trust did not have to be assigned or conveyed to Freddie Mac in order for Freddie Mac to own the secured loan, meaning that Nevada's recording statutes are not implicated. *Id.* at 234, 445 P.3d at 849. Thus, Freddie Mac was not required to publicly record its ownership interest as a prerequisite for establishing that interest. *Id.*

6. In Nationstar's opposition to Saticoy Bay's motion, Nationstar provided a declaration by Dean Meyer, a Freddie Mac employee, attesting that (1) Freddie Mac acquired the Loan in March 2007, (2) Freddie Mac owned the Loan at the time of the HOA foreclosure sale, and (3) that Nationstar had been servicing the loan since June 2012. Meyer's declaration was accompanied by applicable Freddie Mac business records. These business records reflected a Funding Date of March 29, 2007,

AA001843

1 Seller NBR of 623509, and Part. Pct. of 1.00. Meyer attested, amongst other things, that the Funding
2 Date referred to the date Freddie Mac purchased the loan, the Seller NBR referred to the party that
3 sold the loan to Freddie Mac, and the Part. Pct., which also means participation percentage, reflects
4 that Freddie Macs owns 100% of the loan. Meyer also attested that the Servicer Number in Freddie
5 Mac's printouts referred to Nationstar, the servicer of the Loan.

6 7. Meyer's respective declarations, which confirm or at least strongly indicate Nationstar
7 is Freddie Mac's loan servicer, combined with relevant provisions in the Guide that govern the
8 contractual relationship between Freddie Mac and its servicers nationwide, is sufficient to create a
9 genuine issue of material fact that Freddie Mac owned the loan and Nationstar was the servicer of the
10 Loan, such that Nationstar can assert the Federal Foreclosure Bar.

11 8. Saticoy Bay's argument that Meyer is not competent to testify lacks merit. The *Daisy*
12 *Trust* Court addressed an almost identical argument as to the admissibility of the business records
13 attested to in Meyer's declaration under NRS 51.135. Here, Meyer attested that the database entries
14 contained in the printouts were made (1) at or near the time of the event being recorded, (2) by a person
15 with knowledge of the event, and (3) in the course of the business and a regularly conducted activity.
16 Thus, the Freddie Mac business records are admissible.

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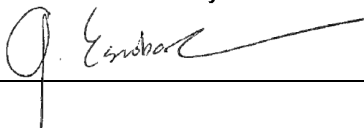
AA001844

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Saticoy Bay's motion for summary judgment is **DENIED**.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Nationstar shall prepare a counter motion for summary judgment. This Court will issue a separate order with respect to Nationstar's summary judgment motion.

Dated this 28th day of December, 2020



Submitted by:

AKERMAN LLP

/s/ Scott R. Lachman
Melanie D. Morgan, Esq.
Nevada Bar No. 8215
Donna M. Wittig, Esq.
Nevada Bar No. 11015
Scott R. Lachman, Esq.
Nevada Bar No. 12016
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

6FB 946 C4B2 C8D2

Adriana Escobar
Approved as to form and content by:
District Court Judge

Law Offices of Michael F. Bohn, Esq., Ltd.

/s/ Adam R. Trippiedi
Michael F. Bohn, Esq.
Nevada Bar No. 1641
Adam R. Trippiedi, Esq.
Nevada Bar No. 12294
376 East Warm Springs Road, Suite 125
Las Vegas, Nevada 89119

*Attorneys for Saticoy Bay LLC Series 4641
Viareggio Ct.*

AA001845

Larsen, Patricia (LAA-Las)

From: Adam Trippiedi <atrippiedi@bohnlawfirm.com>
Sent: Wednesday, December 23, 2020 2:38 PM
To: Lachman, Scott (Assoc-Las); Michael Bohn
Cc: Morgan, Melanie (Ptnr-Las); Wittig, Donna (Assoc-Las); Streible, Elizabeth (Den)
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Hi Scott,

I approve of this order.

Thanks.

Adam R. Trippiedi, ESQ.
Law Offices of
Michael F. Bohn, Esq., Ltd.
2260 Corporate Circle, Suite 480
Henderson, NV 89074
(702) 642-3113
(702) 642-9766 FAX
atrippiedi@bohnlawfirm.com

Confidentiality Notice

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

From: scott.lachman@akerman.com [mailto:scott.lachman@akerman.com]
Sent: Wednesday, December 23, 2020 9:46 AM
To: Adam Trippiedi; Michael Bohn
Cc: melanie.morgan@akerman.com; donna.wittig@akerman.com; elizabeth.streible@akerman.com
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Adam – I have not submitted the order yet. Please forward any revisions today. Thanks!

Scott Lachman

Associate, Consumer Financial Services Practice Group
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5021 | C: 702 321 7282
Scott.Lachman@akerman.com

AA001846

From: Adam Trippiedi <atrippiedi@bohnlawfirm.com>
Sent: Wednesday, December 23, 2020 9:44 AM

To: Lachman, Scott (Assoc-Las) <scott.lachman@akerman.com>; Michael Bohn <mbohn@bohnlawfirm.com>
Cc: Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>; Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; Streible, Elizabeth (Den) <elizabeth.streible@akerman.com>
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Hi Scott,

Have you already submitted this order to the court? If not, please let me know and I will get you my edits (if any) today.

Thanks.

Adam R. Trippiedi, ESQ.
Law Offices of
Michael F. Bohn, Esq., Ltd.
2260 Corporate Circle, Suite 480
Henderson, NV 89074
(702) 642-3113
(702) 642-9766 FAX
atrippiedi@bohnlawfirm.com

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From: scott.lachman@akerman.com [<mailto:scott.lachman@akerman.com>]
Sent: Monday, December 21, 2020 11:12 AM
To: Adam Trippiedi; Michael Bohn
Cc: melanie.morgan@akerman.com; donna.wittig@akerman.com; elizabeth.streible@akerman.com
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Mickey/Adam,

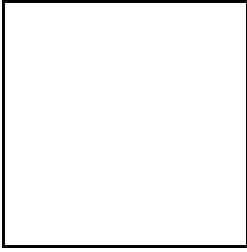
Friendly reminder to review the draft order denying Saticoy's summary judgment motion. It is consistent with the court's prior minute order, which is also attached. Please let us know if you have any revisions and if we may use your e-signature as to form and content. We hope to submit the order to court today.

Regards,
Scott Lachman

Scott Lachman

Associate, Consumer Financial Services Practice Group
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5021 | C: 702 321 7282
Scott.Lachman@akerman.com

AA001847



CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

From: Lachman, Scott (Assoc-Las)

Sent: Friday, December 18, 2020 4:14 PM

To: Adam Trippiedi <atrippiedi@bohnlawfirm.com>; 'Michael Bohn' <mbohn@bohnlawfirm.com>

Cc: Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>; Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; Streible, Elizabeth (Den) <elizabeth.streible@akerman.com>

Subject: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Mickey/Adam,

Attached please find the draft order denying Saticoy's summary judgment motion. It is consistent with the court's prior minute order, which is also attached. Please let us know if you have any revisions and if we may use your e-signature as to form and content. We hope to submit the order to court on Monday, 12/21.

Regards,
Scott Lachman

Scott Lachman

Associate, Consumer Financial Services Practice Group

Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5021 | C: 702 321 7282

Scott.Lachman@akerman.com

AA001848

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Saticoy Bay LLC Series 4641
7 Viareggio Ct., Plaintiff(s)

CASE NO: A-13-689240-C

8 vs.

DEPT. NO. Department 14

9 Nationstar Mortgage LLC,
10 Defendant(s)

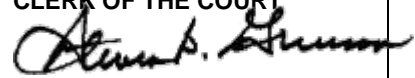
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Denying Motion was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/28/2020

16 Brandon Lopipero .	blopipero@wrightlegal.net
17 Eserve Contact .	office@bohnlawfirm.com
18 Michael F Bohn Esq .	mbohn@bohnlawfirm.com
19 NVEfile .	nvefile@wrightlegal.net
20 Regina A. Habermas .	rhabermas@wrightlegal.net
21 Melanie Morgan	melanie.morgan@akerman.com
22 Akerman LLP	AkermanLAS@akerman.com
23 Donna Wittig	donna.wittig@akerman.com
24 Scott Lachman	scott.lachman@akerman.com

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26
27 AA001849
28



NEOJ
MELANIE D. MORGAN, ESQ.
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Email: donna.wittig@akerman.com
Email: scott.lachman@akerman.com

Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**NOTICE OF ENTRY OF ORDER
DENYING SATICOY BAY LLC SERIES
4641 VIAREGGIO CT'S SUMMARY
JUDGMENT MOTION**

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

AA001850

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that an **ORDER DENYING SATICOY BAY LLC SERIES 4641**
3 **VIAREGGIO CT'S SUMMARY JUDGMENT MOTION** has been entered by this Court on the
4 28th day of December, 2020, in the above-captioned matter. A copy of said Order is attached hereto
5 as **Exhibit A.**

6 Dated: December 28, 2020

7 **AKERMAN LLP**

8
9 /s/ Scott R. Lachman

10 Melanie D. Morgan, Esq.

11 Nevada Bar No. 8215

12 Donna M. Wittig, Esq.

13 Nevada Bar No. 11015

14 Scott R. Lachman, Esq.

15 Nevada Bar No. 12016

16 1635 Village Center Circle, Suite 200

17 Las Vegas, Nevada 89134

18 *Attorneys for Nationstar Mortgage LLC*

19
20
21
22
23
24
25
26 AA001851

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 28th day of December, 2020, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING SATICOY BAY LLC SERIES 4641 VIAREGGIO CT'S SUMMARY JUDGMENT MOTION**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

Brandon Lopipero	blopipero@wrightlegal.net
Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq.	mbohn@bohnlawfirm.com
NVEfile	nvefile@wrightlegal.net
Regina A. Habermas	rhahermas@wrightlegal.net

/s/ Patricia Larsen

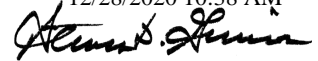
An employee of AKERMAN LLP

AA001852

EXHIBIT A

EXHIBIT A

AA001853



CLERK OF THE COURT

1 **ODM**

2 MELANIE D. MORGAN, ESQ.

3 Nevada Bar No. 8215

4 DONNA M. WITTIG

5 Nevada Bar No. 11015

6 SCOTT R. LACHMAN, ESQ.

7 Nevada Bar No. 12016

8 AKERMAN LLP

9 1635 Village Center Circle, Suite 200

10 Las Vegas, Nevada 89134

11 Telephone: (702) 634-5000

12 Facsimile: (702) 380-8572

13 Email: melanie.morgan@akerman.com

14 Email: donna.wittig@akerman.com

15 Email: scott.lachman@akerman.com

16 *Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC*

17 **EIGHTH JUDICIAL DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 SATICOY BAY LLC SERIES 4641
20 VIAREGGIO CT,

21 Plaintiffs,

22 v.

23 NATIONSTAR MORTGAGE LLC, COOPER
24 CASTLE LAW FIRM, LLP; and MONIQUE
25 CUILLORY,

26 Defendants.

27 NATIONSTAR MORTGAGE LLC,

28 Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**ORDER DENYING SATICOY BAY LLC
SERIES 4641 VIAREGGIO CT'S
SUMMARY JUDGMENT MOTION**

AA001854

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

On October 22, 2020, Saticoy Bay LLC Series 4641 Viareggio Ct's (**Saticoy Bay**) motion for summary judgment came for hearing before the Court following remand by the Nevada Court of Appeals. Melanie D. Morgan, Esq. of Akerman LLP appeared on behalf of Nationstar and Nikoll Nikci of the Law Offices of Michael F. Bohn, Esq. appeared on behalf of Saticoy Bay. The Court having reviewed the summary judgment briefs and the Nevada Court of Appeals' order, and heard arguments by counsel hereby makes the findings of facts, conclusions of law, and orders as follows:

FINDINGS OF FACT

1. A deed of trust listing Monique Guillory as the borrower ("Borrower"), First Magnus Financial Corporation as the lender ("Lender"), and MERS, as beneficiary solely as nominee for Lender and Lender's successors and assigns, was executed on January 19, 2007, and recorded on January 25, 2007 (the "Deed of Trust"). The Deed of Trust granted Lender a security interest in real property known as 4641 Viareggio Court, in Las Vegas (the "Property") to secure the repayment of a loan in the original amount of \$258,400.00 to the Borrower (the promissory note and Deed of Trust together are the "Loan").

2. In March 2007, Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased the Loan, thereby acquiring ownership of the Deed of Trust. Freddie Mac maintained its ownership interest in the Deed of Trust at the time of the HOA Sale on August 22, 2013.

3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which established the Federal Housing Finance Agency ("FHFA") to regulate Freddie Mac, the Federal National Mortgage Association, and the Federal Home Loan Banks.

4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

5. On February 11, 2011, MERS, as nominee for Lender and Lender's successors and assigns, recorded an assignment of the Deed of Trust to Aurora Loan Services LLC ("Aurora").

6. On October 18, 2012, Aurora recorded an assignment of the Deed of Trust to Nationstar.

AA001855

7. At the time of the HOA Sale on August 22, 2013, Nationstar was the record beneficiary of the Deed of Trust.

1 8. On July 30, 2007, Naples Community Homeowners Association (the "HOA"), by its
2 foreclosure agent, Red Rock Financial Services ("Red Rock") initiated a non-judicial foreclosure by
3 recording a Lien for Delinquent Assessments.

4 9. On November 9, 2007, a Release of Lien for Delinquent Assessments was recorded,
5 which stated the Lien for Delinquent Assessments recorded on July 30, 2007, was released and
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7 10. On August 18, 2011, the HOA, by its foreclosure agent, Leach Johnson Song &
8 Gruchow (the "HOA Trustee") initiated a second non-judicial foreclosure by recording a Notice of
9 Delinquent Assessment Lien.

10 11. On January 24, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of
11 Default and Election to Sell against the Property.

12 12. On July 30, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of
13 Foreclosure Sale against the Property.

14 13. On August 22, 2013, the HOA sold the property to Saticoy Bay for \$5,563.00 A
15 foreclosure deed was recorded against the property on September 6, 2013.

16 14. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie
17 Mac's interest in the Property. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr.
18 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)
19 [Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

20 15. Saticoy Bay's motion for summary judgment was previously granted by this Court by
21 order entered December 11, 2018, ruling that the Federal Foreclosure Bar did not protect Freddie
22 Mac's interest in the Deed of Trust because, among other reasons, no interest of Freddie Mac or FHFA
23 was recorded in the county records. Nationstar appealed the decision, and in the interim, the Nevada
24 Supreme Court's *Daisy Trust v. Wells Fargo Bank* decision held that a deed of trust need not be
25 assigned to its owner, such as Freddie Mac in this case, in order for the owner to own the secured loan.
26 135 Nev. 230, 233-34, 445 P.3d 846, 849 (2019). This Court did not have the benefit of the *Daisy*
27 *Trust* decision when it entered its prior summary judgment order. The Nevada Court of Appeals
28 remanded this matter by order dated April 10, 2020. Remittitur issued on June 16, 2020.

CONCLUSIONS OF LAW

1
2 1. Summary judgment is appropriate when the pleadings and other evidence on file
3 demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to
4 judgment as a matter of law." *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d
5 1026, 1031 (2005).

6 2. Nevada's recording statutes do not require that Freddie Mac be identified as the
7 beneficiary on the publicly recorded deed of trust to establish its ownership interest in the subject loan.
8 *Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 230, 445 P.3d 846, 847 (2019).

9 3. Freddie Mac's loan servicer is not required to produce the actual loan servicing
10 agreement or the original promissory note to establish Freddie Mac's ownership interest in a loan
11 where properly authenticated business records establish that interest. *Id.* at 233, 445 P.3d at 847.

12 4. NRS 51.135, the business records exception to the hearsay rule, provides:

13 A memorandum, report, record or compilation of data, in any form, of acts, events,
14 conditions, opinions or diagnoses, made at or near the time by, or from information
15 transmitted by, a person with knowledge, all in the course of a regularly conducted
16 activity, as shown by the testimony or affidavit of the custodian or other qualified
17 person, is not inadmissible under the hearsay rule unless the source of information or
18 the method or circumstances of preparation indicate lack of trustworthiness.

19 5. Under *Daisy Trust v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 445 P.3d 846, 847 (2019),
20 there is a genuine issue of material fact as to whether Saticoy Bay's claim is preempted by the Federal
21 Foreclosure Bar. Freddie Mac did not record the conveyance of the Deed of Trust from First Magnus
22 Financial Corporation. However, the Deed of Trust did not have to be assigned or conveyed to Freddie
23 Mac in order for Freddie Mac to own the secured loan, meaning that Nevada's recording statutes are
24 not implicated. *Id.* at 234, 445 P.3d at 849. Thus, Freddie Mac was not required to publicly record its
25 ownership interest as a prerequisite for establishing that interest. *Id.*

26 6. In Nationstar's opposition to Saticoy Bay's motion, Nationstar provided a declaration
27 by Dean Meyer, a Freddie Mac employee, attesting that (1) Freddie Mac acquired the Loan in March
28 2007, (2) Freddie Mac owned the Loan at the time of the HOA foreclosure sale, and (3) that Nationstar
AA001857
had been servicing the loan since June 2012. Meyer's declaration was accompanied by applicable
Freddie Mac business records. These business records reflected a Funding Date of March 29, 2007,

1 Seller NBR of 623509, and Part. Pct. of 1.00. Meyer attested, amongst other things, that the Funding
2 Date referred to the date Freddie Mac purchased the loan, the Seller NBR referred to the party that
3 sold the loan to Freddie Mac, and the Part. Pct., which also means participation percentage, reflects
4 that Freddie Macs owns 100% of the loan. Meyer also attested that the Servicer Number in Freddie
5 Mac's printouts referred to Nationstar, the servicer of the Loan.

6 7. Meyer's respective declarations, which confirm or at least strongly indicate Nationstar
7 is Freddie Mac's loan servicer, combined with relevant provisions in the Guide that govern the
8 contractual relationship between Freddie Mac and its servicers nationwide, is sufficient to create a
9 genuine issue of material fact that Freddie Mac owned the loan and Nationstar was the servicer of the
10 Loan, such that Nationstar can assert the Federal Foreclosure Bar.

11 8. Saticoy Bay's argument that Meyer is not competent to testify lacks merit. The *Daisy*
12 *Trust* Court addressed an almost identical argument as to the admissibility of the business records
13 attested to in Meyer's declaration under NRS 51.135. Here, Meyer attested that the database entries
14 contained in the printouts were made (1) at or near the time of the event being recorded, (2) by a person
15 with knowledge of the event, and (3) in the course of the business and a regularly conducted activity.
16 Thus, the Freddie Mac business records are admissible.

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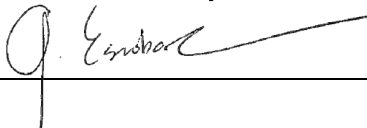
AA001858

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Saticoy Bay's motion for summary judgment is **DENIED**.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Nationstar shall prepare a counter motion for summary judgment. This Court will issue a separate order with respect to Nationstar's summary judgment motion.

Dated this 28th day of December, 2020



Submitted by:

AKERMAN LLP

/s/ Scott R. Lachman

Melanie D. Morgan, Esq.

Nevada Bar No. 8215

Donna M. Wittig, Esq.

Nevada Bar No. 11015

Scott R. Lachman, Esq.

Nevada Bar No. 12016

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

6FB 946 C4B2 C8D2

Approved as to form and content by:
Adriana Escobar
District Court Judge

Law Offices of Michael F. Bohn, Esq., Ltd.

/s/ Adam R. Trippiedi

Michael F. Bohn, Esq.

Nevada Bar No. 1641

Adam R. Trippiedi, Esq.

Nevada Bar No. 12294

376 East Warm Springs Road, Suite 125

Las Vegas, Nevada 89119

*Attorneys for Saticoy Bay LLC Series 4641
Viareggio Ct.*

AA001859

Larsen, Patricia (LAA-Las)

From: Adam Trippiedi <atrippiedi@bohnlawfirm.com>
Sent: Wednesday, December 23, 2020 2:38 PM
To: Lachman, Scott (Assoc-Las); Michael Bohn
Cc: Morgan, Melanie (Ptnr-Las); Wittig, Donna (Assoc-Las); Streible, Elizabeth (Den)
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Hi Scott,

I approve of this order.

Thanks.

Adam R. Trippiedi, ESQ.
Law Offices of
Michael F. Bohn, Esq., Ltd.
2260 Corporate Circle, Suite 480
Henderson, NV 89074
(702) 642-3113
(702) 642-9766 FAX
atrippiedi@bohnlawfirm.com

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From: scott.lachman@akerman.com [mailto:scott.lachman@akerman.com]
Sent: Wednesday, December 23, 2020 9:46 AM
To: Adam Trippiedi; Michael Bohn
Cc: melanie.morgan@akerman.com; donna.wittig@akerman.com; elizabeth.streible@akerman.com
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Adam – I have not submitted the order yet. Please forward any revisions today. Thanks!

Scott Lachman

Associate, Consumer Financial Services Practice Group
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5021 | C: 702 321 7282
Scott.Lachman@akerman.com

AA001860

From: Adam Trippiedi <atrippiedi@bohnlawfirm.com>
Sent: Wednesday, December 23, 2020 9:44 AM

To: Lachman, Scott (Assoc-Las) <scott.lachman@akerman.com>; Michael Bohn <mbohn@bohnlawfirm.com>
Cc: Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>; Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; Streible, Elizabeth (Den) <elizabeth.streible@akerman.com>
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Hi Scott,

Have you already submitted this order to the court? If not, please let me know and I will get you my edits (if any) today.

Thanks.

Adam R. Trippiedi, ESQ.
Law Offices of
Michael F. Bohn, Esq., Ltd.
2260 Corporate Circle, Suite 480
Henderson, NV 89074
(702) 642-3113
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From: scott.lachman@akerman.com [<mailto:scott.lachman@akerman.com>]
Sent: Monday, December 21, 2020 11:12 AM
To: Adam Trippiedi; Michael Bohn
Cc: melanie.morgan@akerman.com; donna.wittig@akerman.com; elizabeth.streible@akerman.com
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Mickey/Adam,

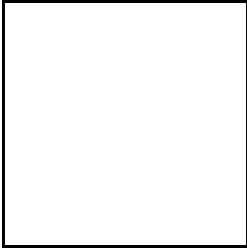
Friendly reminder to review the draft order denying Saticoy's summary judgment motion. It is consistent with the court's prior minute order, which is also attached. Please let us know if you have any revisions and if we may use your e-signature as to form and content. We hope to submit the order to court today.

Regards,
Scott Lachman

Scott Lachman

Associate, Consumer Financial Services Practice Group
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5021 | C: 702 321 7282
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AA001861



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From: Lachman, Scott (Assoc-Las)

Sent: Friday, December 18, 2020 4:14 PM

To: Adam Trippiedi <atrippiedi@bohnlawfirm.com>; 'Michael Bohn' <mbohn@bohnlawfirm.com>

Cc: Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>; Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; Streible, Elizabeth (Den) <elizabeth.streible@akerman.com>

Subject: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Mickey/Adam,

Attached please find the draft order denying Saticoy's summary judgment motion. It is consistent with the court's prior minute order, which is also attached. Please let us know if you have any revisions and if we may use your e-signature as to form and content. We hope to submit the order to court on Monday, 12/21.

Regards,
Scott Lachman

Scott Lachman

Associate, Consumer Financial Services Practice Group

Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5021 | C: 702 321 7282

Scott.Lachman@akerman.com

AA001862

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Saticoy Bay LLC Series 4641
Viareggio Ct., Plaintiff(s)

CASE NO: A-13-689240-C

7 vs.

DEPT. NO. Department 14

8
9 Nationstar Mortgage LLC,
Defendant(s)

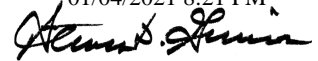
10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Denying Motion was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/28/2020

16 Brandon Lopipero .	blopipero@wrightlegal.net
17 Eserve Contact .	office@bohnlawfirm.com
18 Michael F Bohn Esq .	mbohn@bohnlawfirm.com
19 NVEfile .	nvefile@wrightlegal.net
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23 Donna Wittig	donna.wittig@akerman.com
24 Scott Lachman	scott.lachman@akerman.com

25
26
27 AA001863
28



CLERK OF THE COURT

OGSJ
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Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
CUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**ORDER GRANTING NATIONSTAR
MORTGAGE LLC'S MOTION FOR
SUMMARY JUDGMENT**

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

AA001864

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 On December 15, 2020, Nationstar Mortgage LLC's (**Nationstar**) motion for summary
2 judgment came for hearing before the Court. Scott R. Lachman, Esq. of Akerman LLP appeared on
3 behalf of Nationstar and Adam R. Trippiedi, Esq. of the Law Offices of Michael F. Bohn, Esq.
4 appeared on behalf of Saticoy Bay LLC Series 4641 Viareggio Ct's (**Saticoy Bay**). The court having
5 reviewed the pleadings and heard arguments hereby makes the findings of facts, conclusions of law,
6 and orders as follows:

7 **FINDINGS OF FACT**

8 1. A deed of trust listing Monique Guillory as the borrower ("Borrower"), First Magnus
9 Financial Corporation as the lender ("Lender"), and MERS, as beneficiary solely as nominee for
10 Lender and Lender's successors and assigns, was executed on January 19, 2007, and recorded on
11 January 25, 2007 (the "Deed of Trust"). The Deed of Trust granted Lender a security interest in real
12 property known as 4641 Viareggio Court, in Las Vegas (the "Property") to secure the repayment of a
13 loan in the original amount of \$258,400.00 to the Borrower (the promissory note and Deed of Trust
14 together are the "Loan").

15 2. In March 2007, Freddie Mac purchased the Loan, thereby acquiring ownership of the
16 Deed of Trust. Freddie Mac maintained its ownership interest in the Deed of Trust at the time of the
17 HOA Sale on August 22, 2013.

18 3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008
19 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which
20 established the Federal Housing Finance Agency ("FHFA") to regulate Freddie Mac, the Federal
21 National Mortgage Association, and the Federal Home Loan Banks.

22 4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

23 5. On February 11, 2011, MERS, as nominee for Lender and Lender's successors and
24 assigns, recorded an assignment of the Deed of Trust to Aurora Loan Services LLC ("Aurora").

25 6. On October 18, 2012, Aurora recorded an assignment of the Deed of Trust to
26 Nationstar.

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27 7. At the time of the HOA Sale on August 22, 2013, Nationstar was the record beneficiary
28 of the Deed of Trust and servicer of the Loan for Freddie Mac.

1 8. The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as
2 owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the **Guide**),
3 a document central to Freddie Mac's relationship with servicers nationwide. Among other things, the
4 Guide provides that Freddie Mac's servicers may act as record beneficiaries for the deeds of trust
5 Freddie Mac owns and requires that servicers assign these deeds of trust to Freddie Mac upon Freddie
6 Mac's demand.

7 9. The Guide provides:

8 For each Mortgage purchased by Freddie Mac, the Seller and the Servicer
9 agree that Freddie Mac may, at any time and without limitation, require the
10 Seller or the Servicer, at the Seller's or the Servicer's expense, to make such
11 endorsements to and assignments and recordations of any of the Mortgage
12 documents so as to reflect the interests of Freddie Mac.

13 Guide at 1301.10.

14 10. The Guide also provides that:

15 The Seller/Servicer is not required to prepare an assignment of the Security
16 Instrument to Freddie Mac. However, *Freddie Mac may, at its sole discretion and
17 at any time, require a Seller/Servicer, at the Seller/Servicer's expense, to prepare,
18 execute and/or record assignments of the Security Instrument to Freddie Mac.*

19 *Id.* at its Ex. 7 (Guide at 6301.6) (emphasis added) and Ex. 6 (Guide at 22.14).

20 11. The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie Mac.
21 *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1

22 12. The Guide also provides for a temporary transfer of possession of the note when
23 necessary for servicing, including foreclosure. *See* Guide at 8107.1, 8107.2, 9301.11. However, when
24 in "physical or constructive possession of a Note," the Servicer must "follow prudent business
25 practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at 8107.1(b).
26 Furthermore, when transferring documents in a mortgage file, including a note, the servicer must
27 ensure the receiver acknowledges that the note is "Freddie Mac's property." Guide at 3302.5

28 13. The Guide also includes chapters regarding how and when servicers should appear as
parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 ("Routine and non-routine
litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default
Legal Matters.")

14. The Guide provides:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

Guide at 1201.9.

15. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. *See* Guide at 7101.15(c).

16. Finally, the Guide provides:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must . . . [a]ssign the Security Instrument to the Transferee Servicer and record the assignment.

Guide at 7101.6

17. On July 30, 2007, Naples Community Homeowners Association (the "HOA"), by its foreclosure agent, Red Rock Financial Services ("Red Rock") initiated the non-judicial foreclosure by recording a Lien for Delinquent Assessments.

18. On November 9, 2007, a Release of Lien for Delinquent Assessments was recorded, which stated the Lien for Delinquent Assessments recorded on July 30, 2007, was released and satisfied.

19. On August 18, 2011, the HOA, by its foreclosure agent, Leach Johnson Song & Gruchow (the "HOA Trustee") initiated a second non-judicial foreclosure by recording a Notice of Delinquent Assessment Lien.

20. On January 24, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of Default and Election to Sell against the Property.

21. On July 30, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of Foreclosure Sale against the Property.

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22. On August 22, 2013, the HOA sold the property to Saticoy Bay for \$5,563.00. A foreclosure deed was recorded against the property on September 6, 2013.

23. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx.

24. Saticoy Bay filed a motion for summary judgment which was previously granted by Judge Escobar by order entered December 11, 2018, ruling that the Federal Foreclosure Bar did not protect Freddie Mac's interest in the Deed of Trust because it was not the record beneficiary at the time of sale. Nationstar appealed that decision, and in the interim, the Nevada Supreme Court held in *Daisy Trust v. Wells Fargo Bank* that a deed of trust need not be assigned to its owner, such as Freddie Mac in this case, in order for the owner to own the secured loan. 135 Nev. 230, 233-34, 445 P.3d 846, 849 (2019). This Court did not have the benefit of the *Daisy Trust* decision when it entered its prior summary judgment order. The Nevada Court of Appeals remanded this matter by order dated April 10, 2020. Remittitur issued on June 16, 2020.

25. The court denied Saticoy Bay's motion for summary judgment on remand by minute order issued November 2, 2020. Nationstar filed its summary judgment motion on November 9, 2020. Saticoy Bay filed an opposition on November 23, 2020.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. *See Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To successfully oppose a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

2. "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Wood*, 121

1 Nev. at 732, 121 P.3d at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586
2 (1986)). The governing law determines which "factual disputes are material and will preclude
3 summary judgment; other factual disputes are irrelevant." *Id.* at 731, 121 P.3d at 1031.

4 3. The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments Pool*
5 *I, LLC*, that in order "to have standing, the party seeking relief must have a sufficient interest in the
6 litigation,' so as to ensure the litigant will vigorously and effectively present his or her case against an
7 adverse party." 133 Nev. 247, 250, 396 P.3d 754, 756 (2017) (internal quotations and marks omitted).
8 The Nevada Supreme Court also held that mortgage loan servicers for Freddie Mac or Fannie Mae
9 may assert the Federal Foreclosure Bar in litigation like this one, and that none of FHFA, Fannie Mae,
10 or Freddie Mac need be joined as a party. *Id.* at 251, 396 P.3d at 758.

11 4. With regard to Nationstar's argument that NRS 116, *et seq.* (**State Foreclosure**
12 **Statute**) is preempted by 12 U.S.C. § 4617(j)(3), this Court finds that Nationstar, as servicer for
13 Freddie Mac, has an interest in the Property through its contractual servicing relationship with Freddie
14 Mac and as the beneficiary of record of the Deed of Trust. Nationstar's status as servicer of the loan
15 for Freddie Mac is evidenced by Nationstar's business records as well as Freddie Mac's business
16 records from Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of
17 business to manage the millions of loans it owns nationwide, as well as the testimony of Freddie Mac's
18 employee. Thus, Nationstar may assert the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law
19 in order to defend its interests and Freddie Mac's interests in the Deed of Trust.

20 5. Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a homeowner
21 association's foreclosure of its super-priority lien cannot extinguish a property interest of Freddie Mac
22 while it is under FHFA's conservatorship unless FHFA consents to that extinguishment. *Berezovsky*
23 *v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

24 6. Unless FHFA provides its consent, the federal protection shall be given full effect,
25 which includes preemption of state law. Saticoy Bay bears the burden of proof to establish that FHFA
26 expressly consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has
27 a policy against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v.*
28 *Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff

bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered.")

7. FHFA's April 21, 2015 Statement confirms that there was no such consent here. In the absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-CWH, 2017 WL 773872, *3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which FHFA's statement was sufficient to show FHFA's lack of consent).

8. At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's interest in the Property was established by admissible evidence, namely Freddie Mac's business records and the testimony of one of its employees. Under Nevada law, Freddie Mac had a secured property interest at the time of the HOA Sale. *See In re Montierth*, 131 Nev. 543, 547-48, 354 P.3d 648, 651 (2015); Restatement (Third) of Property: Mortgages § 5.4 cmt. c. In citing *Montierth* and the Nevada Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth Circuit held that a loan-owner servicer relationship "preserves the note owner's power to enforce its interest under the security instrument, because the note owner can direct the beneficiary to foreclose on its behalf." *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a secured property interest. *Id.*

9. The statute of frauds does not impugn Freddie Mac's ownership interest. The statute of frauds applies only "where there is a definite possibility of fraud." *Azevedo v. Minister*, 86 Nev. 576, 580, 471 P.2d 661, 663 (1970). There is none in this case; no one besides Freddie Mac claims to own the Loan, and Saticoy Bay has presented no evidence that another entity claims to own the Loan. Further, Saticoy Bay lacks standing to raise a statute of frauds defense because it was not party to the purchase of the Loan. *Harmon v. Tanner Motor Tours of Nev., Ltd.*, 79 Nev. 4, 16, 377 P.2d 622, 628 (1963).

AA001870

10. Freddie Mac's interest in Property secured by the Deed of Trust was a property interest protected by 12 U.S.C. § 4617(j)(3). Saticoy Bay failed to provide proof that the FHFA consented to

the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. Accordingly, the HOA Sale did not extinguish the Deed of Trust.

11. Insofar as Saticoy Bay raised arguments not addressed in this order, this Court has considered the arguments and determined they do not present a basis to support denial of Nationstar's motion for summary judgment.

12. All claims asserted in this case are now resolved. The Cooper Castle Law Firm LLP was voluntarily dismissed on October 5, 2017. Default judgment was entered against Monique Guillory on September 25, 2017. Naples Community Homeowners Association was dismissed prejudice August 12, 2015.

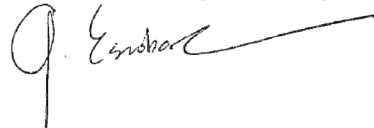
ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Nationstar's motion for summary judgment is granted.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Deed of Trust, recorded on January 25, 2007 with the Clark County, Nevada Recorder's Office as Instrument no. 20070125-0003583, was not extinguished by the HOA's foreclosure sale and continues to be a valid, secured, and enforceable lien on the Property.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Saticoy Bay's interest in the Property is subject to the Deed of Trust.

Dated this 4th day of January, 2021



2F8 578 3EDD E9DD

Adriana Escobar

District Court Judge

Submitted by:

/s/ Scott R. Lachman

Melanie D. Morgan, Esq.

Nevada Bar No. 8215

Donna M. Wittig, Esq.

Nevada Bar No. 11015

Scott R. Lachman, Esq.

Nevada Bar No. 12016

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

Approved as to form and content by:

/s/Adam R. Trippiedi

Michael F. Bohn, Esq.

Nevada Bar No. 1641

Adam R. Trippiedi, Esq.

Nevada Bar No. 12294

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2260 Corporate Circle, Suite 480

Henderson, NV 89074

Attorneys for Saticoy Bay LLC Series 4641

Viareggio Ct

Llarena, Carla (LAA-Las)

From: Adam Trippiedi <atrippiedi@bohnlawfirm.com>
Sent: Monday, January 4, 2021 10:19 AM
To: Lachman, Scott (Assoc-Las); Michael Bohn
Cc: Morgan, Melanie (Ptnr-Las); Wittig, Donna (Assoc-Las); Streible, Elizabeth (Den)
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Hi Scott,

The only change I have is to our signature block. Please add my name and update our address. With that change, you have my approval to submit for filing.

Thanks.

Adam R. Trippiedi, ESQ.
Law Offices of
Michael F. Bohn, Esq., Ltd.
2260 Corporate Circle, Suite 480
Henderson, NV 89074
(702) 642-3113
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From: scott.lachman@akerman.com [mailto:scott.lachman@akerman.com]
Sent: Monday, January 04, 2021 9:07 AM
To: Adam Trippiedi; Michael Bohn
Cc: melanie.morgan@akerman.com; donna.wittig@akerman.com; elizabeth.streible@akerman.com
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Adam,

Attached please find the order granting Nationstar summary judgment. Please let us know if we have approval to use your e-signature. We aim to submit it by mid-week. Thanks and happy new year!

Regards,
Scott Lachman

AA001872

Scott Lachman

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Saticoy Bay LLC Series 4641
Viareggio Ct., Plaintiff(s)

CASE NO: A-13-689240-C

7 vs.

DEPT. NO. Department 14

8
9 Nationstar Mortgage LLC,
Defendant(s)

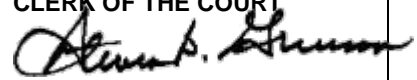
10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 1/4/2021

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25
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27 AA001873
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16 *Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC*

17 **EIGHTH JUDICIAL DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 SATICOY BAY LLC SERIES 4641
20 VIAREGGIO CT,

21 Plaintiffs,

22 v.

23 NATIONSTAR MORTGAGE LLC, COOPER
24 CASTLE LAW FIRM, LLP; and MONIQUE
25 CUILLOREY,

26 Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**NOTICE OF ENTRY OF ORDER
GRANTING NATIONSTAR MORTGAGE
LLC'S MOTION FOR SUMMARY
JUDGMENT**

27 NATIONSTAR MORTGAGE LLC,

28 Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

AA001874

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that an **ORDER GRANTING NATIONSTAR MORTGAGE**
3 **LLC'S MOTION FOR SUMMARY JUDGMENT** has been entered by this Court on the 4th day of
4 January, 2021, in the above-captioned matter. A copy of said Order is attached hereto as **Exhibit A.**

5 Dated this 5th day of January, 2021.

6 **AKERMAN LLP**

7 /s/ Scott R. Lachman

8 Melanie D. Morgan, Esq.

9 Nevada Bar No. 8215

Donna M. Wittig, Esq.

10 Nevada Bar No. 11015

Scott R. Lachman, Esq.

11 Nevada Bar No. 12016

12 1635 Village Center Circle, Suite 200

13 Las Vegas, Nevada 89134

14 *Attorneys for Nationstar Mortgage LLC*

26 AA001875

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 5th day of January, 2021, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING NATIONSTAR MORTGAGE LLC'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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

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Michael F Bohn Esq mbohn@bohnlawfirm.com

WRIGHT FINLAY & ZAK

Brandon Lopipero blopipero@wrightlegal.net
NVEfile nvefile@wrightlegal.net
Regina A. Habermas rhabermas@wrightlegal.net

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

/s/ Carla Llarena

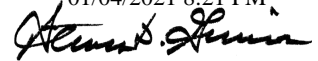
An employee of AKERMAN LLP

AA001876

EXHIBIT A

EXHIBIT A

AA001877



CLERK OF THE COURT

OGSJ
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
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Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
CUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**ORDER GRANTING NATIONSTAR
MORTGAGE LLC'S MOTION FOR
SUMMARY JUDGMENT**

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

AA001878

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On December 15, 2020, Nationstar Mortgage LLC's (**Nationstar**) motion for summary judgment came for hearing before the Court. Scott R. Lachman, Esq. of Akerman LLP appeared on behalf of Nationstar and Adam R. Trippiedi, Esq. of the Law Offices of Michael F. Bohn, Esq. appeared on behalf of Saticoy Bay LLC Series 4641 Viareggio Ct's (**Saticoy Bay**). The court having reviewed the pleadings and heard arguments hereby makes the findings of facts, conclusions of law, and orders as follows:

FINDINGS OF FACT

1. A deed of trust listing Monique Guillory as the borrower ("Borrower"), First Magnus Financial Corporation as the lender ("Lender"), and MERS, as beneficiary solely as nominee for Lender and Lender's successors and assigns, was executed on January 19, 2007, and recorded on January 25, 2007 (the "Deed of Trust"). The Deed of Trust granted Lender a security interest in real property known as 4641 Viareggio Court, in Las Vegas (the "Property") to secure the repayment of a loan in the original amount of \$258,400.00 to the Borrower (the promissory note and Deed of Trust together are the "Loan").

2. In March 2007, Freddie Mac purchased the Loan, thereby acquiring ownership of the Deed of Trust. Freddie Mac maintained its ownership interest in the Deed of Trust at the time of the HOA Sale on August 22, 2013.

3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which established the Federal Housing Finance Agency ("FHFA") to regulate Freddie Mac, the Federal National Mortgage Association, and the Federal Home Loan Banks.

4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

5. On February 11, 2011, MERS, as nominee for Lender and Lender's successors and assigns, recorded an assignment of the Deed of Trust to Aurora Loan Services LLC ("Aurora").

6. On October 18, 2012, Aurora recorded an assignment of the Deed of Trust to Nationstar.

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7. At the time of the HOA Sale on August 22, 2013, Nationstar was the record beneficiary of the Deed of Trust and servicer of the Loan for Freddie Mac.

1 8. The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as
2 owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the **Guide**),
3 a document central to Freddie Mac's relationship with servicers nationwide. Among other things, the
4 Guide provides that Freddie Mac's servicers may act as record beneficiaries for the deeds of trust
5 Freddie Mac owns and requires that servicers assign these deeds of trust to Freddie Mac upon Freddie
6 Mac's demand.

7 9. The Guide provides:

8
9 For each Mortgage purchased by Freddie Mac, the Seller and the Servicer
10 agree that Freddie Mac may, at any time and without limitation, require the
11 Seller or the Servicer, at the Seller's or the Servicer's expense, to make such
12 endorsements to and assignments and recordations of any of the Mortgage
13 documents so as to reflect the interests of Freddie Mac.

14 Guide at 1301.10.

15 10. The Guide also provides that:

16 The Seller/Servicer is not required to prepare an assignment of the Security
17 Instrument to Freddie Mac. However, *Freddie Mac may, at its sole discretion and*
18 *at any time, require a Seller/Servicer, at the Seller/Servicer's expense, to prepare,*
19 *execute and/or record assignments of the Security Instrument to Freddie Mac.*

20 *Id.* at its Ex. 7 (Guide at 6301.6) (emphasis added) and Ex. 6 (Guide at 22.14).

21 11. The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie Mac.
22 *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1

23 12. The Guide also provides for a temporary transfer of possession of the note when
24 necessary for servicing, including foreclosure. *See* Guide at 8107.1, 8107.2, 9301.11. However, when
25 in "physical or constructive possession of a Note," the Servicer must "follow prudent business
26 practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at 8107.1(b).
27 Furthermore, when transferring documents in a mortgage file, including a note, the servicer must
28 ensure the receiver acknowledges that the note is "Freddie Mac's property." Guide at 3302.5

 13. The Guide also includes chapters regarding how and when servicers should appear as
parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 ("Routine and non-routine
litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default
Legal Matters.")

14. The Guide provides:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

Guide at 1201.9.

15. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. *See* Guide at 7101.15(c).

16. Finally, the Guide provides:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must . . . [a]ssign the Security Instrument to the Transferee Servicer and record the assignment.

Guide at 7101.6

17. On July 30, 2007, Naples Community Homeowners Association (the "HOA"), by its foreclosure agent, Red Rock Financial Services ("Red Rock") initiated the non-judicial foreclosure by recording a Lien for Delinquent Assessments.

18. On November 9, 2007, a Release of Lien for Delinquent Assessments was recorded, which stated the Lien for Delinquent Assessments recorded on July 30, 2007, was released and satisfied.

19. On August 18, 2011, the HOA, by its foreclosure agent, Leach Johnson Song & Gruchow (the "HOA Trustee") initiated a second non-judicial foreclosure by recording a Notice of Delinquent Assessment Lien.

20. On January 24, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of Default and Election to Sell against the Property.

21. On July 30, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of Foreclosure Sale against the Property.

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22. On August 22, 2013, the HOA sold the property to Saticoy Bay for \$5,563.00. A foreclosure deed was recorded against the property on September 6, 2013.

23. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx.

24. Saticoy Bay filed a motion for summary judgment which was previously granted by Judge Escobar by order entered December 11, 2018, ruling that the Federal Foreclosure Bar did not protect Freddie Mac's interest in the Deed of Trust because it was not the record beneficiary at the time of sale. Nationstar appealed that decision, and in the interim, the Nevada Supreme Court held in *Daisy Trust v. Wells Fargo Bank* that a deed of trust need not be assigned to its owner, such as Freddie Mac in this case, in order for the owner to own the secured loan. 135 Nev. 230, 233-34, 445 P.3d 846, 849 (2019). This Court did not have the benefit of the *Daisy Trust* decision when it entered its prior summary judgment order. The Nevada Court of Appeals remanded this matter by order dated April 10, 2020. Remittitur issued on June 16, 2020.

25. The court denied Saticoy Bay's motion for summary judgment on remand by minute order issued November 2, 2020. Nationstar filed its summary judgment motion on November 9, 2020. Saticoy Bay filed an opposition on November 23, 2020.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. *See Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To successfully oppose a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

2. "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Wood*, 121

1 Nev. at 732, 121 P.3d at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586
2 (1986)). The governing law determines which "factual disputes are material and will preclude
3 summary judgment; other factual disputes are irrelevant." *Id.* at 731, 121 P.3d at 1031.

4 3. The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments Pool*
5 *I, LLC*, that in order "to have standing, the party seeking relief must have a sufficient interest in the
6 litigation," so as to ensure the litigant will vigorously and effectively present his or her case against an
7 adverse party." 133 Nev. 247, 250, 396 P.3d 754, 756 (2017) (internal quotations and marks omitted).
8 The Nevada Supreme Court also held that mortgage loan servicers for Freddie Mac or Fannie Mae
9 may assert the Federal Foreclosure Bar in litigation like this one, and that none of FHFA, Fannie Mae,
10 or Freddie Mac need be joined as a party. *Id.* at 251, 396 P.3d at 758.

11 4. With regard to Nationstar's argument that NRS 116, *et seq.* (**State Foreclosure**
12 **Statute**) is preempted by 12 U.S.C. § 4617(j)(3), this Court finds that Nationstar, as servicer for
13 Freddie Mac, has an interest in the Property through its contractual servicing relationship with Freddie
14 Mac and as the beneficiary of record of the Deed of Trust. Nationstar's status as servicer of the loan
15 for Freddie Mac is evidenced by Nationstar's business records as well as Freddie Mac's business
16 records from Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of
17 business to manage the millions of loans it owns nationwide, as well as the testimony of Freddie Mac's
18 employee. Thus, Nationstar may assert the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law
19 in order to defend its interests and Freddie Mac's interests in the Deed of Trust.

20 5. Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a homeowner
21 association's foreclosure of its super-priority lien cannot extinguish a property interest of Freddie Mac
22 while it is under FHFA's conservatorship unless FHFA consents to that extinguishment. *Berezovsky*
23 *v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

24 6. Unless FHFA provides its consent, the federal protection shall be given full effect,
25 which includes preemption of state law. Saticoy Bay bears the burden of proof to establish that FHFA
26 expressly consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has
27 a policy against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v.*
28 *Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff

bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered.")

7. FHFA's April 21, 2015 Statement confirms that there was no such consent here. In the absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-CWH, 2017 WL 773872, *3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which FHFA's statement was sufficient to show FHFA's lack of consent).

8. At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's interest in the Property was established by admissible evidence, namely Freddie Mac's business records and the testimony of one of its employees. Under Nevada law, Freddie Mac had a secured property interest at the time of the HOA Sale. *See In re Montierth*, 131 Nev. 543, 547-48, 354 P.3d 648, 651 (2015); Restatement (Third) of Property: Mortgages § 5.4 cmt. c. In citing *Montierth* and the Nevada Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth Circuit held that a loan-owner servicer relationship "preserves the note owner's power to enforce its interest under the security instrument, because the note owner can direct the beneficiary to foreclose on its behalf." *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a secured property interest. *Id.*

9. The statute of frauds does not impugn Freddie Mac's ownership interest. The statute of frauds applies only "where there is a definite possibility of fraud." *Azevedo v. Minister*, 86 Nev. 576, 580, 471 P.2d 661, 663 (1970). There is none in this case; no one besides Freddie Mac claims to own the Loan, and Saticoy Bay has presented no evidence that another entity claims to own the Loan. Further, Saticoy Bay lacks standing to raise a statute of frauds defense because it was not party to the purchase of the Loan. *Harmon v. Tanner Motor Tours of Nev., Ltd.*, 79 Nev. 4, 16, 377 P.2d 622, 628 (1963).

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10. Freddie Mac's interest in Property secured by the Deed of Trust was a property interest protected by 12 U.S.C. § 4617(j)(3). Saticoy Bay failed to provide proof that the FHFA consented to

the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. Accordingly, the HOA Sale did not extinguish the Deed of Trust.

11. Insofar as Saticoy Bay raised arguments not addressed in this order, this Court has considered the arguments and determined they do not present a basis to support denial of Nationstar's motion for summary judgment.

12. All claims asserted in this case are now resolved. The Cooper Castle Law Firm LLP was voluntarily dismissed on October 5, 2017. Default judgment was entered against Monique Guillory on September 25, 2017. Naples Community Homeowners Association was dismissed prejudice August 12, 2015.

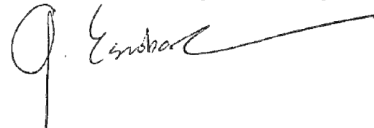
ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Nationstar's motion for summary judgment is granted.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Deed of Trust, recorded on January 25, 2007 with the Clark County, Nevada Recorder's Office as Instrument no. 20070125-0003583, was not extinguished by the HOA's foreclosure sale and continues to be a valid, secured, and enforceable lien on the Property.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Saticoy Bay's interest in the Property is subject to the Deed of Trust.

Dated this 4th day of January, 2021



2F8 578 3EDD E9DD

Adriana Escobar

District Court Judge

Submitted by:

/s/ Scott R. Lachman

Melanie D. Morgan, Esq.

Nevada Bar No. 8215

Donna M. Wittig, Esq.

Nevada Bar No. 11015

Scott R. Lachman, Esq.

Nevada Bar No. 12016

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

Approved as to form and content by:

/s/Adam R. Trippiedi

Michael F. Bohn, Esq.

Nevada Bar No. 1641

Adam R. Trippiedi, Esq.

Nevada Bar No. 12294

Law Offices of Michael F. Bohn, Esq., Ltd.

2260 Corporate Circle, Suite 480

Henderson, NV 89074

Attorneys for Saticoy Bay LLC Series 4641

Viareggio Ct

Llarena, Carla (LAA-Las)

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The only change I have is to our signature block. Please add my name and update our address. With that change, you have my approval to submit for filing.

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Adam,

Attached please find the order granting Nationstar summary judgment. Please let us know if we have approval to use your e-signature. We aim to submit it by mid-week. Thanks and happy new year!

Regards,
Scott Lachman

AA001886

Scott Lachman

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
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6 Saticoy Bay LLC Series 4641
Viareggio Ct., Plaintiff(s)

CASE NO: A-13-689240-C

7 vs.

DEPT. NO. Department 14

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9 Nationstar Mortgage LLC,
Defendant(s)

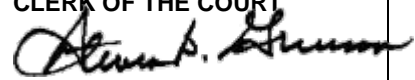
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27 AA001887
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*Attorneys for Defendant/Counterclaimant
Nationstar Mortgage LLC*

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

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
CUILLORY,

Defendants.

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Case No.: A-13-689240-C

Dept.: XIV

NOTICE OF RELEASE OF LIS PENDENS

AA001888

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 NOTICE IS HEREBY GIVEN that the notice of lis pendens, recorded with the Clark County
2 Recorder on September 21, 2015, as Instrument No. 20150921-0001552, in relation to the above-
3 entitled action, is released.

4 This release affects title to the real property located at 4641 Viareggio Court, Las Vegas,
5 Nevada 89147, and legally described as follows:

6 **PARCEL ONE (1):**

7 **LOT SIXTY-TWO (62) IN BLOCK ONE (1) OF CHEYENNE RIDGE PHASE 2**
8 **– UNIT 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 78 OF PLATS,**
9 **PAGE 18, AND AMENDED BY THAT CERTAIN CERTIFICATE OF**
10 **AMENDMENT RECORDED MAY 19, 1997 IN BOOK 970519 AS DOCUMENT**
11 **NO. 01398, OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY**
12 **RECORDER OF CLARK COUNTY, NEVADA.**

13 **PARCEL TWO (2):**

14 **A NON EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PUBLIC**
15 **UTILITY PURPOSES ON, OVER AND ACROSS THE PRIVATE STREETS**
16 **ON THE MAP REFERENCED HEREINABOVE, WHICH EASEMENT IS**
17 **APPURTENANT TO PARCEL ONE (1).**

18 and more particularly identified in the office of the Clark County Recorder's as Assessor Parcel
19 Number: **163-19-311-015.**

20 DATED January 6, 2021.

21 **AKERMAN LLP**

22 /s/ Donna M. Wittig

23 MELANIE D. MORGAN, ESQ.

24 Nevada Bar No. 8215

25 DONNA M. WITTIG, ESQ.

26 Nevada Bar No. 11015

27 SCOTT R. LACHMAN, ESQ.

28 Nevada Bar No. 12016

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

*Attorneys for Defendant/Counterclaimant Nationstar
Mortgage LLC*

AA001889

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 6th day of January, 2021, I caused to be served a true and correct copy of the foregoing **NOTICE OF RELEASE OF LIS PENDENS**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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

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

WRIGHT FINLAY & ZAK

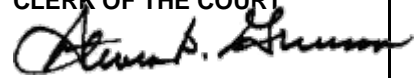
Brandon Lopipero blopipero@wrightlegal.net
NVEfile nvefile@wrightlegal.net
Regina A. Habermas rhabermas@wrightlegal.net

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

AA001890



1 **NOAS**
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3 NIKOLL NIKCI, ESQ.
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(702) 642-3113/ (702) 642-9766 FAX
7
Attorneys for plaintiff/counterdefendant

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

12 Plaintiff,

13 vs.

14 NATIONSTAR MORTGAGE, LLC; COOPER
15 CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY,

16 Defendants.

17 NATIONSTAR MORTGAGE, LLC

18 Counterclaimant,

19 vs.

20 SATICOY BAY LLC SERIES 4641
21 VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; DOES 1
22 through X; and ROE CORPORATIONS I
Through X, inclusive,

23 Counter-defendants.

CASE NO.: A-13-689240-C
DEPT NO.: XIV

24 **NOTICE OF APPEAL**

25 Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct., by and through its attorneys, The Law
26 Offices of Michael F. Bohn, Esq. Ltd., appeals to the Supreme Court of Nevada from the judgment

27 AA001891

1 granting summary upon motion for summary judgment on January 4, 2021.

2 DATED this 3rd day of February, 2021

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

5 By: /s/ /Michael F. Bohn, Esq./
6 MICHAEL F. BOHN, ESQ.
7 NIKOLL NIKCI, ESQ.
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9 Henderson, Nevada 89074
10 Attorneys for Plaintiff
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AA001892

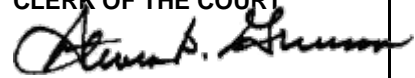
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law
3 Offices of Michael F. Bohn, Esq., Ltd., and on the 3rd day of February, 2021, an electronic copy of the
4 NOTICE OF APPEAL was served on opposing counsel via the Court's electronic service system to the
5 following counsel of record:

6 Melanie D. Morgan, Esq.
7 Donna M. Wittig, Esq.
8 AKERMAN LLP
9 1635 Village Center Circle, Suite 200
10 Las Vegas, Nevada 89134

11 /s/ Michael F. Bohn, Esq. /
12 An Employee of the LAW OFFICES OF
13 MICHAEL F. BOHN, ESQ., LTD.
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AA001893



1 ASTA
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12 (702) 642-3113/ (702) 642-9766 FAX
13
14 Attorneys for plaintiff/counterdefendant

DISTRICT COURT
CLARK COUNTY, NEVADA

11 SATICOY BAY LLC SERIES 4641
12 VIAREGGIO CT,

13 Plaintiff,

14 vs.

15 NATIONSTAR MORTGAGE, LLC; COOPER
16 CASTLE LAW FIRM, LLP; and MONIQUE
17 GUILLORY,

18 Defendants.

19

NATIONSTAR MORTGAGE, LLC

20 Counterclaimant,

21 vs.

22 SATICOY BAY LLC SERIES 4641
23 VIAREGGIO CT; NAPLES COMMUNITY
24 HOMEOWNERS ASSOCIATION; DOES 1
25 through X; and ROE CORPORATIONS I
26 Through X, inclusive,

27 Counter-defendants.

CASE NO.: A-13-689240-C
DEPT NO.: XIV

CASE APPEAL STATEMENT

1. The appellant filing this case appeal statement is Saticoy Bay LLC Series 4641 Viareggio Ct.
2. The judge issuing the judgment appealed from is the honorable Adriana Escobar.

AA001894

1 3. The parties to the proceedings in District Court are Saticoy Bay LLC Series 4641 Viareggio
2 Ct., plaintiff; Nationstar Mortgage, LLC; Cooper Castle Law Firm, LLP; and Monique Guillory,
3 defendants;

4 4. The parties to this appeal are the appellant Saticoy Bay LLC Series 4641 Viareggio Ct.,
5 plaintiff , and respondents Nationstar Mortgage, LLC.

6 5. Counsel for appellant Saticoy Bay LLC Series 4641 Viareggio Ct., plaintiff is Michael F.
7 Bohn, Esq.; 2260 Corporate Circle, Suite 480, Henderson, NV 89074; (702) 642-3113. Counsel for
8 respondents Nationstar Mortgage, LLC, is Melanie D. Morgan, Esq., 1635 Village Center Circle, Suite
9 200, Las Vegas, Nevada, 89134 (702) 634-5000.

10 6. The attorneys for both the plaintiff/appellant and defendants/respondents are licensed in the
11 state of Nevada.

12 7. The appellant was represented by retained counsel in the District Court;

13 8. The appellant is represented by retained counsel on appeal;

14 9. There were no orders granting leave to proceed in forma pauperis;

15 10. The complaint was filed in District Court on September 25, 2013;

16 11. The plaintiff filed this action seeking title to the real property as a result of a foreclosure sale.
17 The district court ruled in favor of defendants after summary judgment.

18 12. The case has previously been the subject of an appeal, No. 77874-COA.

19 13. The case does not involve child custody or visitation; and,

20 14. It is likely that this case can be settled.

21 DATED this 3rd day of February, 2021

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

24 By: /s/ /Michael F. Bohn, Esq./
25 MICHAEL F. BOHN, ESQ.
26 NIKOLL NIKCI, ESQ.
27 2260 Corporate Circle, Ste. 480
28 Henderson, Nevada 89074
 Attorneys for Plaintiff

AA001895

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law
3 Offices of Michael F. Bohn, Esq., Ltd., and on the 3rd day of February, 2021, an electronic copy of the
4 CASE APPEAL STATEMENT was served on opposing counsel via the Court's electronic service
5 system to the following counsel of record:

6 Melanie D. Morgan, Esq.
7 Donna M. Wittig, Esq.
8 AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

9 /s/ Michael F. Bohn, Esq. /
10 An Employee of the LAW OFFICES OF
11 MICHAEL F. BOHN, ESQ., LTD.
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