IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME, Appellants, v. SABLES, LLC, A NEVADA LIMITED LIABILITY COMPANY, AS TRUSTEE OF THE DEED OF TRUST GIVEN BY VICENTA LINCICOME AND DATED 5/23/2007; FAY SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND SUBSIDIARY OF FAY FINANCIAL, LLC; PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A., AS LEGAL TITLE TRUSTEE; BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, A UTAH LIMITED LIABILITY COMPANY; NEWREZ, LLC, D/B/A SHELLPOINT MORTGAGE SERVICING, LLC,; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; AND MCM-2018-NPL2, Respondents.	NEVADA SUPREME COURT CASE NO.: 84238 THIRD JUDICIAL DISTRICT COURT CASE NO.: 18-CV-01332

Electronically Filed
Mar 23 2022 10:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' OPPOSITION TO MOTION TO DISMISS APPEAL

COME NOW, APPELLANTS ALBERT ELLIS LINCICOME and VICENTA LINCICOME, by and through their attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and hereby oppose *Respondent Breckenridge Property Fund 2016, LLC's Motion for Dismissal.*

I. INTRODUCTION

Respondent Breckenridge Property Fund 2016, LLC (hereinafter "Breckenridge"), filed its motion to dismiss this appeal alleging that Appellants have "wrongfully filed" a second appeal after their first appeal was dismissed as to

Docket 84238 Document 2022-09194

Breckenridge. [1] Breckenridge asserts that the Appellants' purpose in filing the appeal was "to extract settlement of Breckenridge."[2] *Id.*

Breckenridge is wrong. Appellants did not and would not file an appeal for an improper purpose. Appellants brought this appeal because the district court's recent orders confirm that all of Breckenridge's claims have been adjudicated, abandoned, or otherwise rendered moot.

Accordingly, this Court should conclude that it has jurisdiction to review the orders subject to this appeal pursuant to NRAP 3A(b)(1).

II. PROCEDURAL AND FACTUAL HISTORY

1. On 11/3/2017, after Appellants were denied the opportunity to make payments upon their modified home loan for several years, the beneficiary of the Deed of Trust caused the Trustee to initiate foreclosure proceedings and record a Notice of Default and Election to Sell. [3]

2. On 10/12/2018, the Trustee recorded its Notice of Trustee's Sale ("NOS") setting the foreclosure sale of Appellants' home to occur 11/9/2018. [4] [5]

3. On 11/7/2018, Appellants filed their Complaint and their TRO Application with the district court and at the hearing on 11/20/2018 the district court granted

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[1] *See* Breckenridge's 3/16/2022 Motion to Dismiss Appeal, p.3.
[2] *Id.*
[3] *Notice of Breach and Default and Election to Sell the Real Property under Deed of Trust* dated11/1/2017 attached as Exhibit 1.
[4] *Notice of Trustee's Sale* dated 11/9/2018 attached as Exhibit 2.
[5] Ex.2,p.1.

Appellants' application for a preliminary injunction, but also required a $172,610.67 bond be posted by 12/20/2018. [6]

4. On 12/31/2018, the district court entered its written order upon its findings and conclusions of law enjoining Sables from selling Appellants' home "until further order of the Court."[7] Six days later, Sables sold Appellants' home at foreclosure.

5. On or about 10/3/2019, Breckenridge filed its *Intervenor's Counterclaim.* [8]

6. Appellants were granted leave and on 12/20/2019 filed their Second Amended Complaint. [9]

7. On or about 10/2/2020, Breckenridge filed its *Crossclaim Against Prof-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee.* [10]

8. On 3/18/2021, Breckenridge filed its *Motion for Summary Judgment Against Plaintiff.* [11]

9. On 6/23/2021, the district court entered its *Order Denying Plaintiffs'*

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[6] *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction* dated 11/7/2018 (internal exhibits omitted) attached as Exhibit 3.
[7] *Order* dated 12/31/2018 attached as Exhibit 4.
[8] *Intervenor's Counterclaim* dated 10/3/2019 attached as Exhibit 5.
[9] *Second Amended Complaint* dated 12/20/2019 (internal exhibits omitted) attached as Exhibit 6.
[10] Breckenridge's *Crossclaim Against Prof-2013-M4 Legal Title Trust, by US Bank National Association, as Legal Title Trustee* dated 10/2/2020 attached as Exhibit 7.
[11] *Breckenridge MSJ Motion* attached as Exhibit 8.

Motion for Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing ("Second MSJ Order"). [12] On the same day the district court entered its *Order on Breckenridge Motion for Summary Judgment* ("Breckenridge MSJ Order"). [13]

10. On 7/19/2021, Appellants filed their Notice of Appeal with the Nevada Supreme Court under Case No. 83261. [14]

11. On or about 7/19/2021, Breckenridge filed with the district court its *Motion for Attorney's Fees and Costs,* therein requesting relief as the "prevailing party."[15]

12. On 8/5/2021, Appellants filed with the district court *Plaintiffs' Opposition to Breckenridge Property Fund 2016's Motion for Attorney Fees and Costs*. [16]

13. On or about 9/1/2021, Breckenridge filed its *Reply in Support of its Motion for Attorney Fees and Costs.* [17]

14. On 9/9/2021, Breckenridge filed its *Motion for Entry of Order Granting*

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[12] *Order Denying Plaintiffs' Motion for Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing* dated 6/23/2021 attached as Exhibit 9.

[13] *Order on Breckenridge Motion for Summary Judgment* dated 6/23/2021 attached as Exhibit 10.

[14] *Notice of Appeal* dated 7/19/2021 attached as Exhibit 11.

[15] *Motion for Attorney's Fees and Costs* dated 7/19/2021 attached as Exhibit 12.

[16] *Plaintiffs' Opposition to Breckenridge Property Fund 2016's Motion for Attorney Fees and Costs* dated 8/5/2021 attached as Exhibit 13.

[17] Breckenridge's *Reply in Support of its Motion for Attorney Fees and Costs* dated 9/1/2021 attached as Exhibit 14.

*Permanent Writ of Restitution and Payment of Overdue Rent*s.[18]

15. On 9/15/2021, Appellants filed with the district court their *Motion for Stay Pending Appeal*. [19]

16. On 9/24/2021, Appellants filed with the district court their opposition to Breckenridge's motion for permanent writ of restitution. [20]

17. On 10/1/2021, Breckenridge filed with the district court its *Opposition to Plaintiff's Motion to Stay Pending Appeal*. [21]

18. On 10/6/2021, Breckenridge filed with the district court its *Reply in Support of Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents*. [22]

19. On 10/13/2021, the district court held a hearing on Breckenridge's writ of restitution and upon Appellants' motion for stay pending appeal. [23]

20. On 11/5/2021, the district court entered its order regarding Breckenridge's

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[18] *Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rent*s dated 9/9/2021 attached as Exhibit 15.

[19] *Motion for Stay Pending Appeal* dated 9/15/2021 attached as Exhibit 16.

[20] *Opposition to Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents* dated 9/24/2021 attached as Exhibit 17.

[21] *Opposition to Plaintiff's Motion to Stay Pending Appeal* dated 10/1/2021 attached as Exhibit 18.

[22] *Reply in Support of Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents* dated 10/6/2021 attached as Exhibit 19.

[23] *Order Granting Ex Parte Application for Order Shortening Time for Hearing on Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents* dated 9/28/2021 attached as Exhibit 20.

Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents and *Plaintiffs' Motion for Stay Pending Appeal*. [24] Thereafter, on 11/22/2021, the district court entered its *Permanent Writ of Restitution*. [25]

21. On 12/15/2021, Appellants were removed from their home by the Lyon County Sheriff's Department.

22. On 1/19/2022, the district court entered its *Order on Attorney's Fees and Costs*, determining Breckenridge to be the prevailing party in the action entitled to attorney's fees pursuant to NRS 18.010(2) on the basis that the action was "maintained without reasonable grounds." [26]

23. On 1/19/2022, this Court entered its *Order Partially Dismissing Appeal* granting Breckenridge's motion to dismiss Breckenridge from the appeal, filed in Nevada Supreme Court Case No. 83261. [27]

III. ARGUMENT

Breckenridge seeks dismissal of this appeal upon the basis that this Court's 1/19/2022 *Order Partially Dismissing Appeal,* entered in Case No. 83261, partially dismissed Appellants' appeal as it pertains to the district court's 6/23/2021 *Order*

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[24] *Order Concerning: Breckenridge Property Fund 2016, LLC's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents* and *Plaintiffs' Motion for Stay Pending Appeal* dated 11/5/2021 attached as Exhibit 21.

[25] *Permanent Writ of Restitution* dated 11/22/2021 attached as Exhibit 22.

[26] *Order on Attorney's Fees and Costs* dated 1/19/2022 attached as Exhibit 23.

[27] *Order Partially Dismissing* Appeal dated 1/19/22 attached as Exhibit 24.

on Breckenridge Motion for Summary Judgment ("Breckenridge MSJ Order"). [28] Breckenridge asserts that this appeal was "wrongly filed" because this Court has determined that the Breckenridge MSJ Order "is not an appealable order." [29]

Breckenridge is wrong. This appeal is properly brought before this Court now that the district court has confirmed that all of Breckenridge's claims have been adjudicated, abandoned, or rendered moot.

On 1/19/2022, in Case No. 83261, this Court entered its *Order Partially Dismissing Appeal* which therein dismissed Appellants' appeal of the Breckenridge MSJ Order on the basis that "it does not dispose of all the claims and issues raised by Breckenridge." [30]

This Court stated that the Breckenridge MSJ Order "does not appear to resolve Breckenridge's claims for slander of title, writ of restitution, unjust enrichment, and rent or monies for possession of the subject property, or award any amount of damages for these claims." *Id. at p.2.*

In the district court's 1/19/2022 order on Breckenridge's 7/19/2021 *Motion for Attorney's Fees and Costs* it found Breckenridge to be the prevailing party and awarded judgment in the amount of $44,648.00 in attorney's fees and $3,788.01 in

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[28] Ex. 24.
[29] *See* Breckenridge's 3/16/2022 Motion to Dismiss Appeal, pp.1-3.
[30] Ex. 24, p. 1-2.

costs. [31] [32] The district court's 1/19/2022 order is a final and appealable post judgment order. [33] [34]

The district court has also entered additional orders resolving Breckenridge's other claims. On 9/9/2021, Breckenridge filed its *Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents*, therein seeking a permanent writ of restitution, but also damages for unpaid rents upon its claim for rents and unjust enrichment. [35]

In the district court's 11/5/2021 Order upon Breckenridge's Motion, it denied Breckenridge's motion as it pertains to unpaid rents and unjust enrichment.[36]

Based upon the district court's 1/19/2022, 11/22/2021, 11/5/2021 orders, and the 6/23/2021 summary judgment orders, all claims in this case have been adjudicated.

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[31] Ex. 12, p.10 (stating that Breckenridge is "entitled to an award of attorney fees and costs based upon NRS 18.020(b).")

[32] Ex. 23, pp.10-11.

[33] *Smith v. Crown Financial Services of America*, 111 Nev. 277, 890 P.2d 769, 1995) (fn.2)("The order of the district court awarding attorney fees and costs is a special order made after final judgment. As such, it is appealable pursuant to NRAP 3A(b)(2)")(*citing Schouweiler v. Yancey Co.*, 101 Nev. 827, 829, 712 P.2d 786, 787 (1985)."

[34] NRAP 17(B)(7) (jurisdiction over post judgment cases now reserved to the Nevada Court of Appeals).

[35] Ex. 15, pp. 8-9.

[36] Ex. 21, pp.8. ("other relief sought in Breckenridge's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue [Rent] is DENIED.")

24. Breckenridge's motion for summary judgment sought entry of judgment as a matter of law upon its claim for quiet title, and upon its claim for restitution of the property. [37] The district court granted Breckenridge's motion for summary judgment. [38] Breckenridge's Motion for permanent writ of restitution sought issuance of a writ of restitution, and also damages for rents and upon its claim for unjust enrichment. [39] The district court granted Breckenridge's requested relief as to a writ of restitution and denied relief as to unpaid rents and unjust enrichment.[40] Breckenridge's crossclaim for wrongful foreclosure was a contingent claim resolved by the district court's 6/23/2021 summary judgment orders. [41] Breckenridge's remaining claim for slander of title is consequently rendered moot or abandoned by its *Motion for Attorney's Fees and Costs* where it declared itself to be the "prevailing party." Furthermore, the order thereon as an appealable post judgment order establishes that Breckenridge's claims have been adjudicated.[42] [43] [44] [45] Otherwise, Breckenridge could deliberately avoid appeal of the district

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[37] Ex. 21, pp.6-9.
[38] Ex. 10.
[39] *See* Ex. 15, pp.8-9 (seeking upon "unjust enrichment and NRS 40.385 (3) that Appellant be required to make "payment of all overdue rents").
[40] *See*, Ex. 21.
[41] *Cf*. Ex. 7; Ex. 9; Ex. 10 (Compare relief sought in Ex. 7 and relief granted in the district courts June 23, 2021 summary judgment orders).
[42] *See* Ex. 12; Ex. 23.
[43] *See* Ex. 23.
[44] *See* NRS 18.010.
[45] *See Smith*, 111 Nev. 277, 890 P.2d 769 (fn. 2).

court's orders by declaring that claims remain to be adjudicated even though it has already declared itself to be the prevailing party and received a judgment for fees and costs.

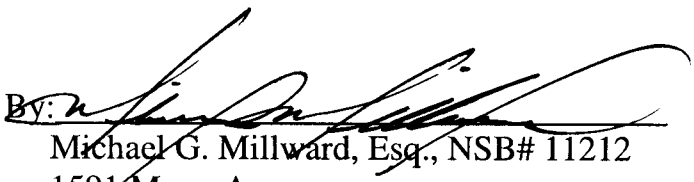
IV. CONCLUSION

For the reasons stated above, this Court should find that Appellants' appeal of the cited district court orders is appropriate even after consideration of this Court's 1/19/2022 *Order Partially Dismissing Appeal*, entered in Case No. 83261.

Accordingly, this Court should conclude that above cited orders that are the subject of this appeal are final orders resolving all of claims of the parties in this matter and are reviewable pursuant to NRAP 3A(b)(1) and are subject to this Court's jurisdiction. Appellants respectfully request that Breckenridge's motion to dismiss this appeal be denied in its entirety.

Dated: March 23, 2022

MILLWARD LAW, LTD

By: 

Michael G. Millward, Esq., NSB# 11212
1591 Mono Ave
Minden, NV 89423
(775) 600-2776
Attorney for Appellants

INDEX TO EXHIBITS

Exhibit 1	Notice to Breach and Default and of Election to Sell the Real Property Under Deed of Trust	6 pages
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Exhibit 9	Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment Filed by BANA, Prof-2013 M4 Legal Title Trust, US Bank and Fay Servicing LLC	18 pages
Exhibit 10	Order on Breckenridge Motion for Summary Judgment	8 pages
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Exhibit 12	Breckenridge Property Fund 2016's Motion for Attorney Fees and Costs	75 pages
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Exhibit 14	Breckenridge Property Fund 2016's Reply in Support of its Motion for Attorney Fees and Costs	6 pages
Exhibit 15	Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents	62 pages
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Exhibit 18	Defendant Breckenridge Property Fund 2016, LLC's Opposition to Plaintiffs' Motion to Stay Pending Appeal	68 pages
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Exhibit 20	Order Granting Ex Parte Application for Order Shortening Time for Hearing on Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents	4 pages
Exhibit 21	Order Concerning: Breckenridge Property Fund 2016, LLC's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents and Plaintiffs' Motion for Stay Pending Appeal	10 pages
Exhibit 22	Permanent Writ of Restitution	4 pages
Exhibit 23	Order on Attorney's Fees and Costs	13 pages
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Exhibit 1

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

0572258

APN: **029-401-17**

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

TS No. : 16-42397

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

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

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

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

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

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

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

01170

T.S. No.: 16-42397

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

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

NOTICE

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

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

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

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

Lauren Jowers
800-495-7166

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

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.
REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

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

T.S. No.: 16-42397

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

Dated: 11/1/2017

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

Michael Busby, Trustee Sale Officer

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

State of CALIFORNIA
County of ORANGE

On 11/1/2017, before me, Christine O'Brien, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary

CHRISTINE O'BRIEN
Notary Public - California
Orange County
Commission # 2167057
My Comm. Expires Oct 8, 2020

01172

Affidavit of Authority

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Veronica Talley
(Print Name)

Veronica Talley
(Signature)

Foreclosure Specialist IV
(Title)

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

State of Texas

County of Denton

On October 5th 2016 before me, Allison Ann Johnston, Notary Public, personally appeared, Veronica Talley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Allison Ann Johnston
Signature

Notary Seal
ALLISON ANN JOHNSTON
Notary Public, State of Texas
My Commission Expires
April 27, 2019

Affidavit of Authority to Exercise the Power of Sale
Revised 6/1/2013

01174

Declaration of Mortgage Servicer Pursuant to NR 107.510

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

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

1. ☒ The mortgage servicer has contacted the borrower pursuant to NRS 107.510 (2), to "assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale". Thirty (30) days, or more, have passed since the initial contact was made.

2. ☐ The mortgage servicer has exercised due diligence to contact the borrower pursuant to NRS 107.510 (5), to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.

3. ☐ No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to NRS 107.410.

4. ☐ During the preceding annual reporting period, the Lender has foreclosed on 100 or fewer real properties located in this state and therefore, pursuant to NRS 107.460, the provisions of NRS 107.400 to 107.560, inclusive, do not apply.

5. ☐ The loan is not a "residential mortgage loan" as defined in NRS 107.450.

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

Dated: 4-5-2016

By: _____

Exhibit 2

APN No.: 029-401-17

[Recording requested by:]

[When recorded mail to:]
Sables LLC
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, Nevada 89148

T.S. No. 16-42397

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 5/23/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

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

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

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

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

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

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

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

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

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

Date: **10/11/2018**

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

Michael Busby, **Trustee Sale Officer**

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

State of CALIFORNIA
County of ORANGE

On 10/11/2018, before me, A.J. Buckelew Notary Public, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

A.J. Buckelew
Signature of Notary

A. J. BUCKELEW
Notary Public - California
Orange County
Commission # 2255941
My Comm. Expires Aug 26, 2022

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

NOTICE TO TENANTS OF THE PROPERTY

Foreclosure proceedings against this property have started, and a notice of sale of the property to the highest bidder has been issued.

You may either: (1) terminate your lease or rental agreement and move out; or (2) remain and possibly be subject to eviction proceedings under chapter 40 of the Nevada Revised Statutes. Any subtenants may also be subject to eviction proceedings.

Between now and the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the landlord.

After the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the successful bidder, in accordance with chapter 118A of the Nevada Revised Statutes.

Under the Nevada Revised Statutes eviction proceedings may begin against you after you have been given a notice to surrender.

If the property is sold and you pay rent by the week or another period of time that is shorter than 1 month, you should generally receive notice after not less than the number of days in that period of time.

If the property is sold and you pay rent by the month or any other period of time that is 1 month or longer, you should generally receive notice at least 60 days in advance.

Under Nevada Revised Statutes 40.280, notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes and may be served by:
(1) Delivering a copy to you personally in the presence of a witness, unless service is accomplished by a sheriff, constable or licensed process server, in which case the presence of a witness is not required;
(2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business and to the place where the leased property is situated, if different; or
(3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property and mailing a copy to you at the place where the leased property is situated.

If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to Nevada Revised Statutes 40.360 or some combination of those results.

Under the Justice Court Rules of Civil Procedure:
(1) You will be given at least 10 days to answer a summons and complaint;
(2) If you do not file an answer, an order evicting you by default may be obtained against you;
(3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and
(4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint.

Exhibit 3

FILED

2018 NOV -7 PM 4:54

TANYA SCHULZ
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Tovar

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * * * *

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME, Plaintiffs, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; and DOES 1-50. Defendants.	**APPLICATION FOR EX PARTE RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION**

COME NOW, Plaintiffs, Albert Ellis Lincicome, Jr., and Vicenta Lincicome, by and through their attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and hereby file their Application to the Court for the entry of a Temporary Restraining Order seeking to prohibit Defendants, SABLES, LLC, FAY SERVICING, LLC, and PROF-2013-M4 LEGAL TITLE TRUST, by U.S. BANK NATIONAL ASSOCIATION, as Legal Title Trustee from foreclosing upon the real property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel Number 29-401-17, (hereinafter referred to as "the Property" or "Lincicomes' Property").

This application is based upon the Memorandum of Points and Authorities submitted herewith, the Affidavit of Vicenta Lincicome attached hereto, the Affidavit of Albert Ellis

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Lincicome, Jr., attached hereto, as well as all papers and pleadings on file in this matter, including the Verified Complaint which was filed in conjunction with this application and is incorporated herein by this reference.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Ex Parte Application for Temporary Restraining Order, Preliminary Injunction, and Injunction (hereinafter "Application") is made to prevent the foreclosure of the Plaintiffs' Property on November 9, 2018, at 11:00 AM. A copy of the Notice of Trustee's Sale is attached as **Exhibit 1.**

The basis for the Application is to prevent irreparable harm to Vicenta Lincicome and Albert Ellis Lincicome, Jr., (hereinafter collectively referred to as "the Lincicomes") and to protect them from material violations of the Homeowner's Bill of Rights. Relatedly, the Lincicomes seek to prevent the foreclosure of their property to preserve their home and rectify or resolve material breaches of contract by Bank of America, N.A., and BAC Home Loans Servicing, LP (together hereinafter referred to as "Bank of America"), concerning the Lincicomes' mortgage loan.

Bank of America has previously rejected all payments attempted to be made by the Lincicomes under a 2009 Loan Modification Agreement, which Plaintiff Vicenta Lincicome (hereinafter individually referred to as "Vicenta") had accepted and signed and Bank of America later signed and recorded.

Beyond the rejected payments, which caused Plaintiffs' arrearage to accrue, Bank of America failed to modify the loan terms as provided in the 2009 Loan Modification Agreement. The evidence provided herein establishes that the statements from Bank of America and Fay Servicing, LLC, the current servicer, from September 2009 to present reflect an incorrect interest rate, an incorrect accrued balance owed, an incorrect unpaid principal balance, and an incorrect last monthly installment due.

Even though the current Trustee, Sables, LLC (hereinafter "Sables"), admits in the Notice of Default that "[t]he subject Deed of Trust was modified by the Loan Modification

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Agreement," the Notice of Default contains the incorrect date the last monthly installment became due under the agreement, as well as an incorrect reinstatement amount.

All the Lincicomes ever wanted was to modify their home loan and make the payment of their mortgage. Since September of 2009, even though they have put up with Bank of America's rejection of their loan payments, they have diligently traveled down every avenue recommended to them to resolve the mortgage problem.

Permitting foreclosure to continue and allowing the Defendants to sell the Lincicomes' home would not only cause irreparable harm to them, but would also permit Defendants to violate Nevada law on top of successfully disregarding and breaching their own contractual and fiduciary duties.

Accordingly, for these and the other reasons provided herein, the Lincicomes pray and respectfully request that this honorable Court will issue a temporary restraining order and preliminary injunction to protect the Lincicomes' home and property from foreclosure, and require Defendants to rectify their violations of the Homeowner's Bill of Rights, including the resolution of contractual breaches of the Lincicomes' mortgage loan agreement.

II. STATEMENT OF RELEVANT FACTS

In May of 2007, the Lincicomes purchased a home located at 70 Riverside Drive, Dayton, Nevada 89403. In order to qualify for the purchase, Sierra Pacific requested that Plaintiff Albert Ellis Lincicome, Jr., (hereinafter individually referred to as "Ellis") make a withdrawal of $80,000 from his 401K retirement plan to be contributed as part of the down payment of the home purchase.

On May 23, 2007, Vicenta executed a Promissory Note in favor of Sierra Pacific, and also a Deed of Trust in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter referred to as "MERS"), as the nominee for Sierra Pacific to secure the mortgage loan. The mortgage loan was an interest only loan. A copy of the May 23, 2007 Deed of Trust and Promissory Note are attached as **Exhibit 2.**

In or about March of 2008, the Lincicomes learned that they had incurred a tax bill of nearly $20,000 for having taken the $80,000 distribution from Ellis's 401k, and as a result of

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the additional tax burden as well as other debts and liabilities, the Lincicomes were unable to make their June 1, 2008, mortgage payment.

After receiving Notice of Default, the Lincicomes began the process of applying for a mortgage workout with Bank of America and on July 11, 2009, Bank of America sent Vicenta a Loan Modification Agreement (hereinafter "LMA") which provided that the first payment of $2,272.62 was to be made September 1, 2009. A copy of the LMA is attached hereto as **Exhibit 3.**

The LMA extended the maturity date to August 1, 2049, and, as of August 1, 2009, the interest rate applicable to their loan would be reduced from the current rate of 6.875% to 4.875%. The LMA provided that on September 1, 2014, the interest rate would increase to 5.375%. Under the Agreement all arrears were to be capitalized as of September 1, 2009. A copy of the "Important Message About Your Loan" notice is attached as **Exhibit 4.**

On July 31, 2009, Vicenta signed the LMA and sent it to Bank of America by Federal Express in the reusable Fed-Ex envelope that was provided with the loan modification package.

On September 1, 2009, the Lincicomes travelled to the Bank of America branch located in Carson City to make their first payment under the LMA. The banker assisting the Lincicomes was a young woman named Crystal. After searching for information concerning the Lincicomes' loan, Crystal could not find any record of the LMA in the system. The payment was accepted to be credited against the Lincicomes' loan once the LMA was entered into Bank of America's system. Crystal told the Lincicomes to contact Bank of America customer service and request a coupon book that would reference the modified loan.

On or about September 1, 2009, Vicenta contacted Bank of America Customer Service and she was told to go to the Customer Assistance Center on Rose Drive in Reno. The Lincicomes were assisted by Manager Barbara Keady. The Lincicomes showed Ms. Keady a signed copy of the LMA. Thereafter, Ms. Keady informed the Lincicomes that she would have Bank of America investigate the status of the LMA.

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On or about October 1, 2009, Vicenta travelled to the Carson City Bank of America branch to make the second payment on the LMA. This time the banker, a middle-aged woman, refused the payment and indicated that there was no record of the existence of the LMA in Bank of America's computer system and would not accept the payment.

On October 29, 2009, Bank of America sent Vicenta a statement contradicting the terms of the LMA. A copy of the October 29, 2009 statement is attached as **Exhibit 5.** The October 29, 2009 statement incorrectly reported the following:

1. That the loan is subject to an interest rate of 6.875% instead of 4.875% as provided in the LMA (Ex. 2);
2. That the total payment amount is $2,435.43 instead of a payment of $2,272.62 under the LMA (Ex. 3);
3. That the principal balance owed is $381,150.00 instead of $417,196.58 as provided in the LMA (Ex. 2); and
4. That the last payment of $2,272.62, which was made September 1, 2009, was only a partial payment instead of the payment amount stated due under the LMA. (Ex. 3).

From October 1, 2009, to December of 2011, the Lincicomes continued to contact Bank of America by phone to check on the status of the LMA so that they could begin making payments. Each time, Bank of America informed the Lincicomes that the matter was being investigated.

During a phone call with Bank of America that occurred on March 12, 2010, the customer service agent encouraged Vicenta to seek help from the Department of Housing and Urban Development's (hereinafter "HUD") Financial Guidance Center.

In April, the Lincicomes met with HUD Counselor Lucy Powell, who assisted the Lincicomes with the design of an action plan, which included the filing of a Chapter 13 Bankruptcy petition to cure the arrearage with Bank of America that would have accrued since the LMA was signed, and to force Bank of America to find and recognize the LMA.

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The Lincicomes filed a petition for Chapter 13 Bankruptcy protection before the United States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case No. 10-51219, therein listing Bank of America as a secured creditor.

Unfortunately, Ms. Powell's plan did not work. Bank of America did not file a claim or appear in the Lincicomes' bankruptcy case prior to the Bankruptcy Court's confirmation of the Lincicomes' Chapter 13 Plan.

On May 4, 2011, unbeknownst to the Lincicomes at the time, Bank of America recorded a fully executed copy of the July 11, 2009 LMA with the office of the Lyon County Recorder, as Document No. 475808. Ex. 1. The Lincicomes remained unaware of the fact that the LMA had been found and executed until 2017.

On November 26, 2014, Bank of America appeared in the Lincicomes' Bankruptcy and filed a *Motion for Relief of Stay* seeking relief from the automatic stay, pursuant to 11 U.S.C. § 362, and claiming accrued interest of $170,972.39, and costs of $17,384.92. The Motion provided credit for the Lincicomes' September 1, 2009, payment of $2,272.62, but the filing did not inform or provide the Bankruptcy Court with a copy of the LMA. Bank of America's November 26, 2014, *Motion for Relief of Stay* is attached as **Exhibit 6**.

On June 15, 2015, the Bankruptcy Court Clerk granted the Lincicomes a discharge of all of their scheduled debts. A copy of the June 15, 2015, Discharge Order is attached as **Exhibit 7**. Prior to discharge, but after the Court had entered an order granting Bank of America's *Motion for Relief of Stay*, the Lincicomes again applied for a loan modification with Bank of America.

On or about April 24, 2015, Bank of America accepted the loan modification application and required the Lincicomes to complete three-month trial modification payments before they could move forward with modifying their mortgage loan. A copy of April 24, 2015 loan modification notice is attached as **Exhibit 8**.

The April 24, 2015 loan modification notice provided that upon completion of the trial payments, the mortgage would be extended to May 1, 2055, that the interest rate would be reduced to 4.125%. Ex. 8. The modification also provided that if it was determined that the

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unpaid balance of the Lincicomes' mortgage exceeded 115% of the current value of their home, they would be eligible to have up to 30% of their principal balance deferred and not be subject to interest. Ex. 8.

The Lincicomes made the first two payments timely. However, on August 1, 2015, while attempting to make the third trial payment, Bank of America informed them that their loan had been transferred to Fay Servicing. A copy of the check which the Lincicomes attempted to tender on August 1, 2015, payable to Bank of America, is attached hereto as **Exhibit 9.**

The Lincicomes called Fay Servicing that same day, August 1, 2015, to make payment and spoke with account manager Rosalind Jackson. Ms. Jackson informed them that Fay Servicing does not honor Bank of America trial modifications, and would not accept a payment form the Lincicomes.

The Lincicomes were devastated when neither Bank of America nor Fay Servicing would accept their payment, and they were very disturbed that Fay Servicing would not honor Bank of America's April 24, 2015 loan modification offer.

On August 10, 2015, Fay Servicing generated a Mortgage Statement which does not reflect the terms of the LMA. A copy of the August 10, 2015 statement is attached hereto as **Exhibit 10.** The statement incorrectly reflects the following:

1. That the loan is subject to an interest rate of 6.875% instead of 4.875% as provided in the LMA (Ex. 2);
2. That the total payment amount is $2,413.95 instead of a payment of $2,272.62 under the LMA (Ex. 3);
3. That the principal balance owed is $381,150.00 instead of $417,196.58 as provided in the LMA (Ex. 2); and
4. That 85 payments remain due, rather than 73 had the terms of the LMA been applied. (*See* Ex. 3).

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

In 2016, the Lincicomes applied for the Home Affordable Modification Program (HAMP) modification through Fay Servicing. Fay Servicing informed the Lincicomes that they only qualified for a Home Affordable Foreclosure Alternatives (HAFA) Short Sale. The Lincicomes appealed Fay Servicing's denial of their qualification for HAMP.

On September 7, 2016, Fay Servicing sent the Lincicomes a response to their appeal of their denial therein indicating that the Lincicomes did not have sufficient income to qualify for a modification, and also that they were not qualified for the HAMP Unemployment Program (HAMP UP) "because the property is not your primary residence." Fay Servicing's reason for denial of HAMP UP was absurd and false. The Lincicomes have continuously used and claimed their home located at 70 Riverside Drive, Dayton, Nevada, as their residence since their purchase of the Property in 2007.

After being denied, the Lincicomes reached out to Senator Harry Reid's office for help, and thereafter, Fay Servicing offered the Lincicomes a trial modification at $2,528.86 per month. After completion of the three trial payments, Fay Servicing sent the Lincicomes the final modification agreement.

Upon reading the agreement, the Lincicomes realized that they could not accept the modification because it would leave them in a terrible financial position, and would likely result in a default.

On November 3, 2017, Sables, LLC, as Trustee under the Deed of Trust, recorded its *Notice of Breach and Default and of Election to Sell the Real Property under Deed of Trust* (hereinafter "NOD"). A copy of the NOD is attached hereto as **Exhibit 11**.

The NOD provides that as of October 31, 2017, $265,572.39 is owed in arrears. Even though the NOD acknowledges that the "subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 . . . on 5/4/2011," it provides that

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all monthly installments from "9/1/2008" forward are due instead of 9/1/2009 as provided in the Loan Modification Agreement. Ex. 11.

The NOD also misstates the date of the recording of the November 25, 2015, Assignment from Bank of America to US Bank as having been recorded "November 25, 2016." Ex. 11.

The NOD includes an Affidavit of Authority signed on October 5, 2016, by Veronica Talley, as a "Foreclosure Specialist IV" (hereinafter "Talley Affidavit") stating that Fay Servicing has complied with the requirements of NRS 107.080. Ex. 11, pp.4-5.

The Talley Affidavit could not possibly be accurate as of the date of the NOD, November 3, 2017, when it was signed nearly 13 months prior to the recording of the NOD.

The NOD also includes a Declaration of the Mortgage Service signed on April 5, 2016. Ex. 11, p.6. The signature on the Declaration is not legible, and no information is provided as to the authority of the person signing to act on behalf of the servicer. *Id.*

The Declaration provides that pursuant to NRS 107.510(2) Fay Servicing, LLC, contacted the borrower by phone to assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale. *Id.* The Declaration was signed and dated nearly 19 months prior to the recording of the NOD to which it is attached. *Id.*

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

III. ARGUMENT AND APPLICABLE LAW

This Application seeks a Temporary Restraining Order pursuant to Nevada Rule of Civil Procedure 65 to prevent the foreclosure on November 9, 2018. Plaintiffs also seek the issuance of a preliminary injunction pursuant to NRS 33.010 and an injunction pursuant to NRS 107.560 in order to enjoin Defendants Sable LLC, Fay Servicing, and US Bank from foreclosing on the Property and prevent irreparable harm to the Lincicomes and additional violation of the Homeowner's Bill of Rights codified as NRS 107.400 to NRS 107.560.

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The Lincicomes also request the Temporary Restraining Order be in effect until the Court sets the matter for a Preliminary Injunction hearing. Plaintiffs request that the Court waive the requirement for a surety bond in this matter, because they are able to establish that they are entitled to injunctive relief pursuant to NRS 107.560 as set forth herein below.

The Lincicomes further request the Court set the matter for a Preliminary Injunction hearing after issuing a Temporary Restraining Order at the Court's earliest convenience.

A. The Homeowner's Bill of Rights Requires that Defendants be Enjoined from Foreclosing on Plaintiffs' Property.

The Court should enjoin Defendants Sables, US Bank, and Fay Servicing from foreclosing upon Plaintiffs' Property until it has corrected the Notice of Default recorded November 3, 2017, to the satisfaction of the Court.

NRS 107.560 provides that an injunction may be entered when there is a material violation of NRS 107.400 to NRS 107.560 in pertinent part as follows:

> 1. If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of NRS 107.400 to 107.560, inclusive. If a sheriff has not recorded the certificate of the sale of the property, a borrower may obtain an injunction to enjoin a material violation of NRS 107.400 to 107.560, inclusive. An injunction issued pursuant to this subsection remains in place and any foreclosure sale must be enjoined until the court determines that the mortgage servicer, mortgagee, beneficiary of the deed of trust or an authorized agent of such a person has corrected and remedied the violation giving rise to the action for injunctive relief. An enjoined person may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.
>
> . . .
>
> 6. A court may award a prevailing borrower costs and reasonable attorney's fees in an action brought pursuant to this section.
>
> 7. The rights, remedies and procedures provided by this section are in addition to and independent of any other rights, remedies or procedures provided by law.

Here, Defendants Sables, Fay Servicing, and US Bank have materially violated NRS 107.500(1).

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NRS 107.500(1) provides as follows in pertinent part:

> 1. At least 30 calendar days before recording a notice of default and election to sell pursuant to subsection 2 of NRS 107.080 . . . and at least 30 calendar days after the borrower's default, the mortgage servicer, mortgagee or beneficiary of the deed of trust **shall mail, by first-class mail, a notice addressed to the borrower** at the borrower's primary address as indicated in the records of the mortgage servicer, mortgagee or beneficiary of the deed of trust, which contains:
>
> . . .
>
> (b) A summary of the borrower's account which sets forth:
>
> (1) The **total amount of payment necessary to cure the default and reinstate the residential mortgage loan** or to bring the residential mortgage loan into current status;
>
> (2) The amount of the principal obligation under the residential mortgage loan;
>
> (3) The **date through which the borrower's obligation under the residential mortgage loan is paid**;
>
> (4) The **date of the last payment by the borrower**;
>
> (5) The **current interest rate** in effect for the residential mortgage loan, if the rate is effective for at least 30 calendar days;
>
> . . .

Fay Servicing has not provided a notice that satisfies NRS 107.500(1). The Lincicomes have searched their files and records and were not ever provided a notice at least 30 days prior to the Notice of Default that accurately complies with the requirements of NRS 107.500(1)(b)(1). See the Affidavits of Vicenta Lincicome is attached hereto as **Exhibit 12** and the Affidavit of Ellis Lincicome attached hereto as **Exhibit 13.**

The Notice of Default, and all prior statements given by Fay Servicing do not accurately reflect the payment amount, interest rate, principal balance, or the number of late payments owed under the LMA as outlined above. Ex. 5, 10, and 11.

The LMA provides in relevant part:

> **As of the 1st day of September, 2009, the amount payable under the Note or Security Instrument (the "Unpaid Principal Balance") is U S $417,196 58, consisting of the amount(s) loaned to the Borrower by the Lender which may include, but not limited to, any past due principal payments, interest, fees and/or costs capitalized to date**
>
> . . .

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The Borrower promises to pay the Unpaid Principal Balance, plus interest, to the order of the Lender Interest will be charged on the Unpaid Principal Balance at the yearly rate of 4 875% from the 1st day of August, 2009 The Borrower promises to make monthly payments of principal and interest of U S $1,977 29 beginning on the 1st day of September, 2009, and continuing thereafter on the same day of each succeeding month until principal and interest are paid in full If on the 1st day of August, 2049 (the "Maturity Date"), the Borrower still owes amounts under the Note and Security Instrument, as amended by this Agreement, the Borrower will pay these amounts in full on the Maturity Date

Ex. 3

Contrary to the LMA, the August 10, 2015 Statement provides in relevant part:

Outstanding Principal	$381,150.00
. . .	
Current Interest Rate	6.875%

Ex. 10.

Beyond the total amount due, the November 3, 2017 NOD, incorrectly states in pertinent part as follows:

> One note(s) for the Original sum of **$381,150.00**, that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by Beneficiary; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:
>
> **The monthly installment which became due on 9/1/2008, along with late charges, and all subsequent monthly installments.**

Ex. 11.

The LMA clearly changes the principal balance owed to $427,196.58, the applicable interest rate to 4.875%, and the payment date to September 1, 2009. Ex. 3.

Based upon the foregoing evidence, the Court should find that Fay Servicing, US Bank and Sables have reported the incorrect balance, interest rate, and payment information in prior statements and in the recorded NOD. This is so, even though Sables NOD recounts that the Deed of Trust is modified by the LMA. Ex. 11.

Disregarding Bank of America's rejection of payments under the LMA in 2009 through 2011, based upon the misstatements of material terms of the mortgage loan in the statements and the NOD, the Lincicomes believe that Fay Servicing, US Bank, and Sables have miscalculated the total balance remaining due under the agreement, including application of the incorrect interest rate.

Furthermore, the NOD and the statements provided do not correctly provide the Lincicomes credit for the six payments that they have made since 2009. The first payment

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was made on September 1, 2009, which was incorrectly later applied to the pre-modification arrearages rather than under the LMA. The next two payments were made in 2015 as part of Plaintiffs' attempt to complete a trial modification with Bank of America, in which Fay rejected the third payment. The last three payments were made in 2016 and provided to Fay Servicing while the Plaintiffs were again working towards modifying their loan.

If the NOD was accurate and provided credit for these six payments, the date that the last installment became due (not accounting for Bank of America's breach) would be approximately February 2010, and not September 1, 2008.

Accordingly, Fay Servicing and US Bank have materially violated NRS 107.500(1) by incorrectly reporting applicable interest, the applicable principal balance, payment amount, and incorrectly calculating the cure amount reported on prior statements and the NOD.

Therefore, pursuant to NRS 107.560(1), Plaintiffs are entitled to the issuance of an injunction prohibiting Defendants foreclosure upon the Lincicomes' Property, until they have to the Court's satisfaction rectified their violations of NRS 107.400 through NRS 107.560.

B. Plaintiffs will Suffer Irreparable Injury without Issuance of a Temporary Restraining Order.

Without judicial intervention, the Lincicomes will suffer irreparable injury if the Court does not intervene and restrain Defendants from moving forward with foreclosure on the Property.

NRCP 65 states, in pertinent part:

> (b) A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

NRS 33.010 provides in pertinent part that a preliminary injunction may be entered as follows:

> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists

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> in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
> 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

Generally, a "preliminary injunction is proper when the moving party can demonstrate it has a reasonable likelihood of success on the merits and that it will suffer irreparable harm for which compensatory damages would not suffice." *Dep't of Bus. & Indus., Fin. Insts. Div. v. Nev. Ass'n Servs., Inc.,* 128 Nev. Adv. op. 34, 294 P.3d 1223, 1226 (2012); *see also Univ. Sys. V. Nevadans for Sound Gov't,* 102 Nev. 712, 721, 100 P.3d 179, 187 (2004).

To warrant the issuance of an injunction, there should exist reasonable probability that real injury will occur if an injunction does not issue. *Berryman v. Int'l Bhd. of Elec. Workers,* 82 Nev. 277, 280, 416 P.2d 387, 389 (1966), as modified, *85* Nev. 13, 449 P.2d 250 (1969).

Further, Courts favor relief which prevents a wrong in preference to that which may afford redress. *Belmont Quadrangle Drilling Corporation v. Galek,* 137 Misc. 637, 244 N.Y.S. 231 (S.Ct.1930). To destroy one's property is sometimes regarded as an irreparable injury *Kane v. Porter,* 77 Cob. *257, 235* P. 561 *(1925).* One's right to the use of his property may not be divested even though he might replace that property. *Czipott v. Fleigh,* 87 Nev. 496, 499, 489 P.2d 681, 683 (1971).

"It is well-established that the loss of an interest in real property constitutes an irreparable *injury." Park Vill. Apartment Tenants Assn v. Mortimer Howard Trust,* 636 F.3d 1 *150,* 1159 (9th Cir. 2011).

Further, infringement of one's real property rights is considered to cause irreparable injury because real property is unique and loss of property rights generally cause irreparable injury. *Dixon* v. *Thatcher,* 103 Nev. 414, 416, (1987) citing to *Leonard v. Stoebling,* 102 Nev. 543, 728 P.2d *1358* (1986) (view from home is unique asset; injunction issued to

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preserve view); see also *Nevada Escrow Service, Inc. v. Crockett,* 91 Nev. 201, *533* P.2d 471 (1975).

Here, Sables, as Trustee of the Deed of Trust, acting in favor of Fay Servicing and US Bank has scheduled the impending foreclosure of the Lincicomes' Property in violation of the Lincicomes' rights under Homeowner's Bill of Rights. *Supra.*

The Lincicomes' loss of their property due to the improper conduct of the Defendants in this action would irreparably injure them, significantly impairing the purpose of this action; to once and for all force the financial institutions in this litigation to honor the terms of their agreement.

Monetary damages are insufficient. The Lincicomes' Property is their home; property that is unquantifiable and irreplaceable as to their love, affection, and memories. The Lincicomes cannot quantify their love and attachment for the place that they desire to live out the remainder of their lives. Money damages are insufficient to replace the Lincicomes' home.

Furthermore, the facts supporting the requested relief are supported by Affidavit, and establish the extent of the Lincicomes' desire to retain their property. Accordingly, irreparable injury will result unless this Court enters a Temporary Restraining Order preventing Sables, Fay Servicing, and US Bank from foreclosing.

C. Lincicomes are Likely to Succeed on the Merits

Although not required to establish the need for a Temporary Restraining Order, the Plaintiffs are likely to succeed on the merits of this case. In their Complaint, Plaintiffs have alleged five (5) causes of action. Included in those claims for relief are (I) injunctive relief, (II) breach of contract, (III) breach of duty to act in good faith and fair dealing, (IV) declaratory relief, and (V) Attorney's fees as special damages.

Based on the Complaint, Plaintiffs are likely to succeed on the merits in regard to their claim for Injunctive Relief under NRS 107.560, as well as their claims for Breach of Contract. The allegations and evidence set forth supporting the allegations paint a clear and substantiated case for recovery on the Lincicomes claims.

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D. Plaintiffs Have Satisfied the Requirements for Temporary Restraining Order

The Court should find that the Lincicomes have satisfied the requirements for issuance of a Temporary Restraining Order pursuant to NRCP 65.

(b) A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

The first requirement of Rule 65(b) demands that if a temporary restraining order is to be granted without written or oral notice to an adverse party, affidavits must be provided which clearly show that immediate and irreparable injury and loss will result before an adverse party can be heard in opposition.

In this matter, prior to filing this application and the Verified Complaint, the undersigned counsel gave written notice by facsimile and email as provided in the Affidavit of Counsel filed concurrently herewith. However, additionally, the Affidavit of Vicenta Lincicome attached as **Exhibit 12** and the Affidavit of Albert Ellis Lincicome, Jr., attached as **Exhibit 13**, clearly and specifically establish the facts recited herein above and in the Verified Complaint.

IV. CONCLUSION

Therefore, based on the foregoing, Plaintiffs respectfully request that this Court enter an *Ex Parte Temporary Restraining Order*, preventing Defendants from foreclosing on the Property. Plaintiffs also request the Temporary Restraining Order remain effective until the time the Court sets the matter for a Preliminary Injunction at the Court's convenience.

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AFFIRMATION

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

Dated this 7th day of November, 2018.

MILLWARD LAW, LTD

By: _____

Michael G. Millward, Esq.
NSB# 11212
1591 Mono Ave
Minden, NV 89423
(775) 600-2776
Attorney for Plaintiffs

INDEX TO EXHIBITS

Exhibit 1	*Notice of Trustee's Sale* dated October 11, 2018	3 pages
Exhibit 2	May 23, 2007 Deed of Trust and Promissory Note	26 pages
Exhibit 3	*2009 Loan Modification Agreement*	6 pages
Exhibit 4	"Important Message About Your Loan" Notice	1 page
Exhibit 5	Bank of America Home Loan Statement dated October 29, 2009	2 pages
Exhibit 6	*Motion for Relief of Stay*	38 pages
Exhibit 7	*Discharge of Debtor After Completion of Chapter 13 Plan*	1 page
Exhibit 8	April 24, 2015 loan modification notice	1 page
Exhibit 9	Lincicomes' check dated August 1, 2015, payable to Bank of America	1 page
Exhibit 10	Fay Servicing's Mortgage Statement generated August 10, 2015	2 pages
Exhibit 11	*Notice of Breach and Default and of Election to Sell the Real Property under Deed of Trust*	6 pages
Exhibit 12	*Affidavit of Vicenta Lincicome*	4 pages
Exhibit 13	*Affidavit of Albert Ellis Lincicome, Jr.*	4 pages

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Exhibit 4

FILED

2018 DEC 31 AM 10:48

ANDREA ANDERSEN

Case No: 18-CV-01332

Dept.: II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

//

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Court hereby enters the following Conclusions of Law:

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

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

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

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

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

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

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

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

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

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

//

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

IT IS SO ORDERED.

Dated this 31st day of December, 2018

DISTRICT JUDGE

AFFIRMATION

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

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

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

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

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Exhibit 5

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Attorney for Defendant in Intervention / Counterclaimant

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; and DOES 1-50., Defendants.	Case No.: 18-CV-01332 Dept No.: II **INTERVENOR'S COUNTERCLAIM**
BRECKENRIDGE PROPERTY FUND 2016, LLC, Defendant in Intervention.	*Caption continued on next page.*

BRECKENRIDGE PROPERTY FUND 2016, LLC, Counterclaimant, vs. ALBERT ELLIS LINCICOME, JR., an individual; VICENTA LINCICOME, an individual; and DOE OCCUPANTS 1-5. Counterdefendants.	

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

JURISDICTION AND VENUE

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

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

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

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

PARTIES

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

(Quiet Title)

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

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

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

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

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

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SECOND CAUSE OF ACTION
(Slander of Title)

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

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

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

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

THIRD CAUSE OF ACTION
(Writ of Restitution)

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

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

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

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

(Rent or Monies for Possession of the Subject Property)

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

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

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

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

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

///

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Counterclaimant prays for judgment against Counterdefendants as follows:

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

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6. For an award of attorney's fees and litigation costs incurred; and

7. Such other and further relief as may be deemed just and proper under the circumstances.

DATED this 30 day of October, 2019.

HUTCHISON & STEFFEN, PLLC

John T. Steffen (4390)
Matthew K. Schriever (10745)
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145

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

Attorney for Defendant in Intervention / Counterclaimant

CERTIFICATE OF SERVICE

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

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

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

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

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

DATED this 3 day of October, 2019.

An Employee of HUTCHISON & STEFFEN

LIST OF EXHIBITS

INTERVENOR'S COUNTERCLAIM

18-CV-01332

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

EXHIBIT 1

EXHIBIT 1

FILED

2018 DEC 31 AM 10:48

TANYA SCHOFIELD
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Anderson

Case No: 18-CV-01332

Dept.: II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

//

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Court hereby enters the following Conclusions of Law:

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

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

//

//

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

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

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

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

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

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

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

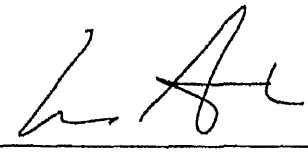
5. That failure of Plaintiffs to timely post a bond and provide notice of bond by December 20, 2018, shall relieve Defendants of their duty to comply with this injunction enjoining the sale of 70 Riverside Drive, Dayton, Lyon County, Nevada, until a filing of notice of bond and a notice of compliance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

//

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

IT IS SO ORDERED.

Dated this 31st day of December, 2018

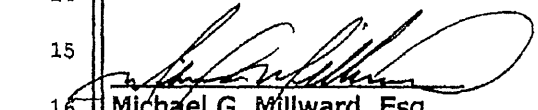


DISTRICT JUDGE

AFFIRMATION

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

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



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

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

Ramir M. Hernandez, Esq.
Nevada Bar No. 13146
Wright, Finlay & Zak
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117

EXHIBIT 2

EXHIBIT 2

70 RIVERSIDE DR

Doc #: 591393
01/25/2018 08:21 AM Page: 1 of 2
OFFICIAL RECORD
Requested By: FIRST AMERICAN TITLE INSURANCE C
Lyon County, NV
Margie Kassebaum, Recorder
Fee: $38.00 RPTT: $1,148.55
Recorded By: lnhumildad

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

RECORDING REQUESTED BY:

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

Recorded As An Accommodation Only Without Liability

Forward Tax Statements to the address given above

SPACE ABOVE LINE FOR RECORDER'S USE

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

TRUSTEE'S DEED UPON SALE

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

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

Breckenridge Property Fund, 2016, LLC

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

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:
All that certain real property situate in the County of Lyon, State of Nevada, described as follows:
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.
EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

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

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

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

RECORDING REQUESTED BY:

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

Recorded As An Accommodation Only Without Liability

Forward Tax Statements to the address given above

SPACE ABOVE LINE FOR RECORDER'S USE

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

TRUSTEE'S DEED UPON SALE

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

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

Breckenridge Property Fund, 2016, LLC

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

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:
All that certain real property situate in the County of Lyon, State of Nevada, described as follows:
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.
EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

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

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

TRUSTEE'S DEED UPON SALE

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

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

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

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

Date: **1/15/2019**

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey Neal

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

State of CALIFORNIA
County of ORANGE

On **1/15/2019** before me, the undersigned, **J. Develasco** Notary Public, personally appeared **Geoffrey Neal** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

J. Develasco
#2147185 Expires 3/21/20

WITNESS my hand and official seal.

Signature _____ (Seal)
J. Develasco
J. Develasco

J. DEVELASCO
Notary Public - California
Orange County
Commission # 2147185
My Comm. Expires Mar 21, 2020

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a) 029-401-17
   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
   [ ] Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page _____
Date of Recording: _____
Notes:

3. a. Total Value/Sales Price of Property $ $294,000.01
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ $294,000.01
   d. Real Property Transfer Tax Due $ 1148.56
4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____
5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____ Capacity AGENT

Signature _____ Capacity AGENT

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Sables, LLC, a Nevada limited liability Company	Print Name: Breckenridge Property Fund, 2016, LLC
Address: 3753 Howard Hughes Parkway, Suite 200, Las Vegas, NV 89169	Address: 2320 Potosi St. Ste 130 Las Vegas, NV 89146

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

Print Name: First American Escrow #: 2000
Address: 10000 W Charleston
City: Las Vegas State: NV Zip: 89135

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 3

EXHIBIT 3

THREE-DAY NOTICE TO QUIT

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

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

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

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

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

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

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC

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

Attorney for Plaintiff
Breckenridge Property Fund 2016, LLC

EXHIBIT A

EXHIBIT A

NOTICE TO TENANT

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC

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

Attorney for Plaintiff
Breckenridge Property Fund 2016, LLC

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

1. *At the time of service I was at least 18 years of age and not a party to this action.*

2. I served copies of the Three-Day Notice to Quit, Notice to Tenant

3. *a. Party served:* Vicenta Lincicome; Tenant and Subtenant and All Occupants
   b. Person served: Posted

4. *Address where the party was served:* 70 Riverside Drive, Dayton, NV 89403

5. *I served the party:*
   a. By Posting. On: Mon, Jan 28 2019 (2) at: 02:20 PM by posting a copy of the documents in a conspicuous place on the property.
   b. By Mailing. On: Mon, Jan 28 2019 by mailing a copy of the documents, addressed as shown in item 4, via Certified Mail issued by United States Post Office from: Las Vegas, NV.

6. *Person Who Served Papers:*
   a. Toni Ruckman (R-052005, Washoe)
   b. FIRST LEGAL
      2920 N. Green Valley Parkway, Suite 514
      Henderson, NV 89014
   c. (702) 671-4002

   d. *The Fee for Service was:*

Pursuant to NRS 53.045

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

01/29/2019 — *(Date)*

Toni L Ruckman — *(Signature)*

7018 1830 0002 1005 0251

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DAYTON, NV 89403

OFFICIAL USE

Certified Mail Fee $3.50

Extra Services & Fees (check box, add fee as appropriate)
- Return Receipt (hardcopy) $ $2.80
- Return Receipt (electronic) $ $0.00
- Certified Mail Restricted Delivery $ $0.00
- Adult Signature Required $ $0.00
- Adult Signature Restricted Delivery $

Postage $0.55

Total Postage and Fees $6.85

Postmark Here

JAN 28 2019

01/28/2019

55105770

Sent To VICENTA LINCICOME

Street and Apt. No. TENANT/SUBTENANT/ALL OCCUPANTS

City, State, ZIP+4® 70 RIVERSIDE DR.
DAYTON, NV 89403-9055

PS Form ... Instructions

Exhibit 6

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not contain personal information, pursuant to NRS 603A.040

FILED

2019 DEC 20 PM 1:38

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
TANYA SCEIRINE
DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * * * *

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, a Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC, substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MCM-2018-NPL2, substituted in for DOE 3; and DOES 4-10.

Defendants.

SECOND AMENDED COMPLAINT (ARBITRATION EXEMPT - NAR 3 "DECLARATORY RELIEF")

BRECKENRIDGE PROPERTY FUND 2016, LLC

Counterclaimant,

vs.

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

Counterdefendants.

(775) 600-2776

COME NOW, ELLIS LINCICOME and VICENTA LINCICOME, by and through their attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and hereby allege and aver as follows:

PARTIES

1. At all times relevant herein, Plaintiff ELLIS LINCICOME is and was a resident of the State of Nevada, residing at 70 Riverside Drive, Dayton, Nevada 89403.

2. At all times relevant herein, Plaintiff VICENTA LINCICOME is and was a resident of the State of Nevada, residing at 70 Riverside Drive, Dayton, Nevada 89403.

3. At all times relevant herein, Defendant SABLES, LLC (hereinafter referred to as "Sables"), is and was a Nevada limited liability company, providing deed of trust trustee services to servicers and financial institutions.

4. At all times relevant herein, Defendant FAY SERVICING, LLC (hereinafter referred to as "Fay Servicing"), is and was a Delaware limited liability company. Fay Servicing provides loan servicing for financial institutions and was the servicer for PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK NATIONAL ASSOCIATION, the current or former beneficiary of a Deed of Trust encumbering Plaintiffs' residence.

5. Upon information and belief, at all times relevant herein, Defendant PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK NATIONAL ASSOCIATION (hereinafter referred to as "US Bank"), as legal title trustee, was a mortgage investment trust. At all times relevant herein, US Bank, was a non-title 7 business entity, registered to do business in the State of Nevada, conducting business in the State of Nevada as a national bank, and providing commercial banking services for individuals, businesses, and institutions in the State of Nevada.

6. At all times relevant herein, Defendant BANK OF AMERICA, N.A., successor by merger to BAC Home Loans Servicing, LP, formerly Countrywide Home Loans Servicing, LP, (hereinafter referred to as "Bank of America") was a non-title seven business entity, registered to do business in the State of Nevada, conducting business in the State of Nevada

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as a national bank, and providing commercial banking services for individuals, businesses, and institutions in the State of Nevada.

7. At all times relevant herein, Defendant and Intervener BRECKENRIDGE PROPERTY FUND 2016, LLC, a Utah limited liability company (hereinafter "Breckenridge"), is and was the grantee of a Trustee's Deed recorded with the Lyon County Recorder on January 25, 2019, as Document No. 591393.

8. At all times relevant herein, Defendant NEWREZ, LLC d/b/a Shellpoint Mortgage Servicing, LLC, substituted in for Doe 1 (hereinafter "Shellpoint") is and was a Delaware limited liability company. Shellpoint provides loan servicing services for beneficiaries of mortgage security instruments. Upon information and belief, at all times relevant herein, Defendant 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted herein for Doe 2 (hereinafter referred to as "Capital Trust"), as legal title trustee, was a mortgage investment trust. At all times relevant herein, Capital Trust, was a non-title 7 business entity, registered to do business in the State of Nevada, conducting business in the State of Nevada as a national bank, and providing commercial banking services for individuals, businesses, and institutions in the State of Nevada.

9. Upon information and belief, Defendant MCM-2018-NPL2, is an investment Trust administered by MCM Capital, LLC, substituted herein for Doe 3 (hereinafter "MCM") as legal title trustee. MCM is a Delaware limited liability company and provides services as a mortgage investor, manager, advisor and technology provider.

10. The true names, capacities, and/or involvement of the DOE Defendants named herein are unknown to Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME (together hereinafter referred to as "the Lincicomes"), who therefore sue said Defendants by fictitious names. The Lincicomes are informed and believe, and thereon allege, that those persons or entities are the partners, owners, shareholders, agents, employees, or alter egos of the Defendants named herein, or those persons have an interest in the deed of trust or mortgage loan, or are otherwise affected by the relief sought herein. The Lincicomes pray leave to amend this Complaint to show their true names and capacities when the same have

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been determined. The Lincicomes are informed and believe, and thereon allege, that each of the Defendants named herein as a DOE is legally responsible in some manner for the events and happenings herein referred to in this lawsuit.

JURISDICTION

11. The Third Judicial District Court in and for the County of Lyon has personal jurisdiction over all parties pursuant to NRS 14.065 and subject matter jurisdiction over all claims asserted in this Complaint pursuant to Article VI of the Nevada Constitution.

12. Mandatory arbitration of this matter is exempt under Rule 3(A) of the Nevada Arbitration Rules because this matter concerns "actions for declaratory relief." NAR 3A.

VENUE

13. The Third Judicial District Court in and for the County of Lyon is the proper venue for this action pursuant to NRS 13.010 because the actions arose out of contracts executed and to be performed in Lyon County, Nevada, and the real property at issue and affected by the relief sought is located in Lyon County, Nevada.

GENERAL ALLEGATIONS

14. In May of 2007, the Lincicomes agreed to enter into a residential mortgage loan with Sierra Pacific for the purchase of a home located at 70 Riverside Drive, Dayton, Nevada 89403 (hereinafter "Residence" or "Premises").

15. Sierra Pacific requested that Plaintiff Ellis Lincicome (hereinafter individually referred to as "Ellis") make a withdrawal of $80,000 from his 401K retirement plan to be contributed as part of the down payment of the home purchase.

16. On May 23, 2007, Vicenta Lincicome (hereinafter individually referred to as "Vicenta") executed a Promissory Note in favor of Sierra Pacific as part of an interest only residential mortgage loan.

17. On that same day, May 23, 2007, Vicenta executed a Deed of Trust (hereinafter "Deed of Trust") in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter referred to as "MERS"), a Delaware Corporation that tracks ownership interests and servicing rights in mortgage loans and holds title to mortgages solely as nominee for its

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member-lenders, as the nominee for Sierra Pacific to secure the mortgage loan. The Promissory Note and Deed of Trust are attached hereto as **Exhibit 1.**

18. In or about March of 2008, the Lincicomes learned that they had incurred a tax bill of nearly $20,000 for having taken the $80,000 distribution from Ellis's 401k.

19. The Lincicomes were unable to make their June 1, 2008, mortgage payment and were unable to later catch up on past due payments.

20. Also on April 27, 2009, Bank of America, N.A., and Countrywide Bank, N.A., merged. See Ex. C to *Motion for Relief of Stay* attached as **Exhibit 2.**

21. Bank of America (or Recontrust Company, N.A.) recorded a Notice of Default on January 23, 2009 as Document No.437084, accelerating the sum due under the Promissory Note.

22. After receiving a Notice of Default and Notice of Sale, the Lincicomes began the process of applying for a mortgage workout with Bank of America.

23. On July 31, 2009, Vicenta executed a Loan Modification Agreement (hereinafter "2009 LMA") with BAC Home Loans Servicing, LP, which provided that the first payment of $2,272.62 was to be made September 1st, 2009. A copy of the 2009 Loan Modification Agreement is attached hereto as **Exhibit 3.**

24. The LMA extended the maturity date to August 1, 2049, and, as of August 1, 2009, the interest rate applicable to their loan would be reduced from the current rate of 6.875% to 4.875%. The LMA provided that on September 1, 2014, the interest rate would increase to 5.375%. Under the LMA all arrears were to be capitalized as of September 1, 2009, and the new principal balance owed would be $417,196.58. A copy of the "Important Message About Your Loan" notice is attached as **Exhibit 4.**

25. On July 31, 2009, the LMA, which was fully executed by Vicenta, was sent by Federal Express in the reusable Fed-Ex envelope provided with the loan modification package to BAC Home Loans Servicing, LP Modification, 100 Beecham Drive, Suite 104, Pittsburgh, PA 15205.

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26. On September 1, 2009, the Lincicomes travelled to the Bank of America branch located in Carson City to make their first payment under the LMA. The banker assisting the Lincicomes was a young woman named Crystal. After searching for information concerning the Lincicomes' loan, Crystal could not find any record of the LMA in their system. Crystal accepted payment under the understanding that it was to be credited against the Lincicomes' loan as modified by the LMA, once the LMA had been entered into their system. Crystal told the Lincicomes to contact Bank of America customer service and request a coupon book for the LMA to make payments easier.

27. On or about September 1, 2009, Vicenta contacted Bank of America Customer Service and was told to go to the Customer Assistance Center on Rose Drive in Reno. The Lincicomes were assisted by Manager Barbara Keady. The Lincicomes showed Ms. Keady a signed copy of the LMA. Ms. Keady informed the Lincicomes that Bank of America would investigate the status of the LMA.

28. On or about October 1, 2009, Vicenta travelled to the Carson City Bank of America branch to make the second payment on the LMA. This time the banker, a middle-aged woman, refused the payment and indicated that there was no record of the existence of the LMA in Bank of America's computer system.

29. Bank of America provided a Home Loan Statement dated October 29, 2009, which establishes that Bank of America had not applied the terms of the LMA to the Lincicomes' mortgage loan. The October 29, 2009 statement is attached as **Exhibit 5.** The statement reflects an incorrect payment amount, an incorrect interest rate, and an incorrect past due amount. Ex. 5.

30. From October 1, 2009, to December of 2011, the Lincicomes continued to contact Bank of America by phone to inquire as to the status of the LMA and make payment. On each phone call, the Bank of America customer service representative would inform the Lincicomes that the matter was being investigated. Copies of correspondence from Bank of America dated December 15, 2009, February 23, 2010, March 12, 2010, October 19, 2011 and December 23, 2011, are attached hereto as **Exhibit 6.**

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31. On March 12, 2010, the Lincicomes again contacted Bank of America by phone and again were informed that the status of the LMA was still being investigated. However, during this call the Lincicomes were advised to seek help from the Department of Housing and Urban Development's (HUD) Financial Guidance Center.

32. In April, the Lincicomes met with HUD Counselor Lucy Powell. Ms. Powell assisted the Lincicomes with the design of an action plan, which included the filing of a Chapter 13 Bankruptcy petition to cure the arrearage with Bank of America that would have accrued since the LMA was signed, and to force Bank of America to find and recognize the LMA.

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

34. The deadline for Bank of America to file a claim was set by the Bankruptcy Court Clerk to expire on August 12, 2010. A copy of the *Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines* is attached as **Exhibit 7.**

35. Neither Bank of America nor BAC Home Loan Servicing filed a claim in the Lincicomes' Bankruptcy case.

36. Without a claim filing or information regarding the validity of the LMA and the current arrears to go off of, the Lincicomes were unable to include payment of arrears as part of their Chapter 13 plan.

37. Upon information and belief, in early 2011, Bank of America found the LMA.

38. Senior Vice President of Bank of America, James S. Smith, executed the LMA on March 22, 2011.

39. A fully executed copy of the LMA was recorded with the office of the Lyon County Recorder on May 4, 2011, as Document No. 475808.

40. Bank of America did not give the Lincicomes notice that the LMA had been signed and recorded.

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41. The Lincicomes remained unaware of the fact that the LMA had been found, or that it had been agreed to and fully executed by Bank of America, until 2017.

42. On November 26, 2014, Bank of America appeared in the Lincicomes' Bankruptcy case and filed a *Motion for Relief of Stay* seeking relief from the automatic stay, pursuant to 11 U.S.C. § 362.

43. In the *Motion for Relief of Stay*, Bank of America did not inform the Bankruptcy Court of the 2009 LMA, nor did it provide the Court with a copy of the LMA recorded on May 4, 2011.

44. On June 15, 2015, the Bankruptcy Court Clerk granted the Lincicomes discharge of all of their scheduled debts. A copy of the June 15, 2015 Discharge Order is attached as **Exhibit 8**.

45. Prior to discharge, but after the Court had entered an order granting Bank of America's *Motion for Relief of Stay*, the Lincicomes again applied for a loan modification.

46. On or about April 24, 2015, Bank of America accepted the loan modification application and required the Lincicomes to complete three trial modification payments before they could move forward with modifying their mortgage loan. A copy of April 24, 2015 loan modification notice is attached as **Exhibit 9.**

47. The April 24, 2015 loan modification notice provided that upon completion of the trial payments, the Lincicomes' mortgage would be extended to May 1, 2055, that the interest rate would be reduced to 4.125%, and that if it is determined that the unpaid balance of the Lincicomes mortgage exceeds 115% of the current value of their home, the Lincicomes would be eligible to have up to 30% of their principal balance deferred and not be subject to interest. Ex.9.

48. The Lincicomes made the first trial payment of $2,013.78 on May 28, 2015. The second trial payment was made on July 1, 2015.

49. Then on August 1, 2015, while attempting to make the third trial payment, Bank of America informed the Lincicomes that their loan had been transferred to Fay

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Servicing, LLC. A copy of the check which the Lincicomes attempted to tender on August 1, 2015, payable to Bank of America, is attached hereto as **Exhibit 10.**

50. The Lincicomes called Fay Servicing that same day, August 1, 2015, to make payment and spoke with account manager Rosalind Jackson. Ms. Jackson informed the Lincicomes that Fay Servicing does not honor Bank of America modifications.

51. On August 10, 2015, Fay Servicing generated a Mortgage Statement indicating the amount due on the Lincicomes' account on September 1, 2015, was $207,599.70, and reflecting an interest rate of 6.875 percent and indicating there were 85 payments that remain due on the account. A copy of Fay Servicing's Mortgage Statement generated August 10, 2015, is attached hereto as **Exhibit 11**.

52. On August 11, 2015, Fay Servicing, LLC, sent a letter to the Lincicomes that Bank of America was no longer their loan servicer and that beginning August 1, 2015, all payment should be sent to Fay Servicing.

53. The Lincicomes were devastated when neither Bank of America nor Fay Servicing would accept their payment and that Fay Servicing would not honor the April 24, 2015 loan modification offer.

54. On November 10, 2015, Bank of America assigned its interest in the Deed of Trust to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee (hereinafter "US Bank"). A copy of the November 10, 2015 Assignment is attached as **Exhibit 12.**

55. The November 10, 2015, Assignment to US Bank was recorded with the Lyon County Recorder as Document No. 544042. Ex.12.

56. In 2016, the Lincicomes applied for the Home Affordable Modification Program (HAMP) modification through Fay Servicing. Fay Servicing informed the Lincicomes that they only qualified for a Home Affordable Foreclose Alternatives (HAFA) Short Sale. The Lincicomes appealed Fay Servicing's denial of their qualification for HAMP.

57. On September 7, 2016, Fay Servicing sent the Lincicomes a response to their appeal of their denial therein indicating that the Lincicomes did not have sufficient income to

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qualify for a modification, and also that they were not qualified for the HAMP Unemployment Program (HAMP UP) "because the property is not your primary residence."

58. The Lincicomes have continuously used and claimed their home located at 70 Riverside Dr., Dayton, Nevada, as their residence.

59. After being denied, the Lincicomes reached out to Senator Harry Reid's office for help. Shortly thereafter Fay Servicing offered the Lincicomes a trial modification at $2,528.86 per month.

60. The Lincicomes completed the three trial payments by December 1, 2016. Then on December 15, 2016, Fay Servicing sent the Lincicomes the final modification agreement. After reviewing the agreement, the Lincicomes knew that entering into the modification under the proposed terms would leave them in a terrible financial position, and would likely result in another default upon the modified terms. The Lincicomes decided not to enter into the agreement.

61. On December 20, 2016, the Lincicomes then elected to enter the State of Nevada Foreclosure Mediation Program.

62. Anita Conboy was appointed mediator and mediation was scheduled and held on April 17, 2017. The mediation was terminated when no agreement between the parties was reached. No certificate of mediation was issued because Fay Servicing did not bring any certifications for any of the documents as required by law.

63. On November 3, 2017, Sables, LLC, as Trustee under the Deed of Trust, recorded its *Notice of Breach and Default and Election to Sell the Real Property under Deed of Trust* (hereinafter "NOD"). A copy of the NOD is attached hereto as **Exhibit 13**.

64. The NOD provides that as of October 31, 2017, $265,572.39 is owed in arrears. Even though the NOD acknowledges that the "subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 . . . recorded on 5/4/2011 . . . in the office of the County recorder of Lyon County," it also provides that all monthly installments from "9/1/2008" forward are due.

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65. The NOD is incorrect because the 2009 LMA was effective July 31, 2009, with the first installment to be made on 9/1/2009 instead of 8/1/2008. Ex.3.

66. The NOD includes an Affidavit of Authority signed on October 5, 2016, by Veronica Talley, as a "Foreclosure Specialist IV" (hereinafter "Talley Affidavit") stating that Fay Servicing has complied with the requirements of NRS 107.080.

67. The Talley Affidavit misstates the date of recording of the November 10, 2015 Assignment from Bank of America to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee, as having been recorded November 25, 2016, instead of the actual date of recording November 25, 2015. Ex.13; Ex.12.

68. The Talley Affidavit was signed nearly 13 months prior to the recording of the NOD.

69. The Declaration of the Mortgage Service attached to the NOD indicates that pursuant to the requirements of NRS 107.510 the mortgage servicer contacted the borrower to assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale. The Declaration was signed and dated April 5, 2016, nearly 19 months prior to the signing of the NOD to which it is attached. Ex.13, p.6.

70. The Lincicomes attended a second mediation on April 3, 2018, and a Certificate of Mediation was issued on October 4, 2018.

71. The Certificate of Mediation provides that the Lincicomes will voluntarily relinquish the property.

72. Even though a deed in lieu of foreclosure was discussed as the Lincicomes' only option at the mediation, and recommended by their attorney Geoffrey Giles, they did not agree to relinquish their property.

73. On October 12, 2018, Sables, LLC, recorded its *Notice of Trustee's Sale* with the Lyon County Recorder as Document No. 587470.

74. The October 12, 2018 *Notice of Trustee's Sale* provides that the date of sale is November 9, 2018, at 11:00 AM, at the Lyon County Court House on 31 S. Main Street Yerington, Nevada 89447.

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75. On November 7, 2018, the Lincicomes filed a *Complaint* for Declaratory Relief and an *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction* in the Third Judicial District Court of the State of Nevada, as Case No. 18-CV-01332.

76. On November 7, 2018, a *Notice of Lis Pendens* was filed in the Third Judicial District Court Case No. 18-CV-01332 against the Premises and was recorded on November 8, 2018, with the Lyon County Recorder as Document No. 588549.

77. On November 8, 2018, the Third Judicial District Court entered an *Order* restraining and enjoining Defendants from foreclosing on the Property. A copy of the November 8, 2018 Order is attached as **Exhibit 14.**

78. On November 8, 2018, a *Notice of Entry of Order* concerning entry of the Court's November 8, 2018 *Order* was served on all interested parties by mail.

79. On November 14, 2018, the Third Judicial District Court entered a *Corrected Order* restraining and enjoining Defendants from foreclosing on the Property.

80. On November 20, 2018, a *Notice of Entry of Order* concerning entry of the Court's November 14, 2018 *Corrected Order* was served on all interested parties.

81. On November 20, 2018, the Court held a hearing on the *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction*.

82. On December 21, 2018 the Third Judicial District Court Clerk took Sable's default.

83. On December 28, 2018, the Lincicomes received a notice from Shellpoint Mortgage Servicing, LLC, indicating that MCM 2018-NPL2 is the new beneficiary of the Deed of Trust.

84. On December 31, 2018, the Third Judicial District Court entered the Order upon the November 20, 2018 hearing.

85. On January 4, 2019, a *Notice of Entry of Order* concerning entry of the Court's December 31, 2018 *Order* was served on all interested parties.

86. On January 4, 2019, Sables, sold the Premises at foreclosure to Breckenridge.

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87. On January 17, 2019, the Lincicomes received a notice from Shellpoint that 1900 Capital Trust II, by U.S. Bank Trust National Association, is the new beneficiary of the Deed of Trust.

88. On January 25, 2019, a *Trustee's Deed Upon Sale* was recorded in the office of the Lyon County Recorder as Document No. 591393. A copy of the Trustee's Deed Upon Sale recorded as Document No. 591393 is attached hereto as **Exhibit 15.**

89. The Trustee's Deed was issued in violation of NRS 107.0805.

FIRST CAUSE OF ACTION

(Wrongful Foreclosure)

90. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 89, hereinabove, as though fully set forth herein.

91. This cause of action is asserted against US Bank, MCM, Captial Trust, Sables and their respective agents who are named parties herein.

92. Sables is named as a prospective Defendant herein only to the extent allowed by NRS 107.029, and shall have no duty or requirement to defend against this claim as long as it remains a "nonparty participant" in the action.

93. By acquiring the benefits of the Deed of Trust, US Bank, MCM, Capital Trust, Sables, and their respective agents, including Fay Servicing and Shellpoint, assumed the duties imposed by law on a beneficiary of a deed of trust including the express obligations contained in the Deed of Trust, and subjected themselves to the statutory duties prerequisite to conducting a foreclosure sale.

94. Defendants had a legal duty to comply with the provisions of Chapter 107 of the Nevada Revised Statutes, including sections NRS 107.080 and NRS 107.400 through NRS 107.560, which sections are also known as the "Homeowners Bill of Rights Act."

95. Defendants were given actual and constructive notice that the 2009 LMA modified the Deed of Trust pertaining to Plaintiffs' Residence prior to the foreclosure sale that occurred January 4, 2019.

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96. Prior to the foreclosure sale in this matter, Defendants US Bank, Fay Servcing, and Sables were given actual notice that the terms Deed of Trust, as modified by the 2009 LMA, had not been enforced by Bank of America or US Bank, or their respective agents.

97. Prior to the foreclosure sale in this matter, Defendants US Bank, Fay Servcing, and Sables were given actual notice that Plaintiffs were asserting that Bank of America, the prior beneficiary of the Deed of Trust had breached its obligation to accept payment from Plaintiffs in the fall of 2009.

98. Upon information and belief, Defendants US Bank and/or Fay Servicing requested that Sables conduct a foreclosure sale, even though doing so would be in violation of its legal duties under NRS 107.080.

99. On January 4, 2019, in violatation of the duties and requirements of the applicable sections of NRS 107, including NRS 107.080, Sables exercised the power of sale to foreclose and sell the Plaintiffs' Residence to Breckenridge.

100. As a proximate and direct result of Defendants' wrongful conduct and foreclosure of Plaintiffs' Residence, Plaintiffs have been damaged in the sum of an amount in excess of Fifteen Thousand Dollars ($15,000) to be proved at trial.

101. In addition to actual damages, Plaintiffs seek treble damages pursuant to NRS 107.028, NRS 107.080, NRS 107.560.

102. The Lincicomes have had to retain the services of an attorney to prosecute this action and are entitled to reasonable attorney's fees and cost of suit incurred herein as permitted under NRS 107.080(8).

SECOND CAUSE OF ACTION

(Declaratory Relief – NRS 30.010 *et. seq*. – NAR 3)

103. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 102, hereinabove, as though fully set forth herein.

104. This cause of action is asserted against Bank of America, US Bank, MCM, Captial Trust, Salbes, Fay Servicing, Shellpoint, and Breckenridge.

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105. Sables is named as a prospective Defendant herein only to the extent allowed by NRS 107.029, and shall have no duty or requirement to defend against this claim as long as it remains a "nonparty participant" in the action.

106. An actual controversy has arisen and now exists between the Lincicomes and all named Defendants which requires a determination of rights, responsibilities, interests, and liabilities of the parties including those declarations sought below.

107. An actual controversy has arisen and now exists between the Lincicomes and the named Defendants which requires a determination of rights, responsibilities, interests, and liabilities of the parties including those declarations sought below.

108. Plaintiffs seek a declaration as to the terms of the under the May 23, 2007 Deed of Trust, as modified by the 2009 LMA, including Plaintiffs' and Bank of America's rights and duties thereunder.

109. Plaintiffs seek a declaration as to Defendant Bank of America's duty to accept payments from Plaintiffs in October of 2009 under the Deed of Trust as modified by the 2009 LMA.

110. Plaintiffs seek a declaration as to any duty Plaintiffs had to perform following Bank of America's rejection of Plaintiffs' payment in October of 2009.

111. Plaintiffs seek a declaration as to any event or occurance that constitutes a cure for Bank of America's rejection of Plaintiffs October 2009 payment.

112. Plaintiffs seek a declaration as to the effect of Bank of America's failure to incorporate and give effect to the 2009 LMA.

113. Plaintiffs seek a declaration as to the effect of the November 10, 2015, assignment of the Deed of Trust, as modified by the 2009 LMA from Bank of America to US Bank.

114. Plaintiffs seek a declaration as to any warranty given by Bank of America to US Bank when Bank of America assisgtned its beneficial interest under the Deed of Trust, as modified by the 2009 LMA, to US Bank on November 10, 2015.

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115. Plaintiffs seek a declaration as to the effect of US Bank, Fay Servicing, and Shellpoint's failute to incorporate and give effect to the 2009 LMA.

116. Plaintiffs seek a declaration of US Bank's rights to enforce any beneficial interest it did or continues to have in the Deed of Trust, as modified by the 2009 LMA, following the assignement of the same from Bank of America on November 10, 2015.

117. Plaintiffs seek a declaration of US Bank's, MCM, and/or Capital Trust's right to enforce the Deed of Trust as modified by the 2009 LMA.

118. Plaintiffs seek a declaration of Plaintiffs' and Defendants' rights in respect to the provisions of NRS 106 and NRS 107.

119. Plaintiffs seek a declaration of Sables duties, as Trustee of the Deed of Trust, to investigate its rights to exercise the power of sale pursuant to NRS 107.080.

120. Plaintiffs seek a declaration of Sables right, as Trustee of the Deed of Trust, to exercise the power of sale under the provisions of NRS 107.080.

121. Plaintiffs seek a declaration of the validity of the Trustee's Deed recorded on January 25, 2019.

122. Plaintiffs seek a declaration of Breckenridge's interest in Plaintiffs' Residence.

123. Judicial declarations sought herein are necessary and appropriate in order for Plaintiffs to ascertain their rights and duties under the Deed of Trust, as modified by the 2009 LMA, as well as their interest in the Residence to maintain the quiet enjoyment of their property free from any disturbance by Defendants and Breckenridge.

124. Plaintiffs have had to retain the services of an attorney to prosecute this action and are entitled to reasonable attorney's fees and costs of suit incurred herein.

THIRD CAUSE OF ACTION

(Quiet Title)

125. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 124, hereinabove, as though fully set forth herein.

126. This cause of action is asserted against Breckenridge.

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127. Upon information and belief, Defendants US Bank and Fay servicing requested Sables, as Trustee of the Deed of Trust, as modified by the 2009 LMA, exercise the power of sale to cause the foreclosure sale of Plaintiffs' Residence.

128. Pursuant to NRS 107.080(1), the power of sale "conferred upon a trustee [is] to be exercised after a breach of the obligation for which transfer is security." NRS 107.080(1).

129. Pursuant to 107.080(2)(a)(2), the power of sale "must" not be exercised until "the grantor . . . has . . . failed to make good the deficiency in performance or payment." NRS 107.080(2)(a)(2).

130. Pursuant to 107.080(5)(a)-(c), a court is required to declare a sale void made pursuant to NRS 107.080, where:

> (a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section;
>
> (b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within 30 days after the date on which the trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder of the county in which the property is located; and
>
> (c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 5 days after commencement of the action.

NRS 107.080(5)(a)-(c).

131. Bank of America breached the Deed of Trust, as modified by the 2009 LMA, when it rejected Plaintiffs' payment in October of 2009.

132. Bank of America and US Bank have not cured the October 2009 breach.

133. Plaintiffs were not in breach of the 2009 LMA at the time of the recording of the NOD on November 3, 2017.

134. Plaintiffs were not in breach of the 2009 LMA at the time of the recording of the Notice of Trustee's Sale on October 12, 2018.

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135. On November 8, 2018, Sables, as Trustee of the Deed of Trust, was served with Plaintiffs' *Complaint* and Plaintiffs' *Applicatoin for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injuction* putting it on notice of of the facts constituting Bank of America's breach of the Deed of Trust by rejection of Plaintiffs' payment in October of 2009.

136. Plaintiffs were not in breach of the 2009 LMA at the time of sale on January 4, 2019.

137. Sables, LLC, the Trustee in this matter had no legal right pursuant to NRS 107.080 to foreclose on Plaintiffs when they were not in breach of the Deed of Trust as modified by the 2009 LMA.

138. Plaintiffs are entitled to have the Trustee's Deed Upon Sale, that was recorded on January 25, 2019, voided and set aside, and title quieted in the Plaintiffs' favor.

139. Plaintiffs have had to retain the services of an attorney to prosecute this action and are entitled to reasonable attorney's fees and costs of suit incurred herein pursuant to the applicable provisions of NRS 107.

FORTH CAUSE OF ACTION

(Violation of Homeowner's Bill of Rights)

140. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 139, hereinabove, as though fully set forth herein.

141. Upon information and belief, Defendants have materially violated the Homeowners Bill of Rights, codified as NRS 107.400 to NRS 107.560.

142. Defendants pursued or otherwise caused the foreclosure of the Plaintiffs' residence even though Plaintiffs payments under the 2009 LMA were rejected.

143. Defendants did not provide the Lincicomes with a notice that complies with NRS 107.500(1), at least 30 calendar days before recording the NOD.

144. NRS 107.0805(1)(b)(3) requires an Affidavit verify that a written statement be sent to homeowners which provides as follows in relevant part:

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> (I) The amount of payment required to make good the deficiency in performance or payment . . . ;
> (II) The amount in default;
> . . .
> (IV) The amount of accrued interest and late charges;
> (V) A good faith estimate of all fees imposed in connection with the exercise of the power of sale . . . .
>
> NRS 107.0805(1)(b)(3).

145. The Lincicomes have not received a statement by any financial institution concerning their home loan from September 2009 forward that accurately reflects the interest rate, principal balance, or last payment date.

146. No affidavit provided by the Defendants in this matter has complied with NRS 107.0805(1)(b)(3).

147. The failure to provide the Lincicomes with accurate information required by NRS 107.400-107.560 is a material violation of the Homeowner's Bill of Rights.

148. As an approximate result of Defendants' violations of NRS 107.400 through NRS 107.560, and NRS 107.0805, the Lincicomes have been damaged in excess of Fifteen Thousand Dollars ($15,000) and are entitled to relief provided for pursuant to NRS 107.400 through NRS 107.560 and NRS 107.560 including treble and statutory damages.

149. Plaintiffs have had to retain the services of an attorney to prosecute this action and are entitled to reasonable attorney's fees and costs of suit incurred herein as permitted pursuan to NRS 107.560.

FIFTH CAUSE OF ACTION

(Breach of Contract – Bank of America)

150. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 149, hereinabove, as though fully set forth herein.

151. On July 11, 2009, Defendant Bank of America offered Plaintiff Vicenta Lincicome a permanent loan modification.

152. On July 31, 2009, following receipt of the offer, Plaintiff Vicenta Lincicome accepted and executed the 2009 LMA provided by Defendant Bank of America.

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153. Following Vicenta Lincicome's execution of the 2009 LMA, she immediately sent the agreement via Federal Express in the envelope that had been provided by Bank of America.

154. Upon information and belief, Defendant Bank of America failed to process the 2009 LMA in its system.

155. On March 22, 2011, James Smith executed the 2009 LMA on behalf of Bank of America. Ex.3.

156. Bank of America caused the 2009 LMA to be recorded with the Lyon County Recorder on May 4, 2011. Ex.3.

157. At no time, other than being provided a copy of the recorded 2009 LMA in 2017, did the Lincicomes receive notice, written or otherwise, that Bank of America had located and signed the 2009 LMA.

158. On September 1, 2009, Bank of America accepted Plaintiff Vicenta Lincicome's payment of $2,276.72.

159. On October 1, 2009, Bank of America rejected Plaintiff Vicenta Lincicome's payment of $2,276.72 and informed her that they could not process a payment for less than the current payment amount.

160. From October 1, 2009, through December of 2011, Bank of America refused to accept all offers to tender payment of $2,276.72 under the 2009 LMA.

161. All verbal and written communications between October 1, 2009, through March of 2010, that were received from Bank of America requesting the status of the 2009 LMA were responded to by Bank of America with the indication that it was continuing to research or investigate the matter.

162. By failing to process the 2009 LMA, and payments according to the 2009 LMA's terms, Bank of America materially breached the 2009 LMA.

163. But for Defendant Bank of America's material breach of the 2009 LMA, the Lincicomes' property would not have been subject to foreclosure sale.

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164. As a proximate cause of Defendant Bank of America's material breach of the 2009 LMA, Plaintiffs have suffered economic losses and general damages in excess of Fifteen Thousand Dollars ($15,000) to be proved at trial.

165. Plaintiffs have had to retain the services of an attorney to prosecute this action and are entitled to reasonable attorney's fees and costs of suit incurred herein.

SIXTH CAUSE OF ACTION

(Breach of Duty to Act in Good Faith and Fair Dealing – Bank of America)

166. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 165, hereinabove, as though fully set forth herein.

167. At all times material hereto, Defendant Bank of America owed to Plaintiff Vicenta Lincicome a duty to deal fairly and in good faith with respect to their contractual relationship.

168. Defendant Bank of America violated its duty of good faith and fair dealing by refusing to perform under the provisions of the 2009 LMA by not accepting Vicenta's timely payments from October 1, 2009, forward so that the Lincicomes could keep current on their loan under the 2009 LMA.

169. That as a direct and proximate result of Defendant Bank of America's breach of its duty to Plaintiff Vicenta Lincicome, Plaintiffs have suffered economic losses and general damages in excess of Fifteen Thousand Dollars ($15,000) to be proved at trial.

170. Plaintiffs have had to retain the services of an attorney to prosecute this action and are entitled to reasonable attorney's fees and costs of suit incurred herein.

SEVENTH CAUSE OF ACTION

(Breach of Contract – US BANK)

171. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 170, hereinabove, as though fully set forth herein.

172. On November 10, 2015, Bank of America assigned its interest in the Deed of Trust to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee (hereinafter "US Bank"). Ex.12.

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173. The November 10, 2015, Assignment to US Bank was recorded with the Lyon County Recorder as Document No. 544042. Ex.12.

174. US Bank through its agent Fay Servicing has at all times relevant continually disregarded the 2009 LMA or failed to incorporate and apply the terms of the 2009 LMA to Plaintiffs' loan.

175. By failing to honor and apply the terms of the 2009 LMA since receipt of assignment of the Deed of Trust, US Bank has materially breached the terms of the 2009 LMA.

176. As a proximate cause of Defendant US Bank's continued material breach of the 2009 LMA, Plaintiffs have suffered economic losses and general damages in excess of Fifteen Thousand Dollars ($15,000) to be proved at trial.

177. Plaintiffs have had to retain the services of an attorney to prosecute this action and are entitled to reasonable attorney's fees and costs of suit incurred herein.

EIGHT CAUSE OF ACTION

(Breach of Duty to Act in Good Faith and Fair Dealing – US BANK)

178. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 177, hereinabove, as though fully set forth herein.

179. At all times material hereto, Defendant US Bank owed to Plaintiff Vicenta Lincicome a duty to deal fairly and in good faith with respect to their contractual relationship.

180. Defendant US Bank violated its duty of good faith and fair dealing by refusing to honor and apply the terms of the 2009 LMA to Vicenta Lincicome's loan.

181. That as a direct and proximate result of Defendant US Bank's breach of its duty to Plaintiff Vicenta Lincicome, Plaintiffs have suffered economic losses and general damages in excess of Fifteen Thousand Dollars ($15,000) to be proved at trial.

182. Plaintiffs have had to retain the services of an attorney to prosecute this action and are entitled to reasonable attorney's fees and costs of suit incurred herein.

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NINTH CAUSE OF ACTION

(Slander of Title)

183. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 182, hereinabove, as though fully set forth herein.

184. US Bank slandered Plaintiffs' title by its conduct including seeking the recording of an inaccurate and unwarranted Notice of Default with the Lyon County Recorder.

185. Fay Servicing slandered Plaintiffs' title by its conduct including seeking the recording of an inaccurate and unwarranted a Notice of Default with the Lyon County Recorder.

186. US Bank and Fay Servicing slandered Plaintiffs' title by causing Sables to record an inaccurate and unwarranted Notice of Default.

187. US Bank and Fay Servicing slandered Plaintiffs' title by causing Sables to record an inaccurate and unwarranted Notice of Sale.

188. US Bank and Fay Servicing slandered Plaintiffs' title by causing Sables to conduct a foreclosure sale and record a Trustee's Deed when they were on notice of the defects of the Notice of Default, Notice of Sale, and that US Bank's right to enforce the Deed of Trust was in question.

189. Wherefore, as a proximate result of Defendants' slander of title, Plaintiffs have suffered general damages in excess of Fifteen Thousand Dollars ($15,000) to be proved at trial.

190. Plaintiffs have had to retain the services of an attorney to prosecute this action and are entitled to reasonable attorney's fees and costs of suit incurred herein.

TENTH CAUSE OF ACTION

(Special Damages –Attorney's Fees)

191. Plaintiffs re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 190, hereinabove, as though fully set forth herein.

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192. Plaintiffs have brought this action in part pursuant to NRS 107.080 and NRS 107.560, which permit recovery of reasonable attorney's fees and costs to a prevailing borrower.

193. Additionally, as natural and proximate consequence of Defendants' conduct alleged herein, Plaintiffs have suffered damages, including special damages in the form of attorney's fees.

194. As a proximate result of Defendants' and Breckenridge's conduct, Plaintiffs have suffered attorney's fees in excess of Fifteen Thousand Dollars ($15,000) to be proved at trial.

195. Plaintiffs are entitled to the recovery of reasonable attorney's fees and costs from Defendants in an amount and sum to be proven at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief:

1. That the Court grant relief to Plaintiffs permitted under the Nevada Homeowner's Bill of Rights;

2. That Breckenridge take nothing by reason of its Counterclaim on file herein;

3. That the Court enter judgment against Defendants in favor of the Lincicomes for their reasonable attorney's fees and costs in Defending Breckenridges' Counterclaim;

4. That the Court make an award of damages in favor of Plaintiffs and against Defendants and Breckenridge in excess of $15,000;

5. The the Court set aside the Trustee's Deed Upon Sale, recorded on January 25, 2019, and quiet title to the Lincicomes' Resdience in favor of the Lincicomes;

6. That the Court determine Plaintiffs and Defendants' duties and rights under the 2007 Deed of Trust as modified by the 2009 Loan Modification Agreement;

7. That the Court declare the rights and interests of the parties;

8. That the Court award Plaintiffs their reasonable attorney's fees and costs; and

9. That the Court provide such other relief as the Court deems proper in the premises.

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AFFIRMATION

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

Dated this 20th day of December, 2019.

MILLWARD LAW, LTD

By: _____

Michael G. Millward, Esq.
NSB# 11212
1591 Mono Ave
Minden, NV 89423
(775) 600-2776
Attorney for Plaintiffs

(775) 600-2776

INDEX TO EXHIBITS

Exhibit 1	*May 23 2007 Promissory Note and Deed of Trust*	26 pages
Exhibit 2	*Motion for Relief of Stay*	38 pages
Exhibit 3	Loan Modification Agreement	6 pages
Exhibit 4	"Important Message About Your Loan" Notice	1 page
Exhibit 5	Bank of America Home Loan Statement dated October 29, 2009	1 page
Exhibit 6	Correspondence from Bank of America dated December 15, 2009, February 23, 2010, March 12, 2010, October 19, 2011 and December 23, 2011	5 pages
Exhibit 7	*Notice of Chapter 13, Bankruptcy Case, Meeting of Creditors, & Deadlines*	3 pages
Exhibit 8	*Discharge of Debtor After Completion of Chapter 13 Plan*	1 page
Exhibit 9	April 24, 2015 Loan Modification Notice	1 page
Exhibit 10	Lincicomes' check dated August 1, 2015, payable to Bank of America	1 page
Exhibit 11	Fay Servicing's Mortgage Statement generated August 10, 2015	2 pages
Exhibit 12	November 10, 2015 Assignment	2 pages
Exhibit 13	*Notice of Breach and Default and of Election to Sell the Real Property under Deed of Trust*	6 pages
Exhibit 14	November 8, 2018 Order	3 pages
Exhibit 15	Trustee's Deed Upon Sale recorded as Document No. 591393	4 pages

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VERIFICATION OF VICENTA LINCICOME

STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

I, Vicenta Lincicome, under the penalty of perjury, being duly sworn, depose and state as follows:

1. That I am one of the Plaintiffs is this matter; and

2. That I have read the Second Amended Complaint and know the contents thereof; that the same is true of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true;

Dated this 19th day of December, 2019

Vicenta Lincicome
VICENTA LINCICOME

On this 19th day of December, 2019, before me personally appeared Vicenta Lincicome, known to be the person described in and who executed the foregoing instrument, and who subscribed and swore to before me that she executed it as her free act and deed.

Witness my hand and official seal this 19th day of December, 2019.

Ashley Voss
Notary Public

ASHLEY VOSS
NOTARY PUBLIC
REG # 19-6005-05
MY COMMISSION EXPIRES
08-13-2023
STATE OF NEVADA

(775) 600-2776

VERIFICATION OF ALBERT ELLIS LINCICOME, JR.

STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

I, Albert Ellis Lincicome, Jr., under the penalty of perjury, being duly sworn, depose and state as follows:

1. That I am one of the Plaintiffs is this matter; and

2. That I have read the Second Amended Complaint and know the contents thereof; that the same is true of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true;

Dated this 19th day of December, 2019

ALBERT ELLIS LINCICOME, JR.

On this 19th day of December, 2019, before me personally appeared Albert Ellis Lincicome, Jr., known to be the person described in and who executed the foregoing instrument, and who subscribed and swore to before me that he executed it as his free act and deed.

Witness my hand and official seal this 19th day of December, 2019.

Notary Public

ASHLEY VOSS
NOTARY PUBLIC
REG # 19-2005-05
MY COMMISSION EXPIRES
08-13-2023
STATE OF NEVADA

(775) 600-2776

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing *Second Amended Complaint* was made on the 20th day of December , 2019, by depositing a true copy of the same for mailing with the United States Postal Service, addressed to the following:

Shadd A. Wade, Esq.
Zieve, Brodnax & Steel
9435 W. Russel Rd., Suite 120
Las Vegas, NV 89148
Attorney for Sables, LLC

Scott R. Lachman, Esq.
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Attorney for Breckenridge Property Fund 2016, LLC

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Attorney for Breckenridge Property Fund 2016, LLC

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Attorney for Fay Servicing, LLC and US Bank Prof-2013-M4 Legal Title Trust.

MCM-2018-NPL2
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Bethesda MD 20814

1900 Capital Trust II
By U.S. Bank Trust National Assoc.
300 Delaware Avenue 9th Floor
Wilmington DE 19801

Shellpoint Mortgage Servicing
Post Office Box 10826
Greenville, SC 29603-0826

Herrin Fosmore, Law Clerk

1771 Hotel Ave, Hidden NV 8742
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Exhibit 7

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Attorney for Defendant, Counterclaimant, and Cross-Plaintiff Breckenridge Property Fund 2016, LLC

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants.	Case No.: 18-CV-01332 Dept No.: II **BRECKENRIDGE PROPERTY FUND 2016, LLC'S CROSSCLAIM AGAINST PROF-2013-M4 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE**

BRECKENRIDGE PROPERTY FUND 2016, LLC,

Counterclaimant,

vs.

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

Counterdefendants.

BRECKENRIDGE PROPERTY FUND 2016, LLC,

Cross-Plaintiff,

vs.

PROF-2013-M4 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE,

Cross-Defendant.

COMES NOW, BRECKENRIDGE PROPERTY FUND 2016, LLC ("Cross-Plaintiff"), by and through its counsel of record, HUTCHISON & STEFFEN, PLLC and WEDGEWOOD, LLC, and hereby files this Crossclaim against PROF-2013-M4 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE ("Cross-Defendant") as follows:

JURISDICTION AND VENUE

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

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

3. Cross-Defendant has sufficient minimum contacts with Nevada so as to allow this Court to exercise jurisdiction over it.

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

///

PARTIES

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

6. Cross-Plaintiff is a limited liability company authorized to do business and doing business in Lyon County, Nevada and is the lawful title holder of the real property located at 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property").

7. Cross-Defendant is, and at all times pertinent hereto was, a national banking association authorized to do business and doing business in Lyon County, Nevada.

FACTUAL ALLEGATIONS

8. In May 2007, Albert and Vicento Lincicome ("Lincicome's") obtained a loan from Sierra Pacific ("Sierra Loan") to finance their purchase of the Subject Property.

9. As security for repayment of the Sierra Loan, the Lincicome's executed a first priority Deed of Trust against the Subject Property ("Deed of Trust"), which was recorded with the Lyon County Recorder's Office on or about May 25, 2007.

10. Thereafter, the Deed of Trust was eventually assigned to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee ("Cross-Defendant") through a Nevada Assignment of Deed of Trust, which was recorded with the Lyon County Recorder's Office on or about November 25, 2015.

11. Cross-Plaintiff is informed and believes, and on that basis alleges, that during the Lincicome's ownership of the Subject Property, they became delinquent in the payment of the Sierra Loan.

12. As a result of that delinquency, Cross-Defendant caused its foreclosure agent and/or trustee to record a Notice of Default and Election with the Lyon County Recorder's Office on or about November 3, 2017.

13. Thereafter, Cross-Defendant caused its foreclosure agent and/or trustee to record a Notice of Trustee's Sale with the Lyon County Recorder's Office.

14. The Lincicome's subsequently filed the underlying Complaint in this action, seeking to postpone or cancel the scheduled foreclosure sale.

15. On December 31, 2018, this Court entered an Order enjoining the foreclosure on the Subject Property on the condition that the Lincicome's post a bond in the amount of $172,610.67 and additional security in the amount of $2,105.10 per month thereafter.

16. The Lincicome's failed to post the required bond and security, which resulted in the foreclosure sale proceeding forward on January 4, 2019.

17. Counterclaimant purchased the Subject Property at the NRS 107 foreclosure sale for $294,000.01 and took title thereto.

18. The acquisition of the Subject Property by Cross-Plaintiff was: (i) at or above fair market value for the Subject Property; (ii) made in good faith and for valuable consideration; and (iii) made without knowledge of any adverse legal or equitable claim to the Subject Property.

19. Cross-Plaintiff filed a Counterclaim against the Lincicome's on October 3, 2019 through which it claims ownership to the Subject Property, seeks to quiet title in its favor, seeks possession of the Subject Property, and seeks other monetary damages

20. On December 20, 2019, the Lincicome's filed their Second Amended Complaint through which it claims ownership to the Subject Property, seeks to quiet title in its favor, seeks to set aside Cross-Defendant's foreclosure sale, and seeks other monetary damages.

21. In the event the Lincicome's claims to set aside the foreclosure sale are sustained, then Cross-Plaintiff is entitled to damages against Cross-Defendant for its wrongful foreclosure sale of the Subject Property.

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

///

///

///

FIRST CAUSE OF ACTION

(Wrongful Foreclosure/Rescission and Restitution)

23. Cross-Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as though fully set forth herein.

24. Cross-Plaintiff properly acquired title and ownership of the Subject Property in exchange for good and valuable consideration paid.

25. In the event the Lincicome's claims to set aside the foreclosure sale are sustained, then Cross-Defendant's sale of the Subject Property to Cross-Plaintiff was wrongful, null, void, and of no effect.

26. If Cross-Defendant's foreclosure sale was wrongful, null, void, and of no effect, then it would be unjust for Cross-Defendant to retain the benefit of its invalid foreclosure sale. Thus, the sale must be rescinded and the funds paid by Cross-Plaintiff's invalid foreclosure sale must be returned.

27. As a direct, legal, and proximate result of Cross-Defendant's actions, Cross-Plaintiff has been damaged by suffering a loss of equity, loss of rental income, unavailability of credit, and increased costs of credit in an amount in excess of Fifteen Thousand Dollars ($15,000.00).

WHEREFORE, Cross-Plaintiff prays for the following:

1. In the event the Court does not order, declare, and determine that Cross-Plaintiff has free and clear title to the Subject Property as prayed for in Cross-Plaintiff's counterclaim against the Lincicome's, then the Court must order, declare, and determine that Cross-Defendant's foreclosure sale and deed to Cross-Plaintiff was wrongful, null, void, and of no effect; that the foreclosure sale must be rescinded; and that the funds paid by Cross-Plaintiff be returned;

2. For an award of damages and losses against Cross-Defendant in an amount in excess of $15,000.00 to be proven at trial;

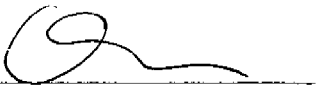
3. For an award of reasonable attorney's fees and costs incurred in this action; and;

4. For such other and further relief as the Court may deem proper.

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

DATED this 2 day of October, 2020.

HUTCHISON & STEFFEN, PLLC



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Attorney for Defendant, Counterclaimant, and Cross-Plaintiff, Breckenridge Property Fund 2016, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **BRECKENRIDGE PROPERTY FUND 2016, LLC'S CROSSCLAIM AGAINST PROF-2013-M4 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE** via U.S. Mail to the parties designated below.

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Attorney for Bank of America

DATED this 2nd day of October, 2020.

An Employee of HUTCHISON & STEFFEN

Exhibit 8

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THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

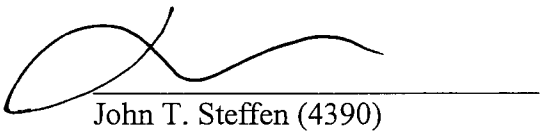
ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants. AND RELATED MATTERS.	Case No.: 18-CV-01332 Dept No.: II **BRECKENRIDGE PROPERTY FUND 2016 LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF**

COMES NOW Breckenridge Property Fund 2016, LLC ("Breckenridge"), by and through its attorney of record, Hutchison & Steffen, PLLC and hereby submits this motion to the Court.

This motion is made and based upon the following points and authorities, the pleadings and papers on file, the attached affidavits and exhibits, and any oral argument this court may entertain.

DATED this 18 day of March 2021.

HUTCHISON & STEFFEN, PLLC



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POINTS AND AUTHORITIES

I. Introduction.

This case pertains to the foreclosure of real property commonly known as 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") that took place on or about January 4, 2019 at which time Breckenridge purchased the Subject Property for $294,000.01.

Albert Ellis Lincicome, Jr. and Vicenta Lincicome ("Plaintiffs") formerly owned the Subject Property. Plaintiffs brought this lawsuit and argue that the foreclosure sale was improperly conducted

but they ignore that the evidence uniformly confirms that they were in default and received actual notice of the same. No amount of distraction about the loan documents or issues of prior loan modification can change these facts. There is no dispute that the Plaintiffs were in default at the time of foreclosure and received both the Notice of Default and the Notice of Sale.

Plaintiffs have no viable claims against Breckenridge. The essence of Plaintiffs' Complaint is that the foreclosing lender did not have the ability to foreclose. Plaintiffs concede that they executed the note and deed of trust and were in default of their loan obligations. Discovery has proven that the foreclosure complied with NRS, that the Plaintiffs were in default of the loan obligations and received both the notice of default and the notice of sale.

As a result of the foreclosure sale, Plaintiffs have been divested of any ownership interest in the Subject Property. Consequently, there are no genuine issues of material fact and Breckenridge is entitled to summary judgment declaring it is both the title owner of the Subject Property and entitled to possession.

II. Statement of Undisputed Facts.

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

2. Plaintiffs subsequently defaulted on that loan obligation resulting in a Notice of Default and Notice of Sale being recorded against the Subject Property. ***See Exhibits #2 and #3.***

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

4. On November 8, 2018, Plaintiffs recorded a lis pendens on the Property and also filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.

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

6. Plaintiffs failed to post the bond and the Subject Property went to foreclosure sale on or about January 4, 2019, at which time Breckenridge purchased the Subject Property for $294,000.01, relying on the fact that the noticed foreclosure sale was valid because Plaintiff failed to post the requisite bond. ***See Exhibit #4.***

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

8. On December 20, 2019, Plaintiffs filed their Second Amended Complaint, wherein they brought claims against Breckenridge for Declaratory Relief and Quiet Title.

9. Breckenridge subsequently filed a Counterclaim against Plaintiffs through which it claims ownership to the Subject Property, seeks to quiet title in its favor, seeks possession of the Property, and seeks other monetary damages.

III. Legal Standard.

The purpose of a motion for summary judgment is to obviate trials when they would serve no useful purpose. *Short v. Hotel Riviera, Inc.*, 79 Nev. 94 (1963). Summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. NRCP 56(c). The Supreme Court of Nevada abandoned the "slightest doubt" standard and clarified the applicable standard for summary judgment in *Wood v. Safeway, Inc.*, 121 Nev., Adv. Op. 73 (2005), adopting the standard articulated by the United States Supreme Court in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), by specifically holding:

> "[T]he plain language of Rule 56(c) mandates the entry of summary judgment after adequate time for discovery and upon motion, against a

> party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. The moving party is entitled to judgment as a matter of law because the non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." *Id.* at 322. *See also Sanders v. Culinary Workers Union*, et at., 804 F. Supp. 86, 92 (D. Nev. 1992).

All facts and inferences drawn must be viewed in the light most favorable to the responding party when determining whether a genuine issue of material fact exists for summary judgment purposes. *Sawyer v. Sugarless Shops, Inc.*, 101 Nev. 265, 267 (1990). The substantive law controls which facts are material and will preclude summary judgment. *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (2005). However, evidence that is merely colorable or not significantly probative is not sufficient to preclude summary judgment. *Oehler v. Humana, Inc.*, 105 Nev. 348, 351-52 (1989). Nor do conclusory statements along with general allegations create an issue of material fact. *Michaels v. Sudeck*, 107 Nev. 332, 334 (1991). Furthermore, the non-movant must "by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Wood*, quoting *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110 (1992).

IV. Legal Argument.

A. Breckenridge Is Entitled To An Order Quieting Tile In Its Favor.

Breckenridge is entitled to an order quieting title to the Subject Property in its favor. NRS 40.010 provides, "An action may be brought by any person against another who claims an estate or interest in real property, adverse to him, for the purpose of determining such adverse claim."

In Nevada, while the "burden of proof [in a quiet title action] rests with the plaintiff to prove good title in himself," *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669 (1996), *abrogated on other grounds by Delgado v. Am. Family Ins. Grp.*, 125 Nev. 564, 570 (2009), "a plaintiff's right to relief

[ultimately]...depends on superiority of title," *W. Sunset 2050 Tr. v. Nationstar Mortg., LLC*, 134 Nev. 352, 354 (2018) (internal quotation marks omitted). And because "[a] plea to quiet title does not require any particular elements...each party must plead and prove his or her own claim to the property in question." *Chapman v. Deutsche Bank Natl Tr. Co.,* 129 Nev. 314, 318 (2013) (internal quotation marks omitted).

Plaintiff's claims to superior title in this matter are supported by well-founded Nevada law. Breckenridge was not involved with this matter until it purchased the Subject Property at the foreclosure sale. Breckenridge took title to the Subject Property pursuant to an NRS 107.080 foreclosure sale. NRS 107.080 provides in pertinent part, "Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption."

The majority of the allegations in the Second Amended Complaint allegedly occurred prior to the foreclosure sale. Many of these allegations deal with the servicing and attempted modifications of the underlying loan by a variety of servicers and beneficiaries. Breckenridge had no role in this dispute prior to the foreclosure and cannot be responsible for the supposed actions of other entities. Breckenridge's first involvement in the matter was when it purchased the Subject Property at the foreclosure sale. Breckenridge is not a lender, noteholder, or beneficiary of Plaintiffs' loan obligations.

The Plaintiffs have failed to meet their burden or provide any evidence that supports their allegations the foreclosure sale was not valid. If the Court determines the sale was valid, Breckenridge is entitled to title to the Subject Property as well as rent for the time in which Plaintiffs have been in unlawful possession of the Subject Property.

Breckenridge took title to the Subject Property pursuant to an NRS 107.080 foreclosure sale. NRS 107.080 provides in pertinent part:

> 5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. Except as otherwise provided in subsection 7, ***a sale made pursuant to this section must be declared void by any court of competent jurisdiction in the county where the sale took place if:***
>
> ***(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section***;
>
> (b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within 30 days after the date on which the trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder of the county in which the property is located; and
>
> (c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 5 days after commencement of the action.

Plaintiffs filed this lawsuit in a last-minute effort to stave off foreclosure in an attempt to retain ownership and possession of the Subject Property. Plaintiffs' allegations of wrongful foreclosure have not been established by any legal or factual support. Instead, it is clear that the beneficiaries, servicers, and trustee not only substantially complied with NRS 107 throughout the entire foreclosure process as required by NRS 107.080(5), but actually strictly complied with those requirements. Accordingly, Breckenridge is entitled to an order quieting title in its favor pursuant to NRS 111.180(1) which provides:

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

The beneficiaries, servicers, and trustee have complied with the requirements of NRS 107 by providing undisputed evidence that the Plaintiffs were in default of their loan obligations and that the Notice of Default and Notice of Sale were properly mailed to the Plaintiffs, facts that Plaintiffs do not even dispute. Plaintiffs have failed to provide any evidence that the foreclosure sale was defective or that they have rights, title, or interest to the Subject Property. Any rights, title, or interest they previously had in the Subject Property has been terminated by way of the valid foreclosure sale. Accordingly, Breckenridge is entitled to titled ownership because there are no defects in the sale.

B. Breckenridge Is Entitled To Possession Of The Subject Property.

Breckenridge's counterclaim against the Plaintiffs also requests an order for possession of the Subject Property. Plaintiffs have been in possession of the Subject Property since Breckenridge purchased the Subject Property at the foreclosure sale.

Over two years ago, Breckenridge served a Three-Day Notice to Quit on the Plaintiffs on January 28, 2019. ***See Exhibit #6.*** However, Plaintiffs have refused to vacate the Subject Property and have continued in possession of the Subject Property notwithstanding the termination of the tenancy by service of the aforesaid Three-Day Notice. Plaintiffs' actions are in violation of NRS 40.250-255 and Breckenridge is entitled to possession of the Subject Property as prescribed in NRS 40.290-420.

Plaintiffs are squatting in the Subject Property without Breckenridge's permission. Plaintiffs are aware that the Subject Property has been foreclosed on as the requisite three-day notice to quit has been served. However, Plaintiffs continue to occupy the Subject Property without paying fair market rent to Breckenridge's detriment. Breckenridge demands possession of the Subject Property and does not agree for the Plaintiffs to continue to occupy the Subject Property.

V. **Conclusion.**

Breckenridge has claim to superior title over Plaintiffs because the Subject Property was sold at a valid foreclosure sale and Breckenridge purchased it at that sale. Plaintiffs have failed to provide any sort of evidence or legal support for their allegations of a wrongful foreclosure. Their case is based solely on mere allegations and cannot survive a motion for summary judgment. For these reasons, this Court must grant summary judgment in Breckenridge's favor. This is a case of statutory construction and purely a legal dispute. There are no ambiguities, the matter is not factually complex,

and there are no genuine issues of material fact. Breckenridge is entitled to judgment as a matter of law and the Court must quiet title and possession of the Subject Property in favor of Breckenridge.

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

DATED this 18 day of March 2020.

HUTCHISON & STEFFEN, PLLC

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Attorneys for Defendant
Breckenridge Property Fund 2016 LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **BRECKENRIDGE PROPERTY FUND 2016 LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF** via U.S. Mail to the parties designated below.

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

DATED this 18 day of March 2020.

An Employee of HUTCHISON & STEFFEN

EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Deed of Trust	20
Exhibit "2"	Notice of Breach and Default and of Election to Sell the Real Property Under Deed of Trust	6
Exhibit "3"	Notice of Trustee's Sale	2
Exhibit "4"	Declaration in Support of Breckenridge Property Fund 2016 LLC's Motion for Summary Judgment Against Plaintiff	3
Exhibit "5"	Trustee's Deed Upon Sale	4

Exhibit "1"

Exhibit "1"

DOC # 407150
05/25/2007 04 34 PM
Official Record
Requested By
STEWART TITLE OF NEVADA
Lyon County - NV
Mary C Milligan - Recorder
Page 1 of 20 Fee $58 00
Recorded By DLW RPTT

0407150

Assessor's Parcel Number
29-401-17
I hereby affirm that this document submitted for recording does not contain a social security number
/s/ LYNDA KLEIN
FUNDER
Recording Requested By
SIERRA PACIFIC MORTGAGE COMPANY, INC
280 BRINKBY STREET, SUITE 100
RENO, NV 89509
775-826-3700

[Space Above This Line For Recording Data]

Loan No 0000479436

DEED OF TRUST

MIN 1000703-0000479436-5

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated MAY 23, 2007, together with all Riders to this document
(B) "Borrower" is VICENTA LINCICOME, A MARRIED WOMAN

Borrower is the trustor under this Security Instrument
(C) "Lender" is SIERRA PACIFIC MORTGAGE COMPANY, INC.

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

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

Unofficial Copy

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

(F) "Note" means the promissory note signed by Borrower and dated MAY 23, 2007
The Note states that Borrower owes Lender
THREE HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED FIFTY and NO/100------ Dollars
(U S $ 381,150.00) plus interest Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 1, 2037

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

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

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

[x] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[x] Other(s) [specify]
[ ] 1-4 Family Rider	[ ] Biweekly Payment Rider	INTEREST ONLY RIDER
[ ] V A Rider		

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

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

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

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

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

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

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

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

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

Unofficial Copy

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY of LYON
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

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

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

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

BORROWER COVENANTS that Borrower is lawfully 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

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

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

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

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

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

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

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

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

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

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

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

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

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

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense Lender is under no obligation to purchase any particular type or amount of coverage Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained Any amounts

disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U S $ MAXIMUM ALLOWED BY LAW .

Unofficial Copy

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

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

Loan No: 0000479436

STATE OF NEVADA, Carson City County ss.

This instrument was acknowledged before me on May 23 2007, by Vicenta Lincicome

Carol Costa

My Commission Expires 11-4-08

CAROL COSTA
NOTARY PUBLIC
STATE OF NEVADA
No 92 0221 5 My Appt Exp Nov 4, 2008

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS
DRAW MERS NV CVL DT 13 WPF (0101DOCS\DEEDS\CVL\NV_MERS CVL)

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

WHEN RECORDED MAIL TO

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

Unofficial Copy

ADJUSTABLE RATE RIDER

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

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

70 RIVERSIDE DRIVE
DAYTON, NV 89403
[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.875 % The Note provides for changes in the interest rate and the monthly payments, as follows

4 INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of JUNE 2017, and may change on that day every 12th month thereafter Each date on which my interest rate could change is called a "Change Date "

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U S

Loan No: 0000479436

Unofficial Copy

dollar-denominated deposits in the London market, as published in *The Wall Street Journal* The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index "

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

(C) **Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0 125%) Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date

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

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

The interest rate I am required to pay at the first Change Date will not be greater than 11 875 % or less than 2.250 % Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO percentage points (2.000 %) from the rate of interest I have been paying for the preceding 12 months My interest rate will never be greater than 11.875 %

(E) **Effective Date of Changes**

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

(F) **Notice of Changes**

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

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

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

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

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

Loan No: 0000479436

Unofficial Copy

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

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

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

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

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

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

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

Loan No: 0000479436

Unofficial Copy

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

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

[Sign Original Only]

Loan No: 0000479436

Unofficial Copy

INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

Property Address 70 RIVERSIDE DRIVE
DAYTON, NV 89403

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

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

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index for such Change Date The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0 125%) Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date

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

Loan No: 0000479436

Unofficial Copy

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

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

[Sign Original Only]

Loan No: 0000479436

Unofficial Copy

EXHIBIT "A"
LEGAL DESCRIPTION

Order No: 06041897-JA

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

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

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

ASSESSOR'S PARCEL NO. 029-401-17

Unofficial Copy

Exhibit "2"

Exhibit "2"

DOC# 572258
11/03/2017 10:29AM
Official Record
Requested By
SERVICELINK TITLE AGENCY INC.
Lyon County - NV
Dawna L. Warr - Recorder
Page: 1 of 6 Fee: $288.00
Recorded By BKC RPTT: $0.00
0572258

APN: **029-401-17**

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

TS No. : 16-42397

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

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

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

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

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

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

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

Unofficial Copy

T.S. No.: 16-42397

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

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

NOTICE

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

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

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

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

Lauren Jowers
800-495-7166

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

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.
REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

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

Unofficial Copy

T.S. No.: 16-42397

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

Dated: 11/1/2017

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

Michael Busby, Trustee Sale Officer

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

State of CALIFORNIA
County of ORANGE

On 11/1/2017, before me, Christine O'Brien, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary

CHRISTINE O'BRIEN
Notary Public - California
Orange County
Commission # 2167057
My Comm. Expires Oct 8, 2020

Unofficial Copy

Affidavit of Authority

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

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

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

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

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

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

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

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

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

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

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

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

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

Unofficial Copy

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

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

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

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

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

Veronica Talley
(Print Name)

Veronica Talley
(Signature)

Foreclosure Specialist IV
(Title)

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

State of Texas

County of Denton

On October 6th 2016 before me, Allison Ann Johnston, Notary Public, personally appeared, **Veronica Talley**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Allison Ann Johnston
Signature

Place Seal

ALLISON ANN JOHNSTON
Notary Public, State of Texas
My Commission Expires
April 27, 2019

Affidavit of Authority to Exercise the Power of Sale
Revised 6/1/2013

Unofficial Copy

Declaration of Mortgage Servicer Pursuant to NR 107.510

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

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

1. ☒ The mortgage servicer has contacted the borrower pursuant to NRS 107.510 (2), to "assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale". Thirty (30) days, or more, have passed since the initial contact was made.

2. ☐ The mortgage servicer has exercised due diligence to contact the borrower pursuant to NRS 107.510 (5), to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.

3. ☐ No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to NRS 107.410.

4. ☐ During the preceding annual reporting period, the Lender has foreclosed on 100 or fewer real properties located in this state and therefore, pursuant to NRS 107.460, the provisions of NRS 107.400 to 107.560, inclusive, do not apply.

5. ☐ The loan is not a "residential mortgage loan" as defined in NRS 107.450.

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

Dated: 4-5-2016

By: _____

Unofficial Copy

Exhibit "3"

Exhibit "3"

Doc #: 587470
10/12/2018 02:27 PM Page: 1 of 2
OFFICIAL RECORD
Requested By: SERVICELINK TITLE AGENCY INC
Lyon County, NV
Dawna L. Warr, Recorder
Fee: $38.00 RPTT: $0.00
Recorded By: mkassebaum

APN No.: **029-401-17**

[Recording requested by:]

[When recorded mail to:]
Sables LLC
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, Nevada 89148

T.S. No. **16-42397**

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 5/23/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

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

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

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

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

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

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

Unofficial Copy

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

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

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

Date: **10/11/2018**

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

Michael Busby, Trustee Sale Officer

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

State of CALIFORNIA
County of ORANGE

On 10/11/2018, before me, A.J. Buckelew Notary Public, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

A.J. Buckelew
Signature of Notary

A. J. BUCKELEW
Notary Public - California
Orange County
Commission # 2255941
My Comm. Expires Aug 26, 2022

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

Unofficial Copy

Exhibit “4”

Exhibit “4”

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

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

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants. AND RELATED MATTERS.	Case No.: 18-CV-01332 Dept No.: II **DECLARATION IN SUPPORT OF BRECKENRIDGE PROPERTY FUND 2016 LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF**

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

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

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

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

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

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

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

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

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

///

///

///

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

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

Exhibit "5"

Exhibit "5"

70 RIVERSIDE DR

Doc #: 591393
01/25/2019 08:21 AM Page: 1 of 2
OFFICIAL RECORD
Requested By: FIRST AMERICAN TITLE INSURANCE C
Lyon County, NV
Margie Kassebaum, Recorder
Fee: $38.00 RPTT: $1,148.55
Recorded By: lnhumildad

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

RECORDING REQUESTED BY:

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

Forward Tax Statements to the address given above

Recorded As An Accommodation Only Without Liability

SPACE ABOVE LINE FOR RECORDER'S USE

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

TRUSTEE'S DEED UPON SALE

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

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

Breckenridge Property Fund, 2016, LLC

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

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:
All that certain real property situate in the County of Lyon, State of Nevada, described as follows:
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.
EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

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

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

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

RECORDING REQUESTED BY:

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

Recorded As An Accommodation Only Without Liability

Forward Tax Statements to the address given above

SPACE ABOVE LINE FOR RECORDER'S USE

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

TRUSTEE'S DEED UPON SALE

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

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

Breckenridge Property Fund, 2016, LLC

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

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:
All that certain real property situate in the County of Lyon, State of Nevada, described as follows:
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.
EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

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

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

TRUSTEE'S DEED UPON SALE

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

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

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

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

Date: **1/15/2019**

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey Neal

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

State of CALIFORNIA
County of ORANGE

On **1/15/2019** before me, the undersigned, **J. Develasco** Notary Public, personally appeared **Geoffrey Neal** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

J. Develasco
#2147185 Expires 3/21/20

WITNESS my hand and official seal.

Signature _____ (Seal)
J. Develasco

J. Develasco

J. DEVELASCO
Notary Public - California
Orange County
Commission # 2147185
My Comm. Expires Mar 21, 2020

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a) 029-401-17
   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
   [ ] Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page _____
Date of Recording: _____
Notes:

3. a. Total Value/Sales Price of Property $ $294,000.01
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ $294,000.01
   d. Real Property Transfer Tax Due $ 1148.55
4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____
5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____ Capacity AGENT

Signature _____ Capacity AGENT

SELLER (GRANTOR) INFORMATION (REQUIRED)
Print Name: Sables, LLC, a Nevada limited liability Company
Address: 3753 Howard Hughes Parkway, Suite 200, Las Vegas, NV 89169

BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Breckenridge Property Fund, 2016, LLC
Address: 2320 Potosi St. Ste 130
Las Vegas, NV 89146

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name: First American Escrow #: accu
Address: 10000 W Charleston
City: Las Vegas State: NV Zip: 89135

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

NEOPOST FIRST-CLASS MAIL

03/18/2021

US POSTAGE $002.60º

ZIP 89521

041L10410529

500 Damonte Ranch Pkwy.
Suite 980
Reno, NV 89521

HUTCHISON & STEFFEN

Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
Minden, NV 89423

Exhibit 9

Case No.: 18-CV-01332

Dept. No.: II

FILED

2021 [illegible] 20 PM 4:13

[illegible]

Victoria Tova[illegible]

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * *

ALBERT ELLIS LINCICOME, JR. and
VICENTA LINCICOME,

Plaintiffs,

vs.

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

Defendants.

_____/

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

I. STATEMENT OF THE CASE

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

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

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

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

II. ISSUE PRESENTED

Should the Court sanction the Plaintiffs for discovery violations?

Should the Court grant the Plaintiffs' Motion for Summary Judgment?

Should the Court grant the Defendants' Motions for Summary Judgment?

III. SUMMARY OF DECISION

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

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

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

IV. PRINCIPLES OF LAW

A. Standard of Review

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

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

B. Statutes of Limitation

NRS 11.190 states in relevant part:

> (1) Within 6 years:
> (a) Except as otherwise provided in NRS 62B.420 and 176.275, an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.
> (b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

C. Enforceability of FMA Agreement

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

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

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

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

District Court Rule 16 states:

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

NRS 40.453 states:

> Except as otherwise provided in NRS 40.495:
> 1. It is hereby declared by the Legislature to be against public policy for any document relating to the sale of real property to contain any provision whereby a mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness secured thereby, waives any right secured to the person by the laws of this state.
> 2. A court shall not enforce any such provision.

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

D. <u>Claim Preclusion</u>

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

E. Repudiation/Renunciation/Anticipatory Breach

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

> In order that the rule permitting the immediate institution of a suit on the renunciation or repudiation of a contract may apply, the renunciation or repudiation must be a present one. It must also be entire, or total, covering the entire performance to which the contract binds the promisor, or the refusal to perform must be of a covenant going to the whole consideration. Furthermore, the renunciation or repudiation must be absolute or unequivocal. It has also been said that in order to be effective for this purpose, the renunciation or repudiation must be clear, strict, positive, definite, specific, distinct, final, unqualified, or unconditional.
>
> In order to constitute an absolute and unequivocal repudiation, no precise form of words is necessary. Whether an anticipatory repudiation has occurred is determined on a case-by-case basis, depending on the particular language used.
> The repudiation or renunciation may be by language or act making it futile for the other party to proceed. An intent to repudiate may be expressly asserted or circumstantially manifested by conduct. However, a party's words and acts communicated to the other party, not its intention, should control. Thus, a mere expression of intention not to perform, or not to be bound, is not enough, nor is a mere threat to abandon, or a mere assertion that the party will be unable, or will refuse, to perform the contract. At the same time, a refusal to perform may itself be a repudiation of the contract, in spite of a party's words seeking to reassure the other party of its intent to perform in the future.

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

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

> The renunciation of a contract by the promisor before the time stipulated for performance is not effective unless such repudiation is unequivocally or affirmatively accepted by the promisee. If the promisee declines to accept the renunciation and continues to insist on the performance of the promise, as it may do, the contract remains in existence for the benefit, and at the risk, of both parties, and is binding on them, and, if anything occurs to discharge it from other causes, the promisor may take advantage of such discharge. Where the contract thus remains in existence, no actionable claim for damages arises until the time for performance expires. Furthermore, a repudiation not treated as an anticipatory breach is immaterial in an action thereafter brought to enforce the contract.
>
> If, after the attempted renunciation by one party to the contract, the other party elects to treat the contract as still binding and to await the time for full performance, it is incumbent on the party making such election to perform such of the obligations as may, in the meantime, fall on it under the terms of the contract.

F. Tender of Payments

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

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

(Citations omitted).

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

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

(Citations omitted).

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

G. <u>Substantial Compliance and NRS 107.080</u>

NRS 107.080 (5) through (8) states:

> 5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. Except as otherwise provided in subsection 7, a sale made pursuant to this section must be declared void by any court of competent jurisdiction in the county where the sale took place if:
>
> (a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section;

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

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

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

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

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

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

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

(c) Reasonable attorney's fees and costs,

unless the court finds good cause for a different award. The remedy provided in this subsection is in addition to the remedy provided in subsection 5.

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

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

H. Computation of Damages-NRCP Rule 16.1

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

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

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

NRCP Rule 37 (b) (1) states:

> (b) Sanctions for Failure to Comply With a Court Order.
> (1) For Not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent — or a witness designated under Rule 30(b)(6) or 31(a)(4) — fails to obey an order to provide or permit discovery, including an order under Rule 35 or 37(a), the court may issue further just orders that may include the following:
> (A) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
> (B) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
> (C) striking pleadings in whole or in part;
> (D) staying further proceedings until the order is obeyed;
> (E) dismissing the action or proceeding in whole or in part;
> (F) rendering a default judgment against the disobedient party; or
> (G) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

V. FINDINGS OF FACT

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

8. The Plaintiffs made no other attempts to mail the payments. BANA then notified the Plaintiffs in October of 2009 stating that the loan had not been modified. However, then BANA signed the LMA and recorded it in March of 2011.

9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the property at $381,000. The Plaintiffs made no payment at the time of bankruptcy filing or during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.

10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no payment on the offer. BANA offered another modification on April 2015 but the loan was service released to Fay Servicing prior to the final payment.

11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final decree was filed by the Bankruptcy Court in July of 2015.

12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of default.

13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank and Fay Servicing as interested parties.

14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make three payments of $2462.30 as an offered trial period plan. The payments had to be made on April 1, 2018, May 1, 2018 and June 1, 2018.

15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in lieu of foreclosure. A certificate for foreclosure was issued.

16. The Plaintiffs did not place the required monthly payments in a bank account or escrow account. Plaintiffs spent all of their income on either items. Plaintiffs do not have sufficient funds to pay off what is owed under any theory as to what instrument controls the computation of what is owed.

17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that they could not afford to make payments on the mortgage. The Plaintiffs have never averred to the Court that they are ready, willing, and able to perform on the original mortgage or subsequent modifications.

18. A Notice of Default and Notice of Sale was filed against the subject property.

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

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

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

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

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

ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

VI. ORDER

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

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

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

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

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

DATED: This 23rd day of June, 2021.

HON. LEON ABERASTURI
DISTRICT COURT JUDGE

Certificate of Mailing

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

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DATED: This 23rd day of June, 2021.

Employee of Hon. Leon Aberasturi

Exhibit 10

Case No.: 18-CV-01332

Dept. No.: II

FILED

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IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * *

ALBERT ELLIS LINCICOME, JR. and
VICENTA LINCICOME,

Plaintiffs,

vs.

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

Defendants.

/

ORDER ON BRECKENRIDGE MOTION FOR SUMMARY JUDGMENT

I. STATEMENT OF THE CASE

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

Breckenridge filed a Reply.

II. ISSUE PRESENTED

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

III. SUMMARY OF DECISION

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

IV. PRINCIPLES OF LAW

A. Standard of Review

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

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

B. NRS 40.010

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

D. NRS 111.180

NRS 111.180 states:

> 1. Any purchaser who purchases an estate or interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property is a bona fide purchaser.
> 2. No conveyance of an estate or interest in real property, or charge upon real property, shall be deemed fraudulent in favor of a bona fide purchaser unless it appears that the subsequent purchaser in such conveyance, or person to be benefited by such charge, had actual knowledge, constructive notice or reasonable cause to know of the fraud intended.

E. NRS 40.250

NRS 40.250 states:

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

V. FINDINGS OF FACT

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

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

10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no payments on the offer. BANA offered another modification on April 2015 but the loan was service released to Fay Servicing prior to the final payment.

11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final decree was filed by the Bankruptcy Court in July of 2015.

12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of default.

13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank and Fay Servicing as interested parties.

14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make three payments of $2462.30 as an offered trial period plan. The payments had to be made on April 1, 2018, May 1, 2018 and June 1, 2018.

15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in lieu of foreclosure. A certificate for foreclosure was issued.

16. The Plaintiffs did not place the required monthly payments in a bank account or escrow account. Plaintiffs spent all of their income on either items. Plaintiffs do not have sufficient funds to pay off what is owed under any theory as to what instrument controls the computation of what is owed.

17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that they could not afford to make payments on the mortgage. The Plaintiffs have never averred

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

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

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

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

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

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

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

VI. ANALYSIS

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

VII. CONCLUSIONS OF LAW

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

ORDER

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

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

DATED: This 23rd day of June, 2021.

HON. LEON ABERASTURI
DISTRICT JUDGE

Certificate of Mailing

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

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

Scott R. Lachman, Esq.
Akerman LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134

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Ramir M. Hernandez, Esq.
Wright, Finlay & Zak, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

DATED: This 23rd day of June, 2021.

_____

Employee of Hon. Leon Aberasturi

Exhibit 11

FILED

2021 JUL 19 AM 11:48

Victoria Tovar

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * * * *

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, a Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC, substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MCM-2018-NPL2, substituted in for DOE 3; and DOES 4-10.

Defendants.

NOTICE OF APPEAL

BRECKENRIDGE PROPERTY FUND 2016, LLC

Counterclaimant,

vs.

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

Counterdefendants.

NOTICE IS HEREBY GIVEN that Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome, by and through their counsel of record, Michael G. Millward of Millward Law, Ltd., appeal to the Supreme Court of Nevada from the *Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC* entered June 23, 2021.

The *Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC,* concerns the following motions:

1. Motion for Summary Judgment filed by Bank of America on March 17, 2021;

2. Motion for Summary Judgment filed by Shellpoint Mortgage Servicing on March 25, 2021; and

3. Motion for Summary Judgment filed by Prof-2013 M4 Legal Trust, U.S. Bank, National Association of Legal Trustee and Fay Servicing, LLC, on March 25, 2021.

NOTICE IS HEREBY GIVEN that Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome appeal to the Supreme Court of Nevada from the *Order on Breckenridge Motion for Summary Judgment,* entered June 23, 2021.

The *Order on Breckenridge Motion for Summary Judgment* concerns the Motion for Summary Judgment filed by Breckenridge Property Fund 2016, LLC, on March 18, 2021.

NOTICE IS HEREBY GIVEN that Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome appeal to the Supreme Court of Nevada from the *Order* granting Sables, LLC, non-monetary status entered May 30, 2019.

The Order concerns Sables, LLC's Declaration of Non-Monetary Status filed on or about December 18, 2018.

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AFFIRMATION

The undersigned hereby affirms, pursuant to NRS 239B.030, that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Respectfully submitted 16 day of July, 2021

MILLWARD LAW, LTD

By: _____

Michael G. Millward, Esq.
NSB# 11212
1591 Mono Ave
Minden, NV 89423
(775) 600-2776
Attorney for Plaintiffs

Exhibit 12

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Attorney for Defendant, Counterclaimant, and Cross-Plaintiff Breckenridge Property Fund 2016, LLC

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants. AND RELATED MATTERS.	Case No.: 18-CV-01332 Dept No.: II **BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ATTORNEY FEES AND COSTS**

COMES NOW Breckenridge Property Fund 2016, LLC ("Breckenridge"), by and through its attorney of record, Hutchison & Steffen, PLLC and hereby submits this motion for attorney fees and costs to the Court. This motion is made and based upon the following points and authorities, the pleadings and papers on file, the attached affidavits and exhibits, and any oral argument this court may entertain.

DATED this 19th day of July, 2021.

HUTCHISON & STEFFEN, PLLC

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Brenoch R. Wirthlin (10282)
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caseynelson@wedgewood-inc.com

Attorney for Defendant, Counterclaimant, and Cross-Plaintiff Breckenridge Property Fund 2016, LLC

DECLARATION OF BRENOCH R. WIRTHLIN, ESQ.

1. I am partner with the law firm of HUTCHISON & STEFFEN, LLC., counsel of record for Plaintiff Breckenridge Property Fund 2016 ("Breckenridge") in the above-captioned case.

2. I have personal knowledge of the costs and attorneys' fees expended in this case. Items contained herein are true and correct to the best of my knowledge and belief.

3. I make this affidavit in support of Breckenridge' application for attorneys' fees and costs.

4. Based upon my review of the attorneys' fees incurred by Breckenridge from Hutchison & Steffen, the total amount of fees of $44,648.00 was both reasonable and necessary. Redacted billing records reflecting these fees are attached hereto as **Exhibit 6**.

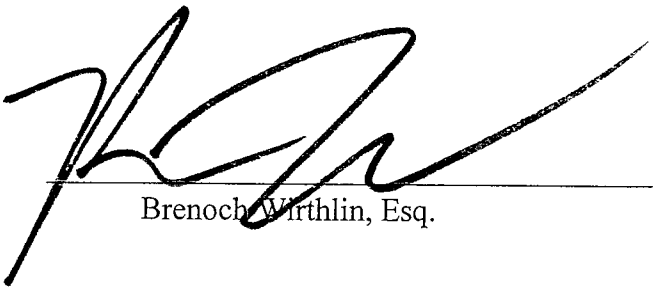
5. During the course of this litigation, Breckenridge's counsel has, among other things, drafted and filed pleadings, initial appearance and fee disclosures, multiple pleadings and discovery related documents, a motion for summary judgment, and a reply in support of summary judgment. Counsel has also been required to prepare for and attend multiple hearings, conduct legal research and analysis, communicate with opposing counsel, and engage in client consultation and strategy meetings.

6. The total costs, as outlined in the Memorandum of Costs and Disbursements, were $3,788.01.

7. As set forth in this Motion, Breckenridge and the undersigned believe the fees and costs requested are reasonable and necessary, and were reasonably and necessarily incurred in this matter.

I make this declaration pursuant to the requirements of NRCP 54(d)(2)(B) and NRCP 68(f) under penalty of perjury of the laws of the State of Nevada, and its contents are true and correct to the best of my knowledge and belief.

DATED this 19th day of July, 2021.



Brenoch Wirthlin, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

This case pertains to the foreclosure of real property commonly known as 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") that took place on or about January 4, 2019 at which time Breckenridge purchased the Subject Property for $294,000.01.

Albert Ellis Lincicome, Jr. and Vicenta Lincicome ("Plaintiffs") formerly owned the Subject Property. Plaintiffs brought this lawsuit and argue that the foreclosure sale was improperly conducted but they ignore that the evidence uniformly confirms that they were in default and received actual notice of the same. No amount of distraction about the loan documents or issues of prior loan modification can change these facts. There is no dispute that the Plaintiffs were in default at the time of foreclosure and received both the Notice of Default and the Notice of Sale.

Plaintiffs had no viable claims against Breckenridge. The essence of Plaintiffs' Complaint is that the foreclosing lender did not have the ability to foreclose. Plaintiffs conceded that they executed the note and deed of trust and were in default of their loan obligations. Discovery has proven that the foreclosure complied with NRS, that the Plaintiffs were in default of the loan obligations and received both the notice of default and the notice of sale.

As a result of the foreclosure sale, Plaintiffs have been divested of any ownership interest in the Subject Property. Consequently, there were no genuine issues of material fact in this case. This Court so found and granted Breckenridge's motion for summary judgment. Breckenridge now seeks attorney fees and costs pursuant to applicable statute.

II. Statement of Undisputed Facts.

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

2. Plaintiffs subsequently defaulted on that loan obligation resulting in a Notice of Default and Notice of Sale being recorded against the Subject Property. ***See Exhibits #2 and #3.***

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

4. On November 8, 2018, Plaintiffs recorded a lis pendens on the Property and also filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.

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

6. Plaintiffs failed to post the bond and the Subject Property went to foreclosure sale on or about January 4, 2019, at which time Breckenridge purchased the Subject Property for $294,000.01, relying on the fact that the noticed foreclosure sale was valid because Plaintiff failed to post the requisite bond. ***See Exhibit #4.***

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

8. On December 20, 2019, Plaintiffs filed their Second Amended Complaint, wherein they brought claims against Breckenridge for Declaratory Relief and Quiet Title.

9. Breckenridge subsequently filed a Counterclaim against Plaintiffs through which it claims ownership to the Subject Property, seeks to quiet title in its favor, seeks possession of the Property, and seeks other monetary damages.

10. On June 23, 2021, this Court entered its Order on Breckenridge's Motion for Summary Judgment ("MSJ Order") granting Breckenridge summary judgment on its claims.

///

III. Law and Argument

A. <u>The law permits an award of attorney fees and costs.</u>

Nevada law permits an award of attorneys' fees whenever authorized by statute, rule, or contract. *See U.S. Design & Const. Corp. v. Int'l Broth. of Elec. Workers*, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002). NRS 18.010(2) sets forth those situations whereby the Court may properly award attorneys' fees:

In addition to the cases where an allowance is authorized by a specific statute, the court may make an allowance of attorney's fees to a prevailing party:

> (a) When the prevailing party has not recovered more than $20,000; or
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. . .

Furthermore, NRS 18.010(2) goes on to describe the liberal construction of the provisions:

> The court shall liberally construe the provisions of this paragraph in favor of awarding attorneys' fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for an deter frivolous or vexatious claims and increase the costs of engaging in business and providing professional services to the public.

Id.

Moreover, NRS 18.020 provides:

> Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:
> 1. In an action for the recovery of real property or a possessory right thereto.
> 2. In an action to recover the possession of personal property, where the value of the property amounts to more than $2,500. The value must be determined by the jury, court or master by whom the action is tried.
> 3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500.
> 4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
> 5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court.

Nev. Rev. Stat. Ann. § 18.020 (West).

As such, an award of attorney fees and costs as requested above is merited on the cited bases.

Further, the Nevada Supreme Court has recognized that a claim or defense is groundless if it is "not supported by any credible evidence at trial." *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687-88 (1995) (citation omitted). There must be evidence in the record supporting the proposition that the claim was brought or the defense maintained "without reasonable grounds or to harass the other party." *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005). Further, the decision to award attorney fees is within the sound discretion of the district court and will not be overturned absent a manifest abuse of discretion. *Id.*

Breckenridge's claims to superior title in this matter are supported by well-founded Nevada law. Breckenridge was not involved with this matter until it purchased the Subject Property at the foreclosure sale. Breckenridge took title to the Subject Property pursuant to an NRS 107.080 foreclosure sale. NRS 107.080 provides in pertinent part, "Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption."

The majority of the allegations in the Second Amended Complaint allegedly occurred prior to the foreclosure sale. Many of these allegations deal with the servicing and attempted modifications of the underlying loan by a variety of servicers and beneficiaries. Breckenridge had no role in this dispute prior to the foreclosure and cannot be responsible for the supposed actions of other entities. Breckenridge's first involvement in the matter was when it purchased the Subject Property at the foreclosure sale. Breckenridge is not a lender, noteholder, or beneficiary of Plaintiffs' loan obligations.

The Plaintiffs failed to meet their burden or provide any evidence that supports their allegations the foreclosure sale was not valid. If the Court determines the sale was valid, Breckenridge is entitled to title to the Subject Property as well as rent for the time in which Plaintiffs have been in unlawful possession of the Subject Property.

Breckenridge took title to the Subject Property pursuant to an NRS 107.080 foreclosure sale. NRS 107.080 provides in pertinent part:

> 5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. Except as otherwise provided in subsection 7, ***a sale made pursuant to this section must be declared void by any court of competent jurisdiction in the county where the sale took place if:***
>
> ***(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section***;
>
> (b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within 30 days after the date on which the trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder of the county in which the property is located; and
>
> (c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 5 days after commencement of the action.

Plaintiffs filed this lawsuit in a last-minute effort to stave off foreclosure in an attempt to retain ownership and possession of the Subject Property. Plaintiffs' allegations of wrongful foreclosure were not and could not have been established by any legal or factual support. Instead, it is clear that the beneficiaries, servicers, and trustee not only substantially complied with NRS 107 throughout the entire foreclosure process as required by NRS 107.080(5), but actually strictly complied with those requirements. Accordingly, as this Court found, Breckenridge is entitled to an order quieting title in its favor pursuant to NRS 111.180(1) which provides:

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

The beneficiaries, servicers, and trustee have complied with the requirements of NRS 107 by providing undisputed evidence that the Plaintiffs were in default of their loan obligations and that the Notice of Default and Notice of Sale were properly mailed to the Plaintiffs, facts that Plaintiffs do not even dispute. Plaintiffs failed to provide any evidence that the foreclosure sale was defective or that they have rights, title, or interest to the Subject Property. Any rights, title, or interest they previously had in

the Subject Property has been terminated by way of the valid foreclosure sale. Accordingly, this Court found that Breckenridge is entitled to titled ownership because there are no defects in the sale.

Based upon the lack of a viable claim against Breckenridge, it respectfully submits that it is entitled to an award of attorney fees and costs based upon NRS 18.020(b).

B. <u>The requested attorney fees are reasonable and satisfy *Brunzell*.</u>

The reasonableness of attorney fees is within the Court's discretion as determined by a consideration of the following factors:

1. The character of the work performed;
2. The work actually performed by the attorney;
3. The qualities of the advocate;
4. The result obtained.

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 350, 455 P.2d 31, 33 (1969).

Here, counsel for Breckenridge prepared various pleadings, responded to Plaintiffs' frivolous filings, and was forced to file a summary judgment and reply to dispose of Plaintiffs' claims and obtain judgment on Breckenridge's claims. Counsel also spent time investigating the facts of the case, and apprising Breckenridge of the status of the case, among other things. While these tasks, and others necessary for the representation, were not necessarily legally complex, each required a thorough review, legal research, and time to consult with the Client. More than 200 attorney hours were spent on these tasks. *See* Exhibit 6.

With respect to the qualities of the advocate Breckenridge' counsel, Hutchison & Steffen, LLC, is an AV-rated law firm, founded locally in 1996. *Id.* Matthew Schriever was an associate with Hutchison & Steffen and was responsible for the day-to-day handling of the case. *Id.* Mr. Schriever has been in practice since 2007 and is licensed in Nevada. *Id.* The firm's billing rates are reasonable and customary in Clark County, Nevada. *See* Exhibit 6.

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V. Conclusion.

For all these reasons, Breckenridge respectfully requests that this Court grant its Motion for Attorney Fees and Costs in its entirety and grant such other and further relief as the Court deems appropriate.

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

DATED this 19th day of July, 2021.

HUTCHISON & STEFFEN, PLLC

John T. Steffen (4390)
Brenoch R. Wirthlin (10282)
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E-mail: caseynelson@wedgewood-inc.com

Attorneys for Defendant
Breckenridge Property Fund 2016 LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ATTORNEY FEES AND COSTS** via U.S. Mail to the parties designated below.

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Attorney for Plaintiffs

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Attorney for Fay Servicing, LLC and US Bank Prof-2013-M4 Legal Title Trust

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

DATED this 19th day of July, 2021.

Danielle Kelley
An Employee of HUTCHISON & STEFFEN

EXHIBIT LIST

Exhibit #	Description	Pages
1	Deed of Trust	20
2	Notice of Breach and Default and of Election to Sell the Real Property Under Deed of Trust	6
3	Notice of Trustee's Sale	2
4	Declaration in Support of Breckenridge Property Fund 2016 LLC's Motion for Summary Judgment	3
5	Trustee's Deed Upon Sale	4
6	Attorneys' Fees and Costs Report	23

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

DOC # 407150
05/25/2007 04 34 PM
Official Record
Requested By
STEWART TITLE OF NEVADA
Lyon County - NV
Mary C Milligan - Recorder
Page 1 of 20 Fee $58 00
Recorded By DLW RPTT

0407150

Assessor's Parcel Number
29-401-17
I hereby affirm that this document submitted for recording does not contain a social security number
/s/ LYNDA KLEIN
FUNDER
Recording Requested By
SIERRA PACIFIC MORTGAGE COMPANY, INC
280 BRINKBY STREET, SUITE 100
RENO, NV 89509
775-826-3700

[Space Above This Line For Recording Data]

Loan No 0000479436

DEED OF TRUST

MIN 1000703-0000479436-5

Unofficial Copy

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated MAY 23, 2007 together with all Riders to this document

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

Borrower is the trustor under this Security Instrument

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

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

Lender's address is 50 IRON POINT CIRCLE, STE 200, FOLSOM, CA 95630

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

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

(F) "Note" means the promissory note signed by Borrower and dated MAY 23, 2007 The Note states that Borrower owes Lender THREE HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED FIFTY and NO/100---- Dollars (U S $ 381,150.00) plus interest Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 1, 2037

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

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

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

[xx Adjustable Rate Rider
[ ] Balloon Rider
[ ] 1-4 Family Rider
[ ] V A Rider
[ ] Condominium Rider
[ ] Planned Unit Development Rider
[ ] Biweekly Payment Rider
[ ] Second Home Rider
[x] Other(s) [specify] INTEREST ONLY RIDER

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

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

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

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

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

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

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

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

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

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TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY of LYON
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

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

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

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

BORROWER COVENANTS that Borrower is lawfully 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

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

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

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

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

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

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

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

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

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

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

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

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

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

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense Lender is under no obligation to purchase any particular type or amount of coverage Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained Any amounts

disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment

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

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

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

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

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

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

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

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

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

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

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

Loan No: 0000479436

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Loan No· 0000479436

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

Loan No: 0000479436

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

Loan No: 0000479436

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

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

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

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

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

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

25 Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U S $ MAXIMUM ALLOWED BY LAW .

Unofficial Copy

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

Vicenta Lincicome (Seal) -Borrower
VICENTA LINCICOME

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

Loan No: 0000479436

STATE OF NEVADA, Clark County ss.

This instrument was acknowledged before me on May 23 2007, by Vicenta Lincicome

Carol Costa

My Commission Expires 11-4-08

CAROL COSTA
NOTARY PUBLIC
STATE OF NEVADA
No 92 0221 5 My Appt Exp Nov 4, 2008

NEVADA–Single Family–Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS
DRAW MERS NV CVL DT 13 WPF (0101DOCS\DEEDS\CVL\NV_MERS CVL)

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

WHEN RECORDED MAIL TO

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

Unofficial Copy

ADJUSTABLE RATE RIDER

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

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

70 RIVERSIDE DRIVE
DAYTON, NV 89403
[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.875 %. The Note provides for changes in the interest rate and the monthly payments, as follows

4 INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of JUNE 2017, and may change on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U.S.

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Unofficial Copy

dollar-denominated deposits in the London market, as published in *The Wall Street Journal* The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index "

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

(C) **Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding *TWO AND ONE QUARTER* percentage points (2.250 %) to the Current Index The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0 125%) Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date

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

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

The interest rate I am required to pay at the first Change Date will not be greater than 11 875 % or less than 2.250 % Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than *TWO* percentage points (2.000 %) from the rate of interest I have been paying for the preceding 12 months My interest rate will never be greater than 11.875 %

(E) **Effective Date of Changes**

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

(F) **Notice of Changes**

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

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

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

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

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

Loan No: 0000479436

Unofficial Copy

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

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

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

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

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

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

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

Loan No: 0000479436

Unofficial Copy

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

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

[Sign Original Only]

Loan No: 0000479436

Unofficial Copy

INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

Property Address 70 RIVERSIDE DRIVE
DAYTON, NV 89403

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

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

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index for such Change Date The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0 125%) Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date

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

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Unofficial Copy

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

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

[Sign Original Only]

Loan No: 0000479436

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EXHIBIT "A"
LEGAL DESCRIPTION

Order No: 06041897-JA

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

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

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

ASSESSOR'S PARCEL NO. 029-401-17

Unofficial Copy

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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

0572258

APN: 029-401-17

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

TS No. : 16-42397

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

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

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

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

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

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

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

Unofficial Copy

T.S. No.: 16-42397

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

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

NOTICE

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

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

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

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

Lauren Jowers
800-495-7166

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

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.
REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

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

Unofficial Copy

T.S. No.: 16-42397

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

Dated: 11/1/2017

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

Michael Busby, Trustee Sale Officer

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

State of CALIFORNIA
County of ORANGE

On 11/1/2017, before me, Christine O'Brien, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary

CHRISTINE O'BRIEN
Notary Public - California
Orange County
Commission # 2167057
My Comm. Expires Oct 8, 2020

Unofficial Copy

Affidavit of Authority

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

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

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

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

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

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

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

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

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

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

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

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

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

Unofficial Copy

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

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

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

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

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

Veronica Talley
(Print Name)

Veronica Talley
(Signature)

Foreclosure Specialist IV
(Title)

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

State of Texas

County of Denton

On October 6th 2016 before me, Allison Ann Johnston, Notary Public, personally appeared, Veronica Talley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Allison Ann Johnston
Signature

Notary Seal
ALLISON ANN JOHNSTON
Notary Public, State of Texas
My Commission Expires
April 27, 2019

Affidavit of Authority to Exercise the Power of Sale
Revised 6/1/2013

Declaration of Mortgage Servicer Pursuant to NR 107.510

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

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

1. ☒ The mortgage servicer has contacted the borrower pursuant to NRS 107.510 (2), to "assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale". Thirty (30) days, or more, have passed since the initial contact was made.

2. ☐ The mortgage servicer has exercised due diligence to contact the borrower pursuant to NRS 107.510 (5), to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.

3. ☐ No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to NRS 107.410.

4. ☐ During the preceding annual reporting period, the Lender has foreclosed on 100 or fewer real properties located in this state and therefore, pursuant to NRS 107.460, the provisions of NRS 107.400 to 107.560, inclusive, do not apply.

5. ☐ The loan is not a "residential mortgage loan" as defined in NRS 107.450.

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

Dated: 4-5-2016

By:

Unofficial Copy

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EXHIBIT PAGE ONLY

EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Doc #: 587470
10/12/2018 02:27 PM Page: 1 of 2
OFFICIAL RECORD
Requested By: SERVICELINK TITLE AGENCY INC
Lyon County, NV
Dawna L. Warr, Recorder
Fee: $38.00 RPTT: $0.00
Recorded By: mkassebaum

APN No.: 029-401-17

[Recording requested by:]

[When recorded mail to:]
Sables LLC
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, Nevada 89148

T.S. No. 16-42397

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 5/23/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

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

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

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

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

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

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

Unofficial Copy

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

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

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

Date: **10/11/2018**

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

Michael Busby, Trustee Sale Officer

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

State of CALIFORNIA
County of ORANGE

On 10/11/2018, before me, A.J. Buckelew Notary Public, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

A.J. Buckelew
Signature of Notary

A. J. BUCKELEW
Notary Public - California
Orange County
Commission # 2255941
My Comm. Expires Aug 26, 2022

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

Unofficial Copy

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EXHIBIT PAGE ONLY

EXHIBIT 4

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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

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

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants. AND RELATED MATTERS.	Case No.: 18-CV-01332 Dept No.: II **DECLARATION IN SUPPORT OF BRECKENRIDGE PROPERTY FUND 2016 LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF**

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

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

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

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

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

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

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

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

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

///

///

///

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

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

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EXHIBIT PAGE ONLY

EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

70 RIVERSIDE DR

Doc #: 591393

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

OFFICIAL RECORD

Requested By: FIRST AMERICAN TITLE INSURANCE C

Lyon County, NV
Margie Kassebaum, Recorder

Fee: $38.00 RPTT: $1,148.55
Recorded By: inhumildad

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

RECORDING REQUESTED BY:

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

Forward Tax Statements to the address given above

Recorded As An Accommodation Only Without Liability

SPACE ABOVE LINE FOR RECORDER'S USE

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

TRUSTEE'S DEED UPON SALE

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

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

Breckenridge Property Fund, 2016, LLC

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

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:
All that certain real property situate in the County of Lyon, State of Nevada, described as follows:
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.
EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

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

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

RECORDING REQUESTED BY:

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

Recorded As An Accommodation Only Without Liability

Forward Tax Statements to the address given above

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Said Property is in the City of DAYTON, County of Lyon

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

Breckenridge Property Fund, 2016, LLC

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

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:
All that certain real property situate in the County of Lyon, State of Nevada, described as follows:
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EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

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

TRUSTEE'S DEED UPON SALE

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

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

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

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

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey Neal

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

State of CALIFORNIA
County of ORANGE

On 1/15/2019 before me, the undersigned, J. Develasco Notary Public, personally appeared Geoffrey Neal who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

J. Develasco
#2147185 Expires 3/21/20

WITNESS my hand and official seal.

Signature _____ (Seal)
J. Develasco

J. Develasco

J. DEVELASCO
Notary Public - California
Orange County
Commission # 2147185
My Comm. Expires Mar 21, 2020

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a) 029-401-17
   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
	☐	Other _____			

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page _____
Date of Recording: _____
Notes:

3. a. Total Value/Sales Price of Property $ $294,000.01
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ $294,000.01
   d. Real Property Transfer Tax Due $ 1148.56

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

5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____ Capacity AGENT

Signature _____ Capacity AGENT

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Sables, LLC, a Nevada limited liability Company	Print Name: Breckenridge Property Fund, 2016, LLC
Address: 3753 Howard Hughes Parkway, Suite 200, Las Vegas, NV 89169	Address: 2320 Potosi St. Ste 130 Las Vegas, NV 89146

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name: First American Escrow #: ACCW
Address: 1000 W Charleston
City: Las Vegas State: NV Zip: 89135

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

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EXHIBIT PAGE ONLY

EXHIBIT 6

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

2320 Potosi Street, Suite 130
Las Vegas, NV 89146

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
3/25/2020	MKS	[redacted]	2.50	$200	$500.00	$500.00
3/25/2020	MKS		1.50	$200	$300.00	$300.00
3/26/2020	MKS		0.70	$200	$140.00	$140.00
3/26/2020	AMO		0.40	$95	$38.00	$38.00
3/26/2020	AMO		0.50	$95	$47.50	$47.50
3/27/2020	AMO		0.10	$95	$9.50	$9.50
3/27/2020	AMO		0.40	$95	$38.00	$38.00
3/30/2020	MKS		0.60	$200	$120.00	$120.00
		Total Fees: 03/2020	**6.70**		**$1,193.00**	**$1,193.00**
4/6/2020	MKS	[redacted]	1.00	$200	$200.00	$200.00
4/7/2020	MKS		0.50	$200	$100.00	$100.00
4/8/2020	MKS		2.80	$200	$560.00	$560.00
4/9/2020	MKS		2.50	$200	$500.00	$500.00
4/10/2020	MKS		1.30	$200	$260.00	$260.00
4/14/2020	MKS		1.00	$200	$200.00	$200.00
4/20/2020	MKS		0.40	$200	$80.00	$80.00
4/21/2020	MKS		4.00	$200	$800.00	$800.00
4/21/2020	MKS		0.50	$200	$100.00	$100.00
4/21/2020	MKS		0.50	$200	$100.00	$100.00
4/23/2020	MKS		1.00	$200	$200.00	$200.00
4/23/2020	MKS		1.00	$200	$200.00	$200.00
4/24/2020	ARV		0.30	$200	$60.00	$60.00
4/24/2020	MKS		0.30	$200	$60.00	$60.00
4/24/2020	AMO		0.50	$95	$47.50	$47.50
4/24/2020	AMO		0.30	$95	$28.50	$28.50

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
		18-CV-0132.				
4/24/2020	AMO	[redacted]	0.20	$95	$19.00	$19.00
4/27/2020	MKS	[redacted]	1.00	$200	$200.00	$200.00
4/29/2020	MKS	[redacted]	0.50	$200	$100.00	$100.00
4/30/2020	MKS	[redacted]	0.40	$200	$80.00	$80.00
		Total Fees: 04/2020	**20.00**		**$3,895.00**	**$3,895.00**
5/15/2020	MKS	[redacted]	0.80	$225	$180.00	$180.00
5/19/2020	MKS	[redacted]	0.40	$225	$90.00	$90.00
5/22/2020	MKS	[redacted]	0.50	$225	$112.50	$112.50
5/26/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
5/27/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
		Total Fees: 05/2020	**2.30**		**$517.50**	**$517.50**
6/1/2020	MKS	[redacted]	0.50	$225	$112.50	$112.50
6/2/2020	MKS	[redacted]	0.80	$225	$180.00	$180.00
6/15/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
6/19/2020	MKS	[redacted]	0.60	$225	$135.00	$135.00
6/23/2020	MKS	[redacted]	0.70	$225	$157.50	$157.50
6/24/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
6/25/2020	MKS	[redacted]	1.50	$225	$337.50	$337.50
6/26/2020	MKS	[redacted]	2.50	$225	$562.50	$562.50
6/29/2020	MKS	[redacted]	2.00	$225	$450.00	$450.00
		Total Fees: 06/2020	**9.20**		**$2,070.00**	**$2,070.00**
7/1/2020	MKS	[redacted]	1.00	$225	$225.00	$225.00
7/6/2020	MKS	[redacted]	0.40	$225	$90.00	$90.00
7/7/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
7/8/2020	MKS	[redacted]	5.00	$225	$1,125.00	$1,125.00

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004451 Wedgewood, LLC

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Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
7/9/2020	MKS	[redacted]	1.20	$225	$270.00	$270.00
7/9/2020	AMO	[redacted]	0.40	$100	$40.00	$40.00
7/10/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
7/10/2020	AMO	[redacted]	0.40	$100	$40.00	$40.00
7/13/2020	MKS	[redacted]	0.60	$225	$135.00	$135.00
7/16/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
7/23/2020	MKS	[redacted]	0.40	$225	$90.00	$90.00
7/24/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
		Total Fees: 07/2020	**10.60**		**$2,285.00**	**$2,285.00**
8/4/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
8/5/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
8/14/2020	MKS	[redacted]	0.50	$225	$112.50	$112.50
8/21/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
8/24/2020	MKS	[redacted]	0.60	$225	$135.00	$135.00
8/31/2020	MKS	[redacted]	2.00	$225	$450.00	$450.00
		Total Fees: 08/2020	**4.00**		**$900.00**	**$900.00**
9/2/2020	MKS	[redacted]	2.00	$225	$450.00	$450.00
9/3/2020	MKS	[redacted]	4.00	$225	$900.00	$900.00
9/9/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
9/10/2020	ARV	[redacted]	0.40	$225	$90.00	$90.00
9/10/2020	MKS	[redacted]	0.80	$225	$180.00	$180.00
9/10/2020	AMO	[redacted]	0.40	$100	$40.00	$40.00
9/10/2020	AMO	[redacted]	0.30	$100	$30.00	$30.00
9/11/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50

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004451 Wedgewood, LLC

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Time & Rate: Bill Value

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
9/14/2020	MKS	[redacted]	0.40	$225	$90.00	$90.00
9/16/2020	MKS	[redacted]	0.40	$225	$90.00	$90.00
9/17/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
9/25/2020	MKS	[redacted]	0.40	$225	$90.00	$90.00
9/26/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
9/28/2020	MKS	[redacted]	0.50	$225	$112.50	$112.50
9/30/2020	MKS	[redacted]	0.70	$225	$157.50	$157.50
		Total Fees: 09/2020	**11.50**		**$2,500.00**	**$2,500.00**
10/1/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
10/1/2020	AMO	[redacted]	0.20	$100	$20.00	$20.00
10/2/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
10/2/2020	AMO	[redacted]	0.30	$100	$30.00	$30.00
10/5/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
10/23/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
10/26/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
10/27/2020	MKS	[redacted]	0.70	$225	$157.50	$157.50
10/28/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
10/29/2020	MKS	[redacted]	0.80	$225	$180.00	$180.00
		Total Fees: 10/2020	**3.80**		**$792.50**	**$792.50**
11/2/2020	MKS	[redacted]	1.00	$225	$225.00	$225.00
11/10/2020	MKS	[redacted]	0.40	$225	$90.00	$90.00
11/11/2020	MKS	[redacted]	0.20	$225	$45.00	$45.00
11/12/2020	MKS	[redacted]	0.40	$225	$90.00	$90.00
11/17/2020	MKS	[redacted]	0.20	$225	$45.00	$45.00
11/20/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
		Total Fees: 11/2020	**2.50**		**$562.50**	**$562.50**

Statement of Account

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Time & Rate: Bill Value

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
12/3/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
12/4/2020	MKS	[redacted]	0.10	$225	$22.50	$22.50
12/16/2020	MKS	[redacted]	0.50	$225	$112.50	$112.50
12/17/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
12/18/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
12/21/2020	MKS	[redacted]	0.50	$225	$112.50	$112.50
12/30/2020	MKS	[redacted]	0.30	$225	$67.50	$67.50
12/31/2020	MKS	[redacted]	0.50	$225	$112.50	$112.50
		Total Fees: 12/2020	**2.80**		**$630.00**	**$630.00**
1/4/2021	MKS	[redacted]	2.00	$225	$450.00	$450.00
1/5/2021	MKS	[redacted]	5.50	$225	$1,237.50	$1,237.50
1/6/2021	MKS	[redacted]	6.20	$225	$1,395.00	$1,395.00
1/8/2021	MKS	[redacted]	0.40	$225	$90.00	$90.00
1/11/2021	MKS	[redacted]	0.20	$225	$45.00	$45.00
1/14/2021	MKS	[redacted]	2.50	$225	$562.50	$562.50
1/15/2021	MKS	[redacted]	4.30	$225	$967.50	$967.50
1/19/2021	MKS	[redacted]	1.00	$225	$225.00	$225.00
1/20/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
1/22/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50

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Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
1/25/2021	MKS	[redacted]	0.40	$225	$90.00	$90.00
1/27/2021	MKS	[redacted]	2.00	$225	$450.00	$450.00
1/28/2021	MKS	[redacted]	0.40	$225	$90.00	$90.00
		Total Fees: 01/2021	**25.50**		**$5,737.50**	**$5,737.50**
2/1/2021	MKS	[redacted]	0.40	$225	$90.00	$90.00
2/3/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
2/4/2021	MKS	[redacted]	4.50	$225	$1,012.50	$1,012.50
2/8/2021	MKS	[redacted]	0.50	$225	$112.50	$112.50
2/9/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
2/10/2021	MKS	[redacted]	0.50	$225	$112.50	$112.50
2/16/2021	MKS	[redacted]	1.50	$225	$337.50	$337.50
2/18/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
2/22/2021	MKS	[redacted]	0.80	$225	$180.00	$180.00
2/23/2021	MKS	[redacted]	0.70	$225	$157.50	$157.50
2/24/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
2/24/2021	MKS	[redacted]	0.50	$225	$112.50	$112.50
2/26/2021	MKS	[redacted]	0.80	$225	$180.00	$180.00
		Total Fees: 02/2021	**11.40**		**$2,565.00**	**$2,565.00**
3/3/2021	MKS	[redacted]	0.80	$225	$180.00	$180.00
3/3/2021	MKS	[redacted]	0.40	$225	$90.00	$90.00
3/5/2021	MKS	[redacted]	2.00	$225	$450.00	$450.00

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Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
3/5/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
3/5/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
3/8/2021	MKS	[redacted]	0.40	$225	$90.00	$90.00
3/16/2021	MKS	[redacted]	6.00	$225	$1,350.00	$1,350.00
3/17/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
3/17/2021	MKS	[redacted]	0.80	$225	$180.00	$180.00
3/18/2021	DTR	[redacted]	0.30	$225	$67.50	$67.50
3/18/2021	MKS	[redacted]	1.20	$225	$270.00	$270.00
3/18/2021	MKS	[redacted]	1.80	$225	$405.00	$405.00
3/18/2021	GLM	[redacted]	1.50	$100	$150.00	$150.00
3/19/2021	MKS	[redacted]	0.40	$225	$90.00	$90.00
3/22/2021	MKS	[redacted]	1.20	$225	$270.00	$270.00
3/24/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
3/26/2021	MKS	[redacted]	0.50	$225	$112.50	$112.50
3/26/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
3/26/2021	MKS	[redacted]	0.50	$225	$112.50	$112.50
3/29/2021	MKS	[redacted]	0.40	$225	$90.00	$90.00
3/29/2021	GLM	[redacted]	2.00	$100	$200.00	$200.00
3/29/2021	GLM	[redacted]	0.20	$100	$20.00	$20.00
3/29/2021	GLM	[redacted]	0.30	$100	$30.00	$30.00
3/30/2021	MKS	[redacted]	0.60	$225	$135.00	$135.00

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Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
3/31/2021	MKS	[redacted]	0.60	$225	$135.00	$135.00
3/31/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
		Total Fees: 03/2021	**23.70**		**$4,832.50**	**$4,832.50**
4/1/2021	MKS	[redacted]	0.50	$225	$112.50	$112.50
4/1/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
4/2/2021	MKS	[redacted]	0.60	$225	$135.00	$135.00
4/9/2021	MKS	[redacted]	0.50	$225	$112.50	$112.50
4/13/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
4/15/2021	MKS	[redacted]	0.60	$225	$135.00	$135.00
4/16/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
4/22/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
4/23/2021	MKS	[redacted]	1.00	$225	$225.00	$225.00
4/23/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
4/27/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
		Total Fees: 04/2021	**5.00**		**$1,125.00**	**$1,125.00**
5/3/2021	BRW	[redacted]	0.70	$250	$175.00	$175.00
5/3/2021	MKS	[redacted]	0.80	$225	$180.00	$180.00
5/4/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
5/4/2021	MKS	[redacted]	4.00	$225	$900.00	$900.00
5/5/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
5/6/2021	MKS	[redacted]	0.40	$225	$90.00	$90.00
5/10/2021	MKS	[redacted]	0.30	$225	$67.50	$67.50
5/17/2021	BRW	[redacted]	0.90	$250	$225.00	$225.00
5/18/2021	BRW	[redacted]	0.40	$250	$100.00	$100.00
5/20/2021	BRW	[redacted]	1.80	$250	$450.00	$450.00

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Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
5/22/2021	BRW	[redacted]	1.10	$250	$275.00	$275.00
5/24/2021	BRW	[redacted]	0.40	$250	$100.00	$100.00
5/26/2021	BRW	[redacted]	0.80	$250	$200.00	$200.00
		Total Fees: 05/2021	**12.20**		**$2,897.50**	**$2,897.50**
		Total Fees:	**151.20**		**$32,503.00**	**$32,503.00**

Costs and Expenses

Date	Description	Orig Expense	Orig Cost	Bill Amount
04/21/2020	Westlaw online legal research (MKS)	$126.37		$126.37
04/24/2020	Delivery Services/Messengers	$105.00		$105.00
04/30/2020	Photocopies	$7.20		$7.20
04/30/2020	Postage	$3.25		$3.25
	Total Costs/Expenses: 04/2020	**$241.82**	**$0.00**	**$241.82**
05/27/2020	Photocopies -- BW Prints	$0.30		$0.30
	Total Costs/Expenses: 05/2020	**$0.30**	**$0.00**	**$0.30**
06/23/2020	Westlaw online legal research (MKS)	$131.29		$131.29
	Total Costs/Expenses: 06/2020	**$131.29**	**$0.00**	**$131.29**
07/09/2020	Delivery Services/Messengers	$105.00		$105.00
07/31/2020	Photocopies	$14.40		$14.40
07/31/2020	Postage	$8.00		$8.00
	Total Costs/Expenses: 07/2020	**$127.40**	**$0.00**	**$127.40**
09/03/2020	Westlaw online legal research (MKS)	$73.67		$73.67
09/10/2020	Delivery Services/Messengers	$105.00		$105.00
09/30/2020	Photocopies	$10.80		$10.80
09/30/2020	Postage	$4.80		$4.80
	Total Costs/Expenses: 09/2020	**$194.27**	**$0.00**	**$194.27**
10/02/2020	Delivery Services/Messengers	$105.00		$105.00
10/31/2020	Postage	$3.25		$3.25
10/31/2020	Photocopies	$6.30		$6.30
	Total Costs/Expenses: 10/2020	**$114.55**	**$0.00**	**$114.55**
01/06/2021	All American Court Reporters- Court Reporting/Transcripts- re Vecenta J. Lincicome [Inv #1163227]		$927.75	$927.75
01/27/2021	All American Court Reporters- Court Reporting/Transcripts- re Albert Ellis Lincicome, Jr [Inv #1163496]		$288.75	$288.75
01/27/2021	All American Court Reporters- Court Reporting/Transcripts- re Vicenta J. Linciome, Vol. II [Inv #1163492]		$393.75	$393.75
	Total Costs/Expenses: 01/2021	**$0.00**	**$1,610.25**	**$1,610.25**
03/30/2021	Photocopies -- BW Prints	$1.35		$1.35

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Costs and Expenses

Date	Description	Orig Expense	Orig Cost	Bill Amount
03/30/2021	Delivery Services/Messengers	$135.00		$135.00
03/31/2021	Photocopies	$45.90		$45.90
03/31/2021	Photocopies	$0.90		$0.90
03/31/2021	Postage	$4.46		$4.46
	Total Costs/Expenses: 03/2021	**$187.61**	**$0.00**	**$187.61**
04/23/2021	Photocopies -- BW Prints	$0.60		$0.60
04/30/2021	Postage -- Postage	$1.40		$1.40
04/30/2021	Postage -- Postage	$2.55		$2.55
	Total Costs/Expenses: 04/2021	**$4.55**	**$0.00**	**$4.55**
05/05/2021	Photocopies -- BW Prints	$0.60		$0.60
05/05/2021	Photocopies -- BW Copies	$3.75		$3.75
05/05/2021	Postage -- Postage	$1.42		$1.42
05/05/2021	Postage -- Postage	$0.71		$0.71
05/05/2021	Postage -- Postage	$3.20		$3.20
05/24/2021	Photocopies -- BW Prints	$0.75		$0.75
	Total Costs/Expenses: 05/2021	**$10.43**	**$0.00**	**$10.43**
06/04/2021	HOLO Discovery- Outside Printing- [Inv #11834]		$85.02	$85.02
06/29/2021	Photocopies -- BW Prints	$2.10		$2.10
	Total Costs/Expenses: 06/2021	**$2.10**	**$85.02**	**$87.12**
	Total Costs/Expenses:	**$1,014.32**	**$1,695.27**	**$2,709.59**

Other Accounting

Date	Description	Amount
06/12/2019	Payment	$200.10
06/21/2019	Payment	$1,464.60
07/18/2019	Payment	$1,188.20
08/15/2019	Payment	$281.05
09/16/2019	Payment	$600.00
10/18/2019	Payment	$2,491.20
11/27/2019	Payment	$1,611.00
12/30/2019	Payment	$2,151.00
01/24/2020	Payment	$621.35
03/17/2020	Payment	$1,038.70
04/10/2020	Payment	$600.65
04/27/2020	Payment	$975.57
05/06/2020	Retainer Applied as Payment	$600.65
06/10/2020	Payment	$4,729.17
06/25/2020	Payment	$517.80
08/10/2020	Payment	$2,201.29
08/25/2020	Payment	$2,412.40
09/16/2020	Payment	$900.00
10/21/2020	Payment	$2,694.27
11/20/2020	Payment	$907.05
12/22/2020	Payment	$562.50
	Payment	

Statement of Account

004451 Wedgewood, LLC

000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Other Accounting

Date	Description	Amount
01/26/2021		$630.00
03/01/2021	Payment	$7,347.75
03/17/2021	Payment	$2,565.00
04/28/2021	Payment	$5,020.11
05/21/2021	Payment	$1,129.55

HUTCHISON & STEFFEN
ATTORNEYS

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv. Lincicome)

	ATTY	SERVICES RENDERED	HOURS	AMOUNT
05/24/19	MKS	[redacted]	0.1	20.00
05/29/19	MKS	[redacted]	0.3	60.00
06/07/19	MKS	[redacted]	0.3	60.00
06/11/19	MKS	[redacted]	0.3	60.00
06/12/19	MKS	[redacted]	0.3	60.00
06/18/19	MKS	[redacted]	4.0	800.00
06/19/19	MKS	[redacted]	0.3	60.00
07/08/19	MKS	[redacted]	0.4	80.00
07/11/19	MKS	[redacted]	0.4	80.00
07/15/19	MKS	[redacted]	0.3	60.00
07/18/19	MKS	[redacted]	0.3	60.00

HUTCHISON & STEFFEN
ATTORNEYS

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv. Lincicome)

	ATTY	SERVICES RENDERED	HOURS	AMOUNT
08/21/19	MKS	[redacted]		
			0.3	60.00
08/22/19	MKS			
			1.0	200.00
08/23/19	MKS			
			1.5	300.00
08/26/19	MKS	[redacted]		
			0.2	40.00
09/03/19	MKS			
			1.2	240.00
09/03/19	MKS			
			0.3	60.00
09/04/19	MKS			
			0.3	60.00
09/05/19	MKS			
			0.2	40.00
09/09/19	AMO	[redacted]		
			0.2	19.00
09/11/19	MKS			

HUTCHISON & STEFFEN
ATTORNEYS

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv. Lincicome)

	ATTY	SERVICES RENDERED	HOURS	AMOUNT
09/17/19	MKS	[redacted]	0.4	80.00
09/19/19	MKS	[redacted]	0.7	140.00
09/20/19	AMO	[redacted]	0.3	60.00
09/20/19	AMO	[redacted]	0.2	19.00
09/26/19	MKS	[redacted]	0.3	28.50
09/27/19	MKS	[redacted]	1.5	300.00
10/01/19	MKS	[redacted]	6.0	1,200.00
10/03/19	AMO	[redacted]	1.0	200.00
10/03/19	JDG	[redacted]	0.4	38.00
			0.6	120.00

HUTCHISON & STEFFEN
ATTORNEYS

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv. Lincicome)

	ATTY	SERVICES RENDERED	HOURS	AMOUNT
10/04/19	MKS	[redacted]	0.3	60.00
10/11/19	MKS	[redacted]	0.3	60.00
10/11/19	MKS	[redacted]	0.3	60.00
10/18/19	MKS	[redacted]	0.3	60.00
10/21/19	AMO	[redacted]	0.2	19.00
10/21/19	MKS	[redacted]	0.2	40.00
10/23/19	MKS	[redacted]	0.5	100.00
10/28/19	MKS	[redacted]	0.5	100.00
10/29/19	MKS	[redacted]	0.3	60.00
10/29/19	MKS	[redacted]	2.5	500.00

HUTCHISON & STEFFEN
ATTORNEYS

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv. Lincicome)

	ATTY	SERVICES RENDERED	HOURS	AMOUNT
10/30/19	AMO	[redacted]	0.2	19.00
10/31/19	MKS	[redacted]	0.3	60.00
11/01/19	MKS	[redacted]	1.0	200.00
11/07/19	MKS	[redacted]	0.3	60.00
11/08/19	AMO	[redacted]	0.3	28.50
11/08/19	AMO	[redacted]	0.4	38.00
11/08/19	MKS	[redacted]	0.3	60.00
11/12/19	MKS	[redacted]	0.3	60.00
11/13/19	MKS	[redacted]	1.3	260.00
11/14/19	MKS	[redacted]		

HUTCHISON & STEFFEN
ATTORNEYS

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv. Lincicome)

	ATTY	SERVICES RENDERED	HOURS	AMOUNT
		[redacted]	3.0	600.00
11/18/19	AMO	[redacted]		
		[redacted]	0.3	28.50
11/18/19	ARV	[redacted]		
		[redacted]	0.5	100.00
11/18/19	MKS	[redacted]		
		[redacted]	1.0	200.00
11/19/19	MKS	[redacted]		
		[redacted]	0.2	40.00
11/22/19	MKS	[redacted]		
		[redacted]	0.5	100.00
11/27/19	MKS	[redacted]		
		[redacted]	0.2	40.00
12/02/19	MKS	[redacted]		
		[redacted]	0.3	60.00
12/03/19	MKS	[redacted]		
		[redacted]	1.0	200.00
12/09/19	MKS	[redacted]	0.3	60.00
12/17/19	MKS	[redacted]	0.3	60.00

HUTCHISON & STEFFEN
ATTORNEYS

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv. Lincicome)

	ATTY	SERVICES RENDERED	HOURS	AMOUNT
12/19/19	MKS	[redacted]	0.2	40.00
12/24/19	MKS		0.3	60.00
12/26/19	MKS		0.2	40.00
12/27/19	MKS		0.2	40.00
12/31/19	MKS	[redacted]	0.3	60.00
01/07/20	MKS		2.5	500.00
01/08/20	AMO		0.5	47.50
01/09/20	MKS	[redacted]	0.2	40.00
01/13/20	MKS		0.2	40.00
01/22/20	MKS		0.3	60.00
01/23/20	MKS		0.5	100.00

HUTCHISON & STEFFEN
ATTORNEYS

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv. Lincicome)

	ATTY	SERVICES RENDERED	HOURS	AMOUNT
01/27/20	MKS	[redacted]	0.3	60.00
01/31/20	MKS	[redacted]	0.4	80.00
02/03/20	MKS	[redacted]	0.5	100.00
02/04/20	MKS	[redacted]	1.2	240.00
02/05/20	MKS	[redacted]	0.4	80.00
02/06/20	MKS	[redacted]	0.2	40.00
02/14/20	MKS	[redacted]	0.4	80.00
02/21/20	MKS	[redacted]	0.3	60.00
03/03/20	MKS	[redacted]	0.3	60.00
03/09/20	MKS	[redacted]	0.3	60.00
03/17/20	MKS	[redacted]	0.2	40.00

HUTCHISON & STEFFEN
ATTORNEYS

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv. Lincicome)

	ATTY	SERVICES RENDERED	HOURS	AMOUNT
03/18/20	MKS	[redacted]	0.3	60.00
03/23/20	MKS		0.2	40.00
03/24/20	MKS		0.5	100.00
03/24/20	MKS		2.5	500.00
		Current fees through 03/24/20	62.3	$12,145.00

SUMMARY	HOURS	RATE	AMOUNT
Alex R. Velto	0.50	200.00	100.00
Jason D. Guinasso	0.60	200.00	120.00
Matthew K. Schriever	58.20	200.00	11,640.00
Amy M. Otutaha	3.00	95.00	285.00

DATE	COSTS ADVANCED	AMOUNT
04/29/19	Total Photocopies @ .10	1.50
05/31/19	Total postage charges	29.60
06/14/19	Reno/Carson Messenger Service - process service	40.00
06/30/19		105.00
07/12/19	Total Photocopies @ .15	26.40
09/09/19	Courier Service	105.00
09/20/19	Courier Service	105.00
09/26/19	Westlaw - online legal research (MKS)	29.80
10/03/19	Courier service	105.00

HUTCHISON & STEFFEN
ATTORNEYS

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv. Lincicome)

DATE	COSTS ADVANCED	AMOUNT
11/05/19	Westlaw - online legal research (MKS)	100.55
11/08/19	Courier service	105.00
11/18/19	Courier service	105.00
01/08/20	Courier fee	105.00
03/24/20	Westlaw - online legal research (MKS)	115.57
	Current costs through 03/24/20	$1,078.42
	Total current fees & costs through 03/24/20	$13,223.42

	Invoice	CREDITS/PAYMENTS	AMOUNT
06/12/19	289565	ACH Payment Received - THANK YOU!	200.10 CR
06/21/19	290909	ACH Payment Received - THANK YOU! (Breckenridge Property)	1,464.60 CR
07/18/19	292197	ACH Payment Received - THANK YOU!	1,188.20 CR
08/15/19	293515	ACH Payment Received - THANK YOU!	281.05 CR
09/16/19	294849	ACH Payment Received - THANK YOU!	600.00 CR
10/18/19	296158	ACH Payment Received - THANK YOU!	2,491.20 CR
11/27/19	297438	ACH Payment Received - THANK YOU!	1,611.00 CR
12/30/19	298769	ACH Payment Received - THANK YOU!	2,151.00 CR
01/24/20	300011	ACH Payment Received - THANK YOU!	621.35 CR
03/17/20	301400	ACH Payment Received - THANK YOU!	1,038.70 CR
04/27/20	303770	Payment Received - THANK YOU!	975.57 CR
		Total credits applied	$12,622.77 CR

TOTAL DUE-PLEASE PAY THIS AMOUNT **$600.65**

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv. Lincicome)

STATEMENTS ARE DUE ON RECEIPT.
PLEASE REFERENCE OUR FILE NUMBER ON ALL PAYMENTS
A 1% finance charge will be assessed on all amounts over 30 days past due.
If you have any questions regarding your account, please immediately contact the attorney handling your matter, or call Janet Vinante in accounting at 702-385-2500, or email her at Janet@Hutchlegal.com

Our Federal Tax I.D. No. is 75-3141066

INDEX TO EXHIBITS

Exhibit 1	Notice to Breach and Default and of Election to Sell the Real Property Under Deed of Trust	6 pages
Exhibit 2	Notice of Trustee's Sale	3 pages
Exhibit 3	Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction (internal exhibits omitted)	18 pages
Exhibit 4	Order dated 12/31/2018	8 pages
Exhibit 5	Intervenor's Counterclaim	33 pages
Exhibit 6	Second Amended Complaint (internal exhibits omitted)	29 pages
Exhibit 7	Breckenridge Property Fund 2016, LLC's Crossclaim Against Prof-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee	7 pages
Exhibit 8	Breckenridge Property Fund 2016 LLC's Motion for Summary Judgment Against Plaintiff	52 pages
Exhibit 9	Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment Filed by BANA, Prof-2013 M4 Legal Title Trust, US Bank and Fay Servicing LLC	18 pages
Exhibit 10	Order on Breckenridge Motion for Summary Judgment	8 pages
Exhibit 11	Notice of Appeal	3 pages
Exhibit 12	Breckenridge Property Fund 2016's Motion for Attorney Fees and Costs	75 pages
Exhibit 13	Plaintiffs' Opposition to Breckenridge Property Fund 2016's Motion for Attorney Fees and Costs	11 pages
Exhibit 14	Breckenridge Property Fund 2016's Reply in Support of its Motion for Attorney Fees and Costs	6 pages
Exhibit 15	Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents	62 pages
Exhibit 16	Plaintiffs' Motion for Stay Pending Appeal	16 pages

Exhibit 17	Opposition to Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents	2 pages
Exhibit 18	Defendant Breckenridge Property Fund 2016, LLC's Opposition to Plaintiffs' Motion to Stay Pending Appeal	68 pages
Exhibit 19	Breckenridge Property Fund 2016's Reply in Support of Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents	3 pages
Exhibit 20	Order Granting Ex Parte Application for Order Shortening Time for Hearing on Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents	4 pages
Exhibit 21	Order Concerning: Breckenridge Property Fund 2016, LLC's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents and Plaintiffs' Motion for Stay Pending Appeal	10 pages
Exhibit 22	Permanent Writ of Restitution	4 pages
Exhibit 23	Order on Attorney's Fees and Costs	13 pages
Exhibit 24	Order Partially Dismissing Appeal	3 pages

Exhibit 13

FILED

Lindsey McCabe

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * * * *

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, a Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC, substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MCM-2018-NPL2, substituted in for DOE 3; and DOES 4-10.

Defendants.

BRECKENRIDGE PROPERTY FUND 2016, LLC

Counterclaimant,

vs.

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

Counterdefendants.

PLAINTIFFS' OPPOSITION TO BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ATTORNEY FEES AND COSTS

COME NOW, Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME by and through their attorneys, Michael G. Millward, Esq., of Millward Law, Ltd., and Justin M. Clouser, Esq., of Clouser Hempen Wasick Law Group, Ltd., and hereby submit their Opposition to *Breckenridge Property Fund 2016's Motion for Attorney Fees and Costs.*

This Opposition is based upon NRS 18.010 and is supported by the Memorandum of Points and Authorities attached hereto, the documents previously admitted as evidence in this Court, and the pleadings and papers on file herein.

Respectfully submitted 2nd day of August, 2021

MILLWARD LAW, LTD.

By: _____

Michael G. Millward, Esq.
1591 Mono Ave.
Minden NV 89423
(775) 600-2776

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Breckenridge Property Fund 2016, LLC (hereinafter "Breckenridge") seeks attorney fees and costs from Plaintiffs and asserts that Plaintiffs had no viable claims against Breckenridge.

Breckenridge is not entitled to attorney fees under NRS 18.010. The Court should not award attorney fees when Plaintiffs' claims were brought pursuant to a legitimate controversy and were not frivolous or without evidentiary support. Additionally, the Lincicomes respectfully request that this honorable Court stay an award of costs until the appeal of this matter is concluded. Accordingly, based upon the facts and law set forth herein, the Court should conclude that Breckenridge is not entitled to an award attorney fees, and that it is appropriate that any award of costs be stayed until the conclusion of this matter following the resolution of Plaintiffs' appeal.

II. FACTS

In May of 2007, the Lincicomes purchased their home located at 70 Riverside Drive, Dayton, Nevada, 89403 (hereinafter "Residence" or "Premises") from Riverview Estates, LLC. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 1).

On May 23, 2007, Vicenta Lincicome (hereinafter individually referred to as "Vicenta") executed a Promissory Note and Deed of Trust as part of an interest only residential mortgage loan. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 2, Ex. 3).

The Lincicomes were unable to make their June 1, 2008, mortgage payment, and Bank of America (or Recontrust Company, N.A.) recorded a Notice of Default on January 23, 2009 as Document No. 437084, accelerating the sum due under the Promissory Note. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 4).

On July 11, 2009, the Lincicomes received an offer to modify their mortgage, and Vicenta Lincicome signed and submitted the modification paperwork and sent the same to BANA on July 31, 2009 (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 6, Ex. 7).

The loan modification agreement prepared by the "Hope Team" has a CHL loan number of "162304785" which is also the BANA loan number for the mortgage. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 6, Ex. 7).

Pursuant to the Loan Modification Agreement (hereinafter "2009 LMA"), "[t]he Borrower promises to make monthly payments of the principal and interest of U.S. $1,977.29 beginning on the 1st day of September 2009. . ." (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 7).

On September 1, 2009, the Lincicomes travelled to the Bank of America branch located in Carson City to make their first payment under the 2009 LMA. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 8). The bank teller assisting the Lincicomes, "Crystal", was unable to find any record of the 2009 LMA in BANA's system. *Id.* Crystal accepted payment and provided a receipt indicating that the loan payment was made upon account No. "162304785." (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 9).

On or about October 1, 2009, Vicenta travelled to the Carson City Bank of America branch to make the second payment on the 2009 LMA. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 8). This time the banker, a middle-aged woman, refused the payment and indicated that there was no record of the existence of the 2009 LMA in BANA's computer system. *Id.*

BANA sent out its October 29, 2009 statement referencing the same loan number that was provided on the 2009 LMA, indicating the premodified terms of the loan. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 10).

From October 1, 2009, to December of 2011, the Lincicomes continued to contact Bank of America by phone to inquire as to the status of the LMA and make payment. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 8, Ex. 11).

The Lincicomes filed a petition for Chapter 13 Bankruptcy protection before the United States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case No. 10-51219, and therein listed Bank of America as a secured creditor. (*Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines* is attached as Exhibit 12).

///

On March 22, 2011, BANA Senior Vice President James S. Smith executed the 2009 LMA. (Ex. 7). Thereafter, on May 4, 2011, BANA caused the 2009 LMA to be recorded with the Lyon County Recorder's Office as Document No. 475808.

BANA did not give the Lincicomes notice that the 2009 LMA had been signed and recorded. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 8). The Lincicomes remained unaware of the fact that the LMA had been found, or that it had been agreed to and fully executed by BANA until 2017. *Id.*

On November 26, 2014, Bank of America appeared in the Lincicomes' Bankruptcy case and filed a *Motion for Relief of Stay* seeking relief from the automatic stay, pursuant to 11 U.S.C. § 362. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 18).

Even though BANA had recorded the fully executed 2009 LMA in 2011, it withheld all information about the 2009 LMA in its motion. *Id.* In fact, BANA misrepresented to the Bankruptcy Court that the Lincicomes had failed to make payment upon the mortgage even though BANA had refused the Lincicomes' payments and kept the existence of the loan modification hidden from them. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 8). BANA falsely asserted that it was entitled to relief from stay. *Id.* BANA supported these false allegations in its Motion with a copy of the promissory note given in 2007 and the 2007 Deed of Trust. BANA did not inform the Lincicomes of the 2009 LMA or the Bankruptcy Court in its Motion. *Id.*

Upon the false statements made in BANA's Motion, the Bankruptcy Court entered its Order permitting BANA to proceed against the property. Prior to discharge, but after the Court had entered its order granting Bank of America's *Motion for Relief of Stay*, the Lincicomes, believing they would be foreclosed upon, again applied for a loan modification. *Id.*

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

///

On November 3, 2017, Sables, LLC, as Trustee under the Deed of Trust (hereinafter "Sables" or "Trustee"), recorded its *Notice of Breach and Default and Election to Sell the Real Property under Deed of Trust* (hereinafter "NOD"). The NOD provides that as of October 31, 2017, $265,572.39 is owed in arrears. *Id.* Even though the NOD acknowledges that the "subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 . . . recorded on 5/4/2011 . . . in the office of the County recorder of Lyon County," it also provides that all monthly installments from "9/1/2008" forward are due. *Id.*

The NOD does not reflect the terms of the 2009 LMA, which would have by its own terms become effective in 2009 with the first installment to be made on 9/1/2009. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 23; Ex. 7).

The Lincicomes elected to seek relief by way of the Nevada Supreme Court Foreclosure Mediation Program and filed a Petition with the Court on December 1, 2017. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 25).

The Lincicomes also completed a Loss Mitigation Application and submitted the same to Fay Servicing. Fay responded on March 6, 2018, with an offer for the Lincicomes to proceed with a trial modification which, if accepted, would require the first payment to be made by April 1, 2018. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 26). As an alternative to a trial modification, Fay Servicing offered on "Attachment B" to its March 6, 2018 letter for the Lincicomes to consider pursuing a Deed-In-Lieu of Foreclosure. *Id.*

The Lincicomes attended the second mediation on April 3, 2018, which was conducted by Madelyn Shipman. (Ex. 8). According to the Mediator's Statement filed with the Third Judicial District Court under Case 18-CV-0346, the Lincicomes agreed to resolve the mediation by way of a Mediation Agreement. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 27). Page 5 of the Mediator's Statement indicates that the Lincicomes agreed to a Deed in Lieu of Foreclosure "Pursuant to the Requirements of Page 6 of TTP dated 3/6/2018" (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 27, p.5).

///

Page 6 of Fay Servicing's March 6, 2018 letter, "Attachment B" gives the Lincicomes the opportunity to avoid foreclosure through Fay Servicing's DIL Program. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 26).

According to the Mediator's Statement as well as the terms of Attachment B, if a Deed in Lieu was not in the works by July 4, 2018, a Certificate of Mediation would be issued on July 5, 2018, so that Fay Servicing could exercise the beneficiary's rights in demanding a foreclosure proceed. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 27, pp. 2, 5).

According to Attachment B of the March 6 letter, the Lincicomes "will have until July 4, 2018 to complete a DIL [(deed in lieu)] for the property." (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 26, p.15).

Pursuant to Attachment B, if the Lincicomes were able to meet the terms set forth therein, the foreclosure will be suspended. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 26, p.15). If the Lincicomes have met all the conditions and terms set forth in Attachment B, Fay Servicing would "prepare and record a lien release in full satisfaction of the mortgage, foregoing all rights to pursue a deficiency." *Id.* at p.16. However, if the Lincicomes failed to accomplish the terms and conditions set forth in Attachment B, then the "foreclosure proceeding that was suspended . . . may be resumed and the foreclosure sale may occur." *Id.*

The Lincicomes chose not to pursue participation in Fay Servicing's DIL program. Then on October 12, 2018, Sables recorded its *Notice of Trustee's Sale* with the Lyon County Recorder as Document No. 587470. (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 28).

Like the Notice of Default, the Notice of Trustee's Sale also provides that the "Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011." (Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 28).

III. <u>LEGAL STANDARD</u>

NRS 18.010 provides that an Award of attorney's fees is appropriate under the following circumstances:

> 1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> (a) When the prevailing party has not recovered more than $20,000; or
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.
>
> 3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.
>
> 4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

III. ARGUMENT

A. Attorney Fees Should Not Be Awarded when Claims were Brought Upon Reasonable Grounds

The Court should find that the Lincicomes' claims were brought upon reasonable grounds, and not for the purpose of harassment, and that Breckenridge is not entitled to attorney fees.

In determining whether the Lincicomes' claims were reasonable under NRS 18.010(2), the Court need look no further than the record of this case. In this case, the Court has previously concluded that the Lincicomes were likely to prevail upon their claims concerning violations of the Homeowners Bill of Rights. Ct. 12/31/2018 Ord., pp.5-6.

The Court specifically found that "Plaintiffs have established that they will succeed on their claim that Defendants have violated NRS 107.500(1)(b) for failing to provide accurate

information required to be provided prior to the initiation of a foreclosure." Ct. 12/31/2018 Ord., p.6, lns. 1-3.

Likewise, the Court granted the Lincicomes leave to file their second amended Complaint to assert additional claims for relief including claims for wrongful foreclosure and quiet title. Ct. 10/16/2019 Ord.

As to the claims pertaining to Breckenridge, Breckenridge previously moved this Court for an Order for Restitution. Breckenridge's Motion was denied by the Court because Breckenridge was "found to have been aware of the title issues at the time of the property sale." Ct. 2/11/2020 Ord.

Without citation to any part of the record, Breckenridge argues that "Plaintiffs conceded that they . . . were in default of their loan obligations." Def. 7/19/21 Mot., p.4. Breckenridge alleges that "Plaintiffs' allegations of wrongful foreclosure were not and could not have been established by any legal or factual support." Def. 7/19/21 Mot., p.8, lns 13-14. Breckenridge asserts that the "beneficiaries, servicers, and trustee . . . strictly complied" with the requirements of Chapter 107. *Id.* at lns.14-18.

In so arguing, Breckenridge must have forgotten that the Notice of Default and the Notice of Sale applicable in this matter both state that the Lincicomes' loan in this matter was modified by the 2009 LMA, and that no party to this action has disputed the validity of the 2009 LMA, or whether it effectively modified the applicable Deed of Trust.

The *Notice of Breach and Default and Election to Sell the Real Property Under Deed of Trust*, recorded with the Lyon County Recorder on November 3, 2017, states as follows:

> The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 6/4/2011 of Official Records in the office of the County recorder of Lyon, County, Nevada . . .

(Pl. 4/14/21 *Statement of Undisputed Facts*, Ex. 24).

The *Notice of Trustees Sale*, recorded with the Lyon County Recorder on October 12, 2018, states that:

> The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011 Official Records in the office of the Recorder of Lyon County Nevada . . .

(Pl. 5/6/21 *Supplement to Statement of Undisputed Facts*, Ex. 41, (BANA_000014)).

The recorded documents make it clear that the 2009 LMA was admitted by the beneficiary and the Trustee to be the operative document as to terms of the mortgage loan. Accordingly, it is no stretch for the Lincicomes to also believe that because their payments had been refused by BANA, and because the beneficiaries and servicers had failed to implement the loan, or seek payment under the 2009 LMA's terms, that it would be improper and even impossible for a Trustee to legally foreclose on their property under those circumstances.

Pursuant to NRS 107.080(2), "[t]he power of sale must not be exercised . . . until. . . the **grantor** . . . has, **<u>for a period of 35 days</u>**, . . . failed to make good the deficiency in performance or payment." NRS 107.080(2) (emphasis added).

Contrary to its own terms, the Notice of Default does not reflect the deficiency that would be owed under the 2009 LMA even if it had been implemented. Ct. 12/31/2018 Ord., pp.2-4. The Lincicomes had a good faith belief that NRS 107.080(2) could not have been substantially complied with when all material terms stated in the Notice of Default were incorrect, and establish that the 2009 LMA had not been implemented. *See id.*

The beneficiary, servicer, and trustee were put on notice of the defects to the Notice of Sale and Notice of Default, and failed to correct them prior to the foreclosure sale. Thus, upon the same, the Lincicomes' claims rooted in wrongful foreclosure were based upon undisputed facts and the law under NRS 107.080(2).

The defects in the Notice of Default and the Notice of Sale, as well as the facts underlying the Lincicomes' belief that BANA had breached the 2009 LMA by failing to implement the same, and refusing payment from the Lincicomes establish that the Lincicomes' claims were founded upon facts and were brought in good faith. Accordingly, Breckenridge's unsupported allegations to the contrary are improper and do not support an award of attorney fees under NRS 18.010.

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Therefore the Lincicomes respectfully request that the Court deny Breckenridge's motion for an award of attorney fees.

B. Award of Costs Should be Stayed

The Lincicomes have filed a timely Notice of Appeal in this matter. Accordingly, the Lincicomes request that an award of costs be stayed until full resolution of this matter on appeal.

IV. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court deny Breckenridge's motion for an award of attorney fees under NRS 18.010, and that an award of costs be stayed until the full resolution of this matter following appeal.

AFFIRMATION

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

Dated this 2nd day of August, 2021.

MILLWARD LAW, LTD

By: _____

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Exhibit 14

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THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants. AND RELATED MATTERS.	Case No.: 18-CV-01332 Dept No.: II **BRECKENRIDGE PROPERTY FUND 2016'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEY FEES AND COSTS**

BRECKENRIDGE PROPERTY FUND 2016'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEY FEES AND COSTS

COMES NOW Breckenridge Property Fund 2016, LLC ("Breckenridge"), by and through its attorney of record, Hutchison & Steffen, PLLC and hereby submits this reply in support of its motion for attorney fees and costs ("Motion") as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

The Motion only seeks fees and costs as it relates to Breckenridge. *As pertaining to Breckenridge, Plaintiffs never had any legitimate claims.* The essence of Plaintiffs' Complaint is that the foreclosing lender did not have the ability to foreclose. Plaintiffs conceded that they executed the note and deed of trust and were in default of their loan obligations. Discovery has proven that the foreclosure complied with NRS, that the Plaintiffs were in default of the loan obligations and received both the notice of default and the notice of sale. As a result of the foreclosure sale, Plaintiffs have been divested of any ownership interest in the Subject Property. Consequently, there were no genuine issues of material fact in this case. This Court so found and granted Breckenridge's motion for summary judgment.

II. Argument

A. Plaintiffs do not and cannot dispute the pertinent facts in this matter entitling Breckenridge to an award of attorney fees and costs.

Plaintiffs offer many citations to the record in this matter but do not at any point dispute that they defaulted on their loan and obligation under the operative Deed of Trust. Moreover, Plaintiffs do not and cannot dispute that they failed to timely post a bond and additional security in order to enjoin the foreclosure of the Subject Property. Plaintiffs also do not and cannot dispute that on January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's ownership of the Subject Property was recorded. Pursuant to the holding in *U.S. Design & Const. Corp. v. Int'l Broth. of Elec. Workers*, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002), the Court should award attorney fees and costs to

Breckenridge. The Plaintiffs do not dispute the reasonableness or necessity of the fees and costs. Rather, they simply argue that despite the undisputed facts above and in the Motion, they were justified in bringing a claim against Breckenridge that was groundless.

As noted in the Motion, a claim or defense is groundless if it is "not supported by any credible evidence at trial." *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687-88 (1995) (citation omitted). Here, based upon the undisputed facts there is more than sufficient evidence in the record supporting the proposition that the claim was brought or the defense maintained "without reasonable grounds or to harass the other party" pursuant to the Nevada Supreme Court's holding in *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005).

Breckenridge was not involved with this matter until it purchased the Subject Property at the foreclosure sale. Breckenridge took title to the Subject Property pursuant to an NRS 107.080 foreclosure sale. NRS 107.080 provides in pertinent part, "Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption." Thus, Breckenridge's claims to superior title in this matter are supported by well-founded Nevada law and Plaintiffs had no reasonable basis to dispute this. The Plaintiffs failed to meet their burden, and discovery did not reveal any basis or evidence to support their claim that the foreclosure sale was not valid.

Plaintiffs even failed to post the bond and security required by this Court to stave off foreclosure. Thus, Plaintiffs' allegations of wrongful foreclosure were not and could not have been established by any legal or factual support. Instead, it is clear that the beneficiaries, servicers, and trustee not only substantially complied with NRS 107 throughout the entire foreclosure process as required by NRS 107.080(5), but actually strictly complied with those requirements. Accordingly, as

this Court found, Breckenridge is entitled to an order quieting title in its favor pursuant to NRS 111.180(1).

Throughout the course of discovery, Plaintiffs failed to provide any evidence that the foreclosure sale was defective or that they have rights, title, or interest to the Subject Property. Accordingly, this Court found that Breckenridge is entitled to titled ownership because there are no defects in the sale. Based upon the lack of a viable claim against Breckenridge specifically, movant requests that it be granted its attorney fees and costs as requested in the Motion.

B. <u>Plaintiffs provide no authority to stay an award of costs.</u>

Plaintiffs have not cited to any authority to stay an award of costs until resolution of the appeal. Further, NRS 18.110 requires that a motion to retax and settle costs needs to be filed "[w]ithin three days of service" of a verified memorandum of costs. Because a motion to retax was not filed, Breckenridge respectfully submits that it is entitled to an award of costs based upon NRS 18.020(b) without delay.

III. Conclusion.

For all these reasons, Breckenridge respectfully requests that this Court grant its Motion For

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Attorney Fees and Costs, and grant such other and further relief as the Court deems appropriate.

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

DATED this 1st day of September, 2021.

HUTCHISON & STEFFEN, PLLC

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Attorneys for Defendant
Breckenridge Property Fund 2016 LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **BRECKENRIDGE PROPERTY FUND 2016'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY FEES AND COSTS** via U.S. Mail to the parties designated below.

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DATED this 1st day of September, 2021.

An Employee of HUTCHISON & STEFFEN

Exhibit 15

ORIGINAL

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THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants. AND RELATED MATTERS.	Case No.: 18-CV-01332 Dept No.: II **BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS**

COMES NOW Breckenridge Property Fund 2016, LLC ("Breckenridge"), by and through its attorneys of record, Hutchison & Steffen, PLLC and hereby submits this motion for entry of an order

granting a permanent writ of restitution in favor of Breckenridge and payment of overdue rents pursuant to this Court's summary judgment order. This motion is made and based upon the following points and authorities, the pleadings and papers on file, the attached exhibits, and any oral argument this court may entertain at a hearing on this matter

DATED this 8th day of September, 2021.

HUTCHISON & STEFFEN, PLLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

This case pertains to the foreclosure of real property commonly known as 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") that took place on or about January 4, 2019 at which time Breckenridge purchased the Subject Property for $294,000.01.

Albert Ellis Lincicome, Jr. and Vicenta Lincicome ("Plaintiffs") formerly owned the Subject Property. Plaintiffs brought this lawsuit and argue that the foreclosure sale was improperly conducted but they ignore that the evidence uniformly confirms that they were in default and received actual notice of the same. No amount of distraction about the loan documents or issues of prior loan modification can change these facts. There is no dispute that the Plaintiffs were in default at the time of foreclosure and received both the Notice of Default and the Notice of Sale.

Plaintiffs had no viable claims against Breckenridge. The essence of Plaintiffs' Complaint is that the foreclosing lender did not have the ability to foreclose. Plaintiffs conceded that they executed the note and deed of trust and were in default of their loan obligations. Discovery proved that the foreclosure complied with NRS, that the Plaintiffs were in default of the loan obligations and received both the notice of default and the notice of sale.

As a result of the foreclosure sale, Plaintiffs have been divested of any ownership interest in the Subject Property. Consequently, there were no genuine issues of material fact in this case. This Court so found and granted Breckenridge's motion for summary judgment. Breckenridge now seeks an order for a permanent writ of restitution and payment of overdue rents pursuant to this Court's summary judgment order.

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II. Statement of Undisputed Facts.

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

2. Plaintiffs subsequently defaulted on that loan obligation resulting in a Notice of Default and Notice of Sale being recorded against the Subject Property. ***See Exhibits #2 and #3.***

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

4. On November 8, 2018, Plaintiffs recorded a lis pendens on the Property and also filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.

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

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

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

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

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

10. Breckenridge has made repeated demand on the Plaintiffs to vacate the Subject Property, but Plaintiffs, without cause or reason, have refused to vacate the Subject Property.

11. The Plaintiffs continue in possession of the Subject Property notwithstanding the termination of the tenancy by services of the aforesaid Three-Day Notice.

12. The Plaintiffs' actions are in violation of NRS § 40.250-255 and Breckenridge is entitled to possession of the Subject Property as prescribed in NRS § 40.290-420.

13. On December 20, 2019, Plaintiffs filed their Second Amended Complaint, wherein they brought claims against Breckenridge for Declaratory Relief and Quiet Title.

14. Breckenridge subsequently filed a Counterclaim against Plaintiffs through which it claims ownership to the Subject Property, sought to quiet title in its favor, sought other monetary damages, as well as possession of the Property through a claim for writ of restitution ("Restitution Claim").

15. In addition, Breckenridge sought payment of "reasonable rents for the period of time from service of the Three-Day Notice until such time as the [Plaintiffs] vacate the Subject Property." *See* Breckenridge's Counterclaim on file herein, at ¶ 34.

16. Because the Plaintiffs remained in possession of the Subject Property even after service of the Three-day Notice, Plaintiffs should be required to pay rent to Breckenridge from February 1, 2019, until the date they vacate the Subject Property.

17. Ultimately, this Court made a determination granting Breckenridge' counterclaims and denying Plaintiffs' claims. The Plaintiffs have been and continue to reap a windfall by being able to stay in the Subject Property without having to make any payments. To add to that windfall, the Plaintiffs have an incentive to delay final resolution because every month of delay is another month of living rent free.

18. Based on the current rental market, a range of $2,250.00 - $2,500.00 is a fair market rental value for the Subject Property. ***See Exhibit #7.*** That rental range is consistent with the monthly security of $2,105.10 per month that this court previously ordered to stay foreclosure.[1]

19. Plaintiffs have been in the Subject Property from February 1, 2019, to the present, August, 2021, or a total of 31 months, which would equate to rent in the principal amount of not less than $69,750 - $77,500.

20. Accordingly, Breckenridge requests this Court issue an order and judgment against the Plaintiffs, in this range (and additional amounts due at this rate by entry of such an order) for rents due to Breckenridge due to the Plaintiffs' continued wrongful possession of the Subject Property.

21. On June 23, 2021, this Court entered its Order on Breckenridge's Motion for Summary Judgment ("MSJ Order") granting Breckenridge summary judgment on its claims against the Plaintiffs.

22. In its MSJ Order this Court made numerous findings of fact and conclusions of law, adopted herein by reference, including but not limited to the findings that Breckenridge purchased the Property at a proper foreclosure sale and is therefore entitled to summary judgment regarding its claims to title of the Property as against Plaintiffs.

III. Law and Argument

A. <u>Based upon this Court's MSJ Order, Breckenridge is entitled to a permanent writ of restitution regarding the Property.</u>

As noted above, on or about January 4, 2019, Breckenridge purchased the Subject Property at the NRS 107 foreclosure sale for $294,000.01. The Three-Day Notice was served on the Plaintiffs on January 28, 2019. NRS § 40.255(1)(c) provides for removal of a person who holds over and continues in possession of real property after a 3-day written notice to surrender has been served upon the person:

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[1] Plaintiffs did not dispute this amount when proffered as part of Breckenridge's motion requesting Plaintiff's post rental payments with the Court.

> (c) Where the property or mobile home has been sold under a power of sale granted by NRS 107.080 to the trustee of a deed of trust executed by the person, or by another person under whom the person claims, and the title under such sale has been perfected;

Nev. Rev. Stat. Ann. § 40.255 (West). Breckenridge is the sole owner of the Property by virtue of purchasing the Property at a valid foreclosure sale conducted pursuant to NRS Chapter 107 on January 4, 2019. Service of the Three-Day Notice terminated the Plaintiffs' right to remain in the Property. Despite this, the Plaintiffs refused to vacate the Property within the three days as required by NRS 40.280 *et seq*. Rather, the Plaintiffs continued to squat in the Property without Breckenridge's permission or consent. Plaintiffs have paid no rent to Breckenridge during the time they are illegally squatting in the Property. Plaintiffs had no objective basis in law or fact to remain in the Property after foreclosure. Breckenridge was vested with title to the Property and the foreclosure proceeded properly.

Plaintiffs' continued occupation of the Property was in clear violation of NRS § 40.255 and Breckenridge is entitled to permanent possession of the Property as prescribed in NRS §§ 40.290 to 40.420. Breckenridge, as purchaser of the Property, is entitled to a permanent writ of restitution of the Property.

B. <u>Breckenridge is entitled to rental payments during the time Plaintiffs have unjustly remained in the Subject Property without making a single rental payment.</u>

"Unjust enrichment occurs whenever a person has and retains a benefit which in equity and good conscience belongs to another. Unjust enrichment is the unjust retention of a benefit to the loss of another." *Topaz Mutual Co. v. Marsh*, 108 Nev. 845, 856 (1992); *Nevada Industrial Development v. Benedetti*, 103 Nev. 360, 363 (footnote 2) (1987).

Plaintiffs have been unjustly enriched by being allowed to remain in the Subject Property without paying rent or a mortgage payment since February, 2019. The foreclosure in this matter occurred over two years ago and Plaintiffs were not making payments to their lender prior to that time either. The Plaintiffs are squatting in the Subject Property without Breckenridge's permission. They are aware that

the Subject Property has been foreclosed. However, Plaintiffs continue to occupy the Subject Property without paying fair market rent to Breckenridge's detriment.

NRS 40.385(3) provides, "A tenant who retains possession of the premises that are the subject of the appeal during the pendency of the appeal shall pay to the landlord rent in the amount provided in the underlying contract between the tenant and the landlord as it becomes due." This Court should follow the guidance and rationale of NRS 40.385(3) – which has now been confirmed due to the MSJ Order – and require the Plaintiffs to pay fair market rent for their years' long wrongful occupation of the Subject Property.

Breckenridge has provided proof that the fair market rental value of the Subject Property is in the range of $2,250.00 to $2,500.00. This rental range is consistent with the monthly security of $2,105.10 per month that this Court previously ordered to stay foreclosure.

IV. Conclusion.

For all these reasons, Breckenridge respectfully requests that this Court grant its Motion for entry of an order granting Breckenridge a permanent writ of restitution, as well as payment of all overdue rents until the Subject Property is vacated, and to grant such and further relief as the Court deems appropriate.

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding

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document filed in this court does not contain the social security number of any person

DATED this 8th day of September, 2021.

HUTCHISON & STEFFEN, PLLC

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Attorneys for Breckenridge Property Fund 2016, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a true and correct copy of the **BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS** via U.S. Mail to the parties designated below.

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Attorney for Bank of America

DATED this 8th day of September, 2021.

Danielle Kelley
An Employee of HUTCHISON & STEFFEN

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

DOC # 407150
05/26/2007 04 34 PM
Official Record
Requested By
STEWART TITLE OF NEVADA
Lyon County - NV
Mary C Milligan - Recorder
Page 1 of 20 Fee $58 00
Recorded By DLW RPTT

0407150

Assessor's Parcel Number
29-401-17
I hereby affirm that this document submitted for recording does not contain a social security number
/s/ LYNDA KLEIN
FUNDER
Recording Requested By
SIERRA PACIFIC MORTGAGE COMPANY, INC
280 BRINKBY STREET, SUITE 100
RENO, NV 89509
775-826-3700

[Space Above This Line For Recording Data]

Loan No 0000479436

DEED OF TRUST

MIN 1000703-0000479436-5

Unofficial Copy

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21 Certain rules regarding the usage of words used in this document are also provided in Section 16

(A) "Security Instrument" means this document, which is dated MAY 23, 2007 together with all Riders to this document

(B) "Borrower" is VICENTA LINCICOME, A MARRIED WOMAN

Borrower is the trustor under this Security Instrument

(C) "Lender" is SIERRA PACIFIC MORTGAGE COMPANY, INC.

Lender is a CORPORATION organized and existing under the laws of CALIFORNIA

Lender's address is 50 IRON POINT CIRCLE, STE 200, FOLSOM, CA 95630

(D) "Trustee" is GREENHEAD INVESTMENTS, INC., A CALIFORNIA CORPORATION

(E) "MERS" is Mortgage Electronic Registration Systems, Inc MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns MERS is the beneficiary under this Security Instrument MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P O Box 2026, Flint, Michigan 48501-2026, tel (888) 679-MERS

(F) "Note" means the promissory note signed by Borrower and dated MAY 23, 2007 The Note states that Borrower owes Lender THREE HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED FIFTY and NO/100 Dollars (U S $ 381,150.00) plus interest Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 1, 2037

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property"

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower The following Riders are to be executed by Borrower [check box as applicable]

[xx] Adjustable Rate Rider
[ ] Balloon Rider
[ ] 1-4 Family Rider
[ ] V A Rider
[ ] Condominium Rider
[ ] Planned Unit Development Rider
[ ] Biweekly Payment Rider
[ ] Second Home Rider
[xx] Other(s) [specify] INTEREST ONLY RIDER

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers

(M) "Escrow Items" means those items that are described in Section 3

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for (i) damage to, or destruction of, the Property, (ii) condemnation or other taking of all or any part of the Property, (iii) conveyance in lieu of condemnation, or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S C §2601 et seq) and its implementing regulation, Regulation X (24 C F R Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument

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TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS This Security Instrument secures to Lender (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note, and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of LYON
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A."

which currently has the address of 70 RIVERSIDE DRIVE [Street],
DAYTON [City], Nevada 89403 [Zip Code] ("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property All replacements and additions shall also be covered by this Security Instrument All of the foregoing is referred to in this Security Instrument as the "Property " Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property, and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument

BORROWER COVENANTS that Borrower is lawfully 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

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not obligated to apply such payments at the time such payments are accepted If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority (a) interest due under the Note, (b) principal due under the Note, (c) amounts due under Section 3 Such payments shall be applied to each Periodic Payment in the order in which it became due Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property, (b) leasehold payments or ground rents on the Property, if any, (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10 These items are called "Escrow Items" At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time Any such waiver may only be in writing In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9 If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender

4. Charges; Liens Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement, (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded, or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan

5 Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires What Lender requires pursuant to the preceding sentences can change during the term of the Loan The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably Lender may require Borrower to pay, in connection with this Loan, either (a) a one-time charge for flood zone determination, certification and tracking services, or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense Lender is under no obligation to purchase any particular type or amount of coverage Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained Any amounts

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disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance Lender shall have the right to hold the policies and renewal certificates If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender Lender may make proof of loss if not made promptly by Borrower Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower Such insurance proceeds shall be applied in the order provided for in Section 2

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim The 30-day period will begin when the notice is given In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due

6 Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control

7 Preservation, Maintenance and Protection of the Property; Inspections Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration

Lender or its agent may make reasonable entries upon and inspections of the Property If it has reasonable cause, Lender may inspect the interior of the improvements on the Property Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause

8 Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence

9 Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property Lender's actions can include, but are not limited to (a) paying any sums secured by a lien which has priority over this Security Instrument, (b) appearing in court, and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note

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Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed Borrower is not a party to the Mortgage Insurance

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums)

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance " Further

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund

(b) Any such agreements will not affect the rights Borrower has " if any " with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11 Assignment of Miscellaneous Proceeds, Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value Any balance shall be paid to Borrower

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due

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

Loan No: 0000479436

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

Loan No: 0000479436

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

Loan No: 0000479436

NON-UNIFORM COVENANTS Borrower and Lender further covenant and agree as follows

22 Acceleration; Remedies Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify, (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lenders' election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale Lender or its designee may purchase the Property at any sale

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it Such person or persons shall pay any recordation costs Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law

25 Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U S $ MAXIMUM ALLOWED BY LAW

Unofficial Copy

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it

Vicenta Lincicome (Seal) -Borrower
VICENTA LINCICOME

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

Loan No: 0000479436

STATE OF NEVADA, Carson City County ss.

This instrument was acknowledged before me on May 28 2007, by

Vicenta Lincicome

Carol Costa

My Commission Expires 11-4-08

CAROL COSTA
NOTARY PUBLIC
STATE OF NEVADA
No 92 0221 5 My Appt Exp Nov 4, 2008

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS
DRAW MERS NV CVL DT 13 WPF (0101DOCS\DEEDS\CVL\NV_MERS CVL)

Form 3029 1/01
(page 13 of 13 pages)

WHEN RECORDED MAIL TO

MIP INSURING DEPARTMENT
SIERRA PACIFIC MORTGAGE COMPANY, INC.
50 IRON POINT CIRCLE, STE 200
FOLSOM, CA 95630
916-932-1700

Unofficial Copy

ADJUSTABLE RATE RIDER

(1 Year LIBOR Index - Rate Caps)
(Assumable after Initial Period)

THIS ADJUSTABLE RATE RIDER is made this 23rd day of MAY 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure the Borrower's Adjustable Rate Note (the "Note") to SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender") of the same date and covering the property described in the Security Instrument and located at

70 RIVERSIDE DRIVE
DAYTON, NV 89403
[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES
The Note provides for an initial interest rate of 6.875 % The Note provides for changes in the interest rate and the monthly payments, as follows

4 INTEREST RATE AND MONTHLY PAYMENT CHANGES
(A) Change Dates
The interest rate I will pay may change on the first day of JUNE 2017, and may change on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index
Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U.S.

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Unofficial Copy

dollar-denominated deposits in the London market, as published in *The Wall Street Journal* The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index "

If the Index is no longer available, the Note Holder will choose a new Index which is based upon comparable information The Note Holder will give me notice of this choice

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding 2.250 %) percentage points (*TWO AND ONE QUARTER* to the Current Index The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0 125%) Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments The result of this calculation will be the new amount of my monthly payment

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11 875 % or less than 2.250 % Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than *TWO* percentage points (2.000 %) from the rate of interest I have been paying for the preceding 12 months My interest rate will never be greater than 11.875 %

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1 UNTIL BORROWER'S INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION A ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL BE IN EFFECT AS FOLLOWS.

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by

Loan No: 0000479436

Unofficial Copy

Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law

If Lender exercises this option Lender shall give Borrower notice of acceleration The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower

2 AFTER MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT DESCRIBED IN SECTION 11(A) ABOVE SHALL THEN CEASE TO BE IN EFFECT, AND UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL INSTEAD BE DESCRIBED AS FOLLOWS

Transfer of the Property or a Beneficial Interest in Borrower As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law Lender also shall not exercise this option if (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee, and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower

Loan No: 0000479436

UNOFFICIAL COPY

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

[Sign Original Only]

Loan No: 0000479436

Unofficial Copy

INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

Property Address 70 RIVERSIDE DRIVE
DAYTON, NV 89403

THIS ADDENDUM is made this 23rd day of MAY, 2007, and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date as this Addendum executed by the undersigned and payable to SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender")

THIS ADDENDUM supersedes Section 4(C) of the Rider None of the other provisions of the Rider are changed by this Addendum

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index for such Change Date The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0 125%) Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date

During the Interest-Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest-Only Period unless I make a voluntary prepayment of principal during such period If I make a voluntary prepayment of principal during the Interest-Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest at the then current interest rate on the lower principal balance At the end of the Interest-Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest-Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note The result of this calculation will be the new amount of my monthly payment After the end of the Interest-Only Period, my payment amount will not be reduced due to voluntary prepayments

Loan No: 0000479436

Unofficial Copy

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider

Vicenta Lincicome (Seal) -Borrower
VICENTA LINCICOME

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

[Sign Original Only]

Loan No: 0000479436

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EXHIBIT "A"
LEGAL DESCRIPTION

Order No: 06041897-JA

The land referred to herein is situated in the State of Nevada, County of LYON, described as follows:

LOT 42 AS SHOWN ON THE OFFICIAL MAP OF GOLD CANYON ESTATES, PHASE 2, FILE IN THE OFFICE OF THE LYON COUNTY, NEVADA RECORDER, ON OCTOBER 20, 2005, AS DOCUMENT NO. 365687.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF, LYING BELOW THE NATURAL ORDINARY HIGH WATER LINE OF THE CARSON RIVER.

ASSESSOR'S PARCEL NO. 029-401-17

Unofficial Copy

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

DOC# 572258
11/03/2017 10:29AM
Official Record
Requested By
SERVICELINK TITLE AGENCY INC.
Lyon County - NV
Dawna L. Warr - Recorder
Page: 1 of 6 Fee: $288.00
Recorded By BKC RPTT: $0.00

0572258

APN: 029-401-17

WHEN RECORDED MAIL TO:
Sables, LLC
c/o Zieve Brodnax & Steele
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169

TS No. : 16-42397

NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO SELL THE REAL PROPERTY UNDER DEED OF TRUST

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business day prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this Notice of Default may be recorded (which date of recordation appears on this notice). This amount is $266,672.39 as of 10/31/2017 and will increase until your account becomes current.

NOTICE IS HEREBY GIVEN THAT: SABLES, LLC, a Nevada limited liability company is either the original trustee, or the duly appointed substituted Trustee, or acting as agent for the Trustee or the Beneficiary under a under a Deed of Trust dated 5/23/2007, executed by **VICENTA LINCICOME, A MARRIED WOMAN,** as trustor to secure obligations in favor of **Mortgage Electronic Registration Systems, Inc., as nominee for SIERRA PACIFIC MORTGAGE COMPANY, INC. its successors and** assigns, as Beneficiary, recorded 5/25/2007, instrument no. **407150 The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808** and recorded on **5/4/2011** of Official Records in the office of the County recorder of **Lyon, County, Nevada** securing, among other obligations including

One note(s) for the Original sum of **$381,150.00,** that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by Beneficiary; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:

The monthly installment which became due on 9/1/2008, along with late charges, and all subsequent monthly installments.

You are responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to; foreclosure trustee fees and costs, advances and late charges.

Furthermore, as a condition to bring your account in good standing, you must provide the undersigned with written proof that you are not in default on any senior encumbrance and provide proof of insurance.

Unofficial Copy

T.S. No.: 16-42397

Nothing in this Notice of Default should be construed as a waiver of any fees owing to the beneficiary under the Deed of Trust, pursuant to the terms and provisions of the loan documents.

That by reason thereof the present Beneficiary under such deed of Trust has executed and delivered to said duly appointed Trustee a written Declaration of Default and Demand for Sale and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. As to owner-occupied property, where reinstatement is possible, the time to reinstate may be extended to 5 days prior to the date of sale pursuant to NRS 107.080. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:

PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee
c/o Fay Servicing, LLC
c/o SABLES, LLC, a Nevada limited liability company
3753 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
Beneficiary Phone: 800-495-7166
Trustee Phone: (702) 664-1774

To reach a person with authority to negotiate a loan modification on behalf of the lender:

Lauren Jowers
800-495-7166

Property Address: **70 RIVERSIDE DRIVE, DAYTON, Nevada 89403**

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.
REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

Attached hereto and incorporated herein by reference is the Affidavit of Authority in Support of Notice of Default and Election to Sell pursuant to NRS 107.080.

Unofficial Copy

T.S. No.: 16-42397

You may wish to consult a credit counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with names and addresses of local HUD approved counseling agency by calling their approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to HUD's website: http://portal.hud.gov.

Dated: 11/1/2017

SABLES, LLC, a Nevada limited liability company, as Trustee
Sables, LLC
c/o Zieve Brodnax & Steele
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
(702) 948-8565

Michael Busby, Trustee Sale Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 11/1/2017, before me, Christine O'Brien, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

CHRISTINE O'BRIEN
Notary Public - California
Orange County
Commission # 2167057
My Comm. Expires Oct 8, 2020

Unofficial Copy

Affidavit of Authority

(Nevada Revised Statute §107.080 as amended effective June 1, 2013)

Re: TS# 16-42397
Borrower Name: VICENTA LINCICOME
Property Address: 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403

I, Veronica Talley, am the Foreclosure Specialist of Fay Servicing, LLC, the current servicer for the beneficiary of the deed of trust described in the notice of default and election to sell to which this affidavit is attached ("Deed of Trust"). The following facts are based upon my personal review of documents that are of public record in the State of Nevada and personal knowledge acquired by my personal review of the business records of the beneficiary, which are within my custody and control. The business records of the beneficiary contain entries made in the ordinary course of business at or about the time the events reflected therein occurred.

1(a). The full name and business address of the current trustee of record for the Deed of Trust is Sables LLC, a Nevada Limited Liability Company, 3753 Howard Hughes Parkway, Suite 200, Las Vegas, Nevada 89169

1(b). The full name and business address of the current holder of the Note secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services – PROF .

1(c). The full name and business address of the current beneficiary for the obligation or debt secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services – PROF

1(d). The full name and business address of the current servicer for the obligation secured by the Deed of Trust is Fay Servicing, LLC, 440 S. LaSalle St, Suite 2000, Chicago, IL 60605

2. From my review of the documents of public record and the business records of the current beneficiary and a title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to Chapter 692A of the NRS, the name of each assignee and each recorded assignment of the Deed of Trust.

2(a). Assignee Name: PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee
Instrument and Recording Information: Assignment of Deed of Trust recorded on 11/25/2016 Instrument No. 544042

2(b). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP
Instrument and Recording Information: Corporation Assignment of Deed of Trust recorded on 08/15/2011 Instrument No. 480360

2(c). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP
Instrument and Recording Information: Assignment of Mortgage recorded on 11/10/2010 Instrument No 467719

3. The current beneficiary under the Deed of Trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the Deed of Trust.

4. From my review of the documents of public record and the business records of the current beneficiary, the current trustee has authority to exercise the power of sale with respect to the property

Unofficial Copy

encumbered by the Deed of Trust, pursuant to instruction from the current beneficiary of record and current holder of the note secured by the Deed of Trust.

5. From my review of the documents of public record and the business records of the current beneficiary, the beneficiary, servicer of the obligation, or an attorney of the beneficiary or servicer has sent to VICENTA LINCICOME, a written statement of: (I) the amount of payment required to make good the deficiency in performance of payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement; (II) the amount in default; (III) the principal amount of the obligation or debt secured by the deed of trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the power of sale; and (VI) contact information for obtaining the most current amounts due and the local or toll-free telephone number that VICENTA LINCICOME may call to receive the most current amounts due and a recitation of the information in this affidavit.

6. The borrower or obligor of the loan secured by the Deed of Trust may call Fay Servicing, LLC at 800-495-7166 to receive the most current amounts due and a recitation of the information contained in this Affidavit.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this Affidavit was executed on October 5, 2016.

By: Fay Servicing, LLC, its attorney in fact

Veronica Talley
(Print Name)

Veronica Talley
(Signature)

Foreclosure Specialist IV
(Title)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Texas

County of Denton

On October 6th 2016 before me, Allison Ann Johnston, Notary Public, personally appeared, Veronica Talley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Allison Ann Johnston
Signature

Notary Seal
ALLISON ANN JOHNSTON
Notary Public, State of Texas
My Commission Expires
April 27, 2019

Affidavit of Authority to Exercise the Power of Sale
Revised 6/1/2013

Declaration of Mortgage Servicer Pursuant to NR 107.510

T.S. Number: 16-42397
Borrower(s): VICENTA LINCICOME
Mortgage Servicer: Fay Servicing, LLC
Property Address: 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403

The undersigned, as an authorized agent or employee of the mortgage servicer named below, declares that:

1. ☒ The mortgage servicer has contacted the borrower pursuant to NRS 107.510 (2), to "assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale". Thirty (30) days, or more, have passed since the initial contact was made.

2. ☐ The mortgage servicer has exercised due diligence to contact the borrower pursuant to NRS 107.510 (5), to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.

3. ☐ No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to NRS 107.410.

4. ☐ During the preceding annual reporting period, the Lender has foreclosed on 100 or fewer real properties located in this state and therefore, pursuant to NRS 107.460, the provisions of NRS 107.400 to 107.560, inclusive, do not apply.

5. ☐ The loan is not a "residential mortgage loan" as defined in NRS 107.450.

I certify that this declaration is accurate, complete and supported by competent and reliable evidence which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

Dated: 4-5-2016

By:

Unofficial Copy

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EXHIBIT PAGE ONLY

EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Doc #: 587470

10/12/2018 02:27 PM Page: 1 of 2

OFFICIAL RECORD

Requested By: SERVICELINK TITLE AGENCY INC

Lyon County, NV
Dawna L. Warr, Recorder

Fee: $39.00 RPTT: $0.00
Recorded By: mkassebaum

APN No.: 029-401-17

[Recording requested by:]

[When recorded mail to:]
Sables LLC
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, Nevada 89148

T.S. No. 16-42397

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 5/23/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

TRUSTOR: VICENTA LINCICOME, A MARRIED WOMAN
Duly Appointed Trustee: Sables LLC, a Nevada Limited Liability Company
Recorded 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011 Official Records in the office of the Recorder of Lyon County, Nevada, Described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State ofNevada, described as follows:

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Date of Sale: 11/9/2018 at 11:00 AM

Unofficial Copy

Place of Sale: 31 S. Main Street Yerington, Nevada 89447
Lyon County Courthouse
Estimated Sale Amount: $666,632.22
Street Address or other common designation of real property: 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403

A.P.N. No.: 029-401-17

The undersigned Trustee disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above. If no street address or other common designation is shown, directions to the location of the property may be obtained by sending a written request to the beneficiary within 10 days of the date of first publication of this Notice of Sale.

Date: 10/11/2018

Sables LLC, a Nevada Limited Liability Company
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
Phone: (702) 948-8565
Sale Information: (714) 848-9272 www.elitepostandpub.com
For Non-Automated Sale Information, call: (702) 664-1774

Michael Busby, Trustee Sale Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 10/11/2018, before me, A.J. Buckelew Notary Public, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

A.J. Buckelew
Signature of Notary

A. J. BUCKELEW
Notary Public - California
Orange County
Commission # 2255941
My Comm. Expires Aug 26, 2022

THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND
ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE.

Unofficial Copy

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EXHIBIT PAGE ONLY

EXHIBIT 4

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

John T. Steffen (4390)
Matthew K. Schriever (10745)
Alex R. Velto (14961)
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel (702) 385-2500
Fax (702) 385-2086
mschriever@hutchlegal.com

Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9157
Fax (310) 730-5967
caseynelson@wedgewood-inc.com
Attorney for Defendant, Counterclaimant, and Cross-Plaintiff Breckenridge Property Fund 2016, LLC

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50, Defendants. AND RELATED MATTERS.	Case No.: 18-CV-01332 Dept No.: II **DECLARATION IN SUPPORT OF BRECKENRIDGE PROPERTY FUND 2016 LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF**

The undersigned, Jason Campbell declares under penalty of perjury that the following assertions are true:

1. I am an authorized agent of Breckenridge Property Fund 2016, LLC ("Breckenridge").

2. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true. I make this declaration in support of Breckenridge's motion for summary judgment against Plaintiffs.

3. On January 4, 2019, Breckenridge purchased real property located at 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") at a foreclosure sale conducted pursuant to NRS 107. ("Foreclosure Sale").

4. Breckenridge was the highest bidder and paid $294,000.01 to purchase the Subject Property at the Foreclosure Sale.

5. Breckenridge relied on the fact that the noticed Foreclosure Sale was valid because Plaintiffs failed to post the court-ordered bond.

6. Breckenridge had no role in this dispute prior to its purchase of the Subject Property at the Foreclosure Sale.

7. Breckenridge is entitled to an order quieting title in its favor because there were no defects in the Foreclosure Sale and any rights, title, or interest that Plaintiffs previously had in the Subject Property has been terminated by way of the Foreclosure Sale

8. I declare under penalty of perjury of the laws of the United States and the State of Nevada that these facts are true to the best of my knowledge and belief.

///

///

///

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person.

Jason Campbell, authorized representative of
Breckenridge Property Fund 2016, LLC

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EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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EXHIBIT PAGE ONLY

EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

70 RIVERSIDE DR

Doc #: 591393
01/25/2019 08:21 AM Page: 1 of 2
OFFICIAL RECORD
Requested By: FIRST AMERICAN TITLE INSURANCE O
Lyon County, NV
Margie Kassebaum, Recorder
Fee: $38.00 RPTT: $1,148.55
Recorded By: inhumlidad

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:
Breckenridge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NV 89146

Forward Tax Statements to the address given above

Recorded As An Accommodation Only Without Liability

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397
Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: $ 1148.55
The Grantee Herein WAS NOT the Foreclosing Beneficiary.
The Amount of the Unpaid Debt was $671,249.37
The Amount Paid by the Grantee was $294,000.01
Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:
All that certain real property situate in the County of Lyon, State of Nevada, described as follows:
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.
EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:
Breckenridge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NV 89146

Recorded As An Accommodation Only Without Liability

Forward Tax Statements to the address given above

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397
Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: $1148.55
The Grantee Herein WAS NOT the Foreclosing Beneficiary.
The Amount of the Unpaid Debt was $671,249.37
The Amount Paid by the Grantee was $294,000.01
Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:
All that certain real property situate in the County of Lyon, State of Nevada, described as follows:
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EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

TRUSTEE'S DEED UPON SALE

T.S. #: 16-42397
Order #: 160069595-NV-VOO

Trustee having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Breach and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified return receipt mail, postage pre-paid to each person entitled to notice in compliance with Nevada Revised Statutes 107.080.

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 1/4/2019. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being $ $294,000.01, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, SABLES, LLC, a Nevada limited liability company, as Trustee, has this day, caused its name to be hereunto affixed.

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey Neal

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 1/15/2019 before me, the undersigned, J. Develasco Notary Public, personally appeared Geoffrey Neal who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

J. Develasco
#2147185 Expires 3/21/20

WITNESS my hand and official seal.

Signature _____ (Seal)
J. Develasco

J. Develasco

J. DEVELASCO
Notary Public - California
Orange County
Commission # 2147185
My Comm. Expires Mar 21, 2020

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a) 029-401-17
   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
[ ]	Other _____		

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page _____
Date of Recording: _____
Notes:

3. a. Total Value/Sales Price of Property $ $294,000.01
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ $294,000.01
   d. Real Property Transfer Tax Due $ 1148.56

4. If Exemption Claimed:
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity AGENT

Signature _____ Capacity AGENT

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Sables, LLC, a Nevada limited liability company	Print Name: Breckenridge Property Fund, 2016, LLC
Address: 3753 Howard Hughes Parkway, Suite 200, Las Vegas, NV 89169	Address: 2320 Potosi St. Ste 130 Las Vegas, NV 89146

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name: First American Escrow #: 0000
Address: 1000 W Charleston
City: Las Vegas State: NV Zip: 89135

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

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EXHIBIT PAGE ONLY

EXHIBIT 6

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

THREE-DAY NOTICE TO QUIT

TO: VICENTA LINCICOME
TENANT AND SUBTENANT AND ALL OCCUPANTS
70 RIVERSIDE DR.
DAYTON, NEVADA 89403

Or any occupants of the above-named property or any persons in possession of the above-mentioned property.

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED AND DEMAND IS MADE that you surrender possession of the property to the undersigned at or before noon of the third (3) day after receipt of this Notice pursuant to Sections 40.255, 40.280, and 40.290 to 40.420 of the Nevada Revised Statutes.

YOU ARE HEREBY NOTIFIED that if you are a tenant of the prior owner of the Property, you are to refer to the Notice to Tenant which is attached as Exhibit A to this Three-Day Notice to Quit. If you need another copy of the Notice to Tenant, please contact the undersigned below.

UPON YOUR FAILURE TO VACATE OR SURRENDER THE PREMISES AS DEMANDED, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC

CASEY J. NELSON, ESQ.
Nevada Bar # 12259
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorney for Plaintiff
Breckenridge Property Fund 2016, LLC

EXHIBIT A

EXHIBIT A

NOTICE TO TENANT

TO: VICENTA LINCICOME
TENANT AND SUBTENANT AND ALL OCCUPANTS
70 RIVERSIDE DR.
DAYTON, NEVADA 89403

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED OF A CHANGE OF OWNERSHIP. The new owner of the property is BRECKENRIDGE PROPERTY FUND 2016, LLC, 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146.

YOU MUST CONTACT US AND ESTABLISH YOUR BONA FIDE TENANCY in the property **within three (3) business days** of receipt of this Notice.

IN ORDER TO ESTABLISH YOUR TENANCY, within three (3) business days of receipt of this Notice you must furnish a copy of your fully executed, current lease or rental agreement and proof of all past payments to Breckenridge Property Fund 2016, c/o the owner's attorney, Casey J. Nelson, Esq., at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Failure to produce valid documentation clearly demonstrating a bona fide tenancy will result in eviction proceedings immediately being brought against all occupants.

A LEASE OR TENANCY shall be considered bona fide only if:

1) The mortgagor/prior owner or the child, spouse, or parent of the mortgagor/prior owner under the contract is not the tenant or occupant;
2) The lease or tenancy was the result of an arms-length transaction; and
3) The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy

The new owner reserves the right to challenge the authenticity and validity of any purported lease or tenancy based upon other terms, conditions, or factors which appear fraudulent or which are not otherwise standard terms within residential leases in the geographic area.

YOU ARE HEREBY NOTIFIED that if you are a bona fide tenant or subtenant in the property, **you must still vacate the property within either 1) 90 days of this notice; or 2) upon the expiration of the remainder of the term of your bona fide lease, whichever date is later.**

YOU ARE HEREBY NOTIFIED that you must continue to pay rent to the new owner throughout the remainder of your tenancy in order to avoid eviction proceedings being brought against you for non-payment of rent.

Rent shall be remitted to BRECKENRIDGE PROPERTY FUND 2016, LLC at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Your failure to pay rent to the new owner throughout the notice period or comply with any other term of the agreement or applicable law shall constitute a breach of the lease or rental agreement and may result in eviction proceedings.

YOU ARE HEREBY NOTIFIED that upon your failure to timely establish your tenancy or upon your failure to fully vacate or surrender the premises as demanded, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC

CASEY J. NELSON, ESQ.
Nevada Bar # 12259
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorney for Plaintiff
Breckenridge Property Fund 2016, LLC

Attorney or Party without Attorney: Wedgewood, LLC Casey J. Nelson, Esq. (SBN 12259) 2320 Potosi Street, Suite 130 Las Vegas, NV 89146 Telephone No: (702) 305-9157 Attorney For: Plaintiff	Ref. No. or File No.: 70 RIVERSIDE DR.			For Court Use Only
Insert name of Court, and Judicial District and Branch Court:				
Plaintiff: BRECKENRIDGE PROPERTY FUND 2016, LLC Defendant: VICENTA LINCICOME; TENANT AND SUBTENANT AND ALL OCCUPANTS				
AFFIDAVIT OF SERVICE	Hearing Date:	Time:	Dept/Div:	Case Number:

1. *At the time of service I was at least 18 years of age and not a party to this action.*

2. I served copies of the Three-Day Notice to Quit, Notice to Tenant

3. a. *Party served:* Vicenta Lincicome; Tenant and Subtenant and All Occupants
   b. *Person served:* Posted

4. *Address where the party was served:* 70 Riverside Drive, Dayton, NV 89403

5. *I served the party:*
   a. By Posting. On: Mon, Jan 28 2019 (2) at: 02:20 PM by posting a copy of the documents in a conspicuous place on the property.
   b. By Mailing. On: Mon, Jan 28 2019 by mailing a copy of the documents, addressed as shown in Item 4, via Certified Mail Issued by United States Post Office from: Las Vegas, NV.

6. *Person Who Served Papers:*
   a. Toni Ruckman (R-052005, Washoe)
   b. FIRST LEGAL
      2920 N. Green Valley Parkway, Suite 514
      Henderson, NV 89014
   c. (702) 671-4002
   d. *The Fee for Service was:*

Pursuant to NRS 53.045

7. *I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.*

01/29/2019 — *(Date)*

Toni L Ruckman — *(Signature)*

7018 1830 0002 1005 0251

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

DAYTON, NV 89403

Certified Mail Fee $3.50

Extra Services & Fees (check box, add fee as appropriate)
- ☐ Return Receipt (hardcopy) $ $0.00
- ☐ Return Receipt (electronic) $ $0.00
- ☐ Certified Mail Restricted Delivery $ $0.00
- ☐ Adult Signature Required $ $0.00
- ☐ Adult Signature Restricted Delivery $

Postage $0.55

Total Postage and Fees $6.85

JAN 28 2019
Postmark Here
01/28/2019
55105770

Sent To VICENTA LINCICOME
Street and TENANT/SUBTENANT/ALL OCCUPANTS
City, State 70 RIVERSIDE DR.
DAYTON, NV 89403-9055

PS Form 3800, August 2006 See Reverse for Instructions

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EXHIBIT PAGE ONLY

EXHIBIT 7

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

John T. Steffen (4390)
Matthew K. Schriever (10745)
HUTCHISON & STEFFEN, PLLC
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
Telephone: (702) 385-2500
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mschriever@hutchlegal.com

Casey J. Nelson (12259)
WEDGEWOOD, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Telephone: (702) 305-9157
Facsimile: (310) 730-5967
caseynelson@wedgewood-inc.com

Attorney for Defendant / Counterclaimant
Breckenridge Property Fund 2016, LLC

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants.	Case No.: 18-CV-01332 Dept No.: II **DECLARATION IN SUPPORT OF MOTION FOR ORDER REQUIRING PLAINTIFF TO DEPOSIT RENTAL AND/OR MORTGAGE PAYMENTS WITH COURT**

AND RELATED ACTIONS

The undersigned, Jason Campbell declares under penalty of perjury that the following assertions are true:

1. I am the Director of Regional Operations for Wedgewood, LLC, which is the managing member of Defendant / Counterclaimant Breckenridge Property Fund 2016, LLC ("Breckenridge").

2. I am an authorized representative of Breckenridge.

3. Breckenridge is a limited liability company authorized to do business in Nevada, that purchases real estate throughout the state of Nevada.

4. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

5. As the Director of Regional Operations for Wedgewood, LLC, the major responsibilities and duties of my position include, among other, the following:

a. Daily analysis of upcoming properties scheduled to go to sale in foreclosure;

b. Daily analysis of real property market conditions and property valuations;

c. Area Property Manager oversight, renovation direction, budgeting, approval; and

d. Area real estate professional oversight including pricing, offer negotiation, and repair negotiation.

6. Breckenridge purchased the real property located at 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") at a foreclosure sale that occurred on January 4, 2019.

7. Breckenridge purchased the Subject Property at the foreclosure sale as an independent, good faith purchaser.

8. I have reviewed the publicly available information available for the Subject Property and compared that information with online rental availability of other real estate available for rent in Dayton, Nevada and Fernley, Nevada.

9. Based on current available rental prices and rentals in those surrounding areas I have determined that a fair market rental value for the Subject Property to be in the $2,250.00 to $2,500.00 per month range.

10. The factors I utilized to determine that fair market rental range in comparing the Subject Property with other properties for rent included year built, square footage, bed/bath count, neighborhood, larger garage size, single story, lot size, availability, and desirability.

I declare under penalty of perjury of the laws of the United States and the State of Nevada that these facts are true to the best of my knowledge and belief.

Jason Campbell, Director of Regional Operations for Wedgewood, LLC

Exhibit 16

FILED

2021 SEP 15 AM 9:59

Victoria Tovar

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * * * *

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, a Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC, substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MCM-2018-NPL2, substituted in for DOE 3; and DOES 4-10.

Defendants.

BRECKENRIDGE PROPERTY FUND 2016, LLC

Counterclaimant,

vs.

ALBERT ELLIS LINCICOME, JR., an individual; VICENTA LINCICOME, an individual; and DOE OCCUPANTS 1-5.

Counterdefendants.

PLAINTIFFS' MOTION FOR STAY PENDING APPEAL

COME NOW, Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME by and through their attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and Justin M. Clouser, Esq., of Clouser Hempen Wasick Law Group, Ltd., and hereby move this Court for an order staying all proceedings in this matter pending appeal of the *Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC* and the *Order on Breckenridge Motion for Summary Judgment,* both entered June 23, 2021.

This motion is made pursuant to NRCP 62(d), and is supported by the Memorandum of Points and Authorities attached hereto, the documents previously admitted as evidence in this Court, the supporting Exhibits attached hereto, and the pleadings and papers on file herein.

Respectfully submitted 14th day of September, 2021

MILLWARD LAW, LTD.

By: _____

Michael G. Millward, Esq.
NSB: 11212
Attorney for Petitioner
1591 Mono Ave.
Minden, NV 89423
(775) 600-2776

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME (hereinafter collectively the "Plaintiffs" or the "Lincicomes") seek an order from this Court staying any action on the underlying proceedings until such time as their appeal of this Court's summary judgment orders is resolved.

On June 23, 2021, this Court entered its *Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC* and the *Order on Breckenridge Motion for Summary Judgment*. On July 19, 2021, Plaintiffs appealed those orders to the Nevada Supreme Court, and the appeal is currently pending.

Because the Court's orders which are the subject of the appeal concern the rights and interest the Lincicomes have in their home located at 70 Riverside Drive, Dayton, Nevada (hereinafter the "Property"), and because those interests may be affected by a decision of the Nevada Supreme Court, a stay of the proceeding including an order on the request for Writ of Restitution is necessary and appropriate to prevent serious and irreparable harm.

Therefore, the Lincicomes respectfully request that this Court issue a stay of all proceedings pending appeal.

II. A STAY IS APPROPRIATE PENDING APPEAL

A. Legal Standard.

NRCP 62 (d)(2) provides the Court the authority to enter a stay pending appeal of the district court's order to the Nevada Supreme Court.

When determining to issue a stay of proceedings pending appeal, courts are to consider the following:

> (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied;
> (2) whether the appellant ... will suffer irreparable or serious injury if the stay or injunction is denied;

> (3) whether respondent ... will suffer irreparable or serious injury if the stay or injunction is granted; and
> (4) whether appellant/petition is likely to prevail on the merits in the appeal.

See Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 89 P.3d 36 (2004). As established herein, all of the factors weigh in favor of the issuance of a stay in this action.

B. <u>The object of the appeal will be defeated if the stay is not entered.</u>

The object of Plaintiffs' appeal will be defeated if a stay is not issued. Plaintiffs filed their Second Amended Complaint on December 20, 2019, in order to set aside the Trustee's Deed Upon Sale, recorded on January 25, 2019, to quiet title to the Lincicomes' residence in favor of the Lincicomes, and to determine the parties respective duties and rights, including those under the 2007 Deed of Trust as modified by the 2009 Loan Modification Agreement.

If the Court's *Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC* and the Court's *Order on Breckenridge Motion for Summary Judgment* and proceedings herein are not stayed, Plaintiffs will be evicted from their home, which will undoubtedly defeat the primary object of their appeal, which seeks review of this Court's Orders by the Nevada Supreme Court.

C. <u>Plaintiffs will suffer irreparable harm if the stay is not granted.</u>

Plaintiffs will suffer irreparable injury if the stay is denied. Nevada law is clear that the loss of real property constitutes irreparable harm because real property is unique. *See Dixon v. Thatcher,* 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987) (holding that "real property and its attributes are considered unique and loss of real property rights generally results in irreparable harm").

The Lincicomes' residence sits in the balance of this Court's decision. This Court's Summary Judgment Orders were decided narrowly on several issues including the validity of actions taken by the Trustee and the beneficiary of the Lincicomes' mortgage loan. The acts of Defendants related to the nonjudicial foreclosure have been the subject matter of this case prior to the foreclosure of the Lincicomes' property.

Defendant Breckenridge Property Fund 2016, LLC (hereinafter "Breckenridge") was aware or constructively aware, of the allegations in this case prior to purchasing the property at foreclosure. Breckenridge has admitted that it knew of the issues pertaining to this case prior to its purchase at foreclosure and knew that "Plaintiffs failed to post the court ordered bond," and it chose to purchase the property out of foreclosure anyway. See Declaration in Support of Breckenridge Property Fund 2016, LLC's Motion for Summary Judgment Against Plaintiff attached hereto as **Exhibit 1**.

Money damages will be insufficient to replace the Lincicomes' home if they happen to prevail upon any one of their claims that would result in the nullification of the foreclosure. Furthermore, NRS 107.560(4) makes it clear that the validity of the sale is not affected only as to a bona fide purchaser of the property "without notice." *See* NRS 107.560(4). Breckenridge is not a bona fide purchaser of the property. See Exhibit 1.

Breckenridge had notice and therefore the sale of the property, under the alleged violations of the Homeowners Bill of Rights, which the Court found the Lincicomes were likely to prevail upon in its December 31, 2018 Order, remains subject to potential invalidation on appeal.

D. <u>Defendants will not suffer irreparable or serious harm if the stay is granted.</u>

The Defendants in this matter, including Breckenridge will not suffer irreparable or serious harm if the stay is granted. With the growth of the value of the housing market, it may be in Breckenridge's best interest not to oust Plaintiffs or proceed with the sale of the property. Notably, Breckenridge purchased the property for $294,000. At present Zillow.com provides that the property is valued at $537,500. See Zillow valuation attached as **Exhibit 2.**

The fact that Breckenridge may have to wait a little longer to evict the Plaintiffs from their home is not irreparable harm sufficient to deny the requested stay. *See Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985) (holding that "[m]ere injuries, however

substantial, in terms of money, time and energy necessarily expended in the absence of a stay" are not irreparable harm (internal quotations omitted)).

E. <u>Review of Court Orders and Likelihood to Prevail.</u>

The Lincicomes' appeal is not brought in bad faith. I am sure the Court can agree that the law and the facts of this case made it a difficult case to determine by way of summary judgment. Accordingly, without any disrespect to the Court intended, the Lincicomes believe that review of the Court's decision is warranted, especially as to the application of the unique and novel facts and circumstances that arise in this case as applied to the law under Chapter 107 of the Nevada Revised Statutes.

If the Lincicomes are meritorious on any one of the close issues, such as the claim for wrongful foreclosure or violation of the Homeowners Bill of Rights, the appropriate remedy under Nevada law would be the declaration that the foreclosure sale was void. *See* NRS 107.080(5) or NRS 107.560(4).

The Court has admonished the Lincicomes in this case repeatedly that they will not get their home for free. The Lincicomes have never sought such relief and do not seek that relief now. It is appropriate that the Lincicomes be given the opportunity to have the Court's summary judgment decision fully and finally reviewed. If this Court's decision is affirmed, then the Lincicomes will be required to vacate their home and the Defendants in this matter will be able to seek costs as is appropriate.

However, if the Court does not stay all pending matters, including Breckenridge's request for writ of restitution, and the Supreme Court reverses this Court's decision on grounds sufficient to declare the foreclosure void under NRS 107.080(5), or under NRS 107.560(4), then the Lincicomes will be irreparably injured and the relief provided under NRS 107.080(5) and NRS 107.560(4) will be unavailable to them.

The fact that the Lincicomes did not prevail before this Court does not mean that they will not or cannot prevail before the Nevada Supreme Court. Moreover, when seeking a stay, "a movant does not always have to show a probability of success on the merits," if there is a

"serious legal question involved" and the "balance of equities weighs heavily in favor of granting the stay." *Hansen,* 116 Nev. at 659, 6 P.3d at 987 (internal quotations omitted).

As set forth above, because denial of stay could result in irreparable harm to the Lincicomes, the Court should find that the balance of equities as well as the applicable relief under Nevada law weighs heavily in favor of granting the stay. Therefore, the Lincicomes respectfully request that this Court stay summary judgment Orders and all proceedings pending appeal.

F. <u>Defendants are Adequately Protected.</u>

Pursuant to NRCP 62 (d)(1), the Court may require a bond be issued when staying a proceeding pending appeal. *See,* NRCP 62 (d)(1).

It is well accepted that the term "may" as used in NRCP 62 is permissive, not mandatory. *See, State ex. rel. Pub Serv. Comm'n v. First Judicial Dist. Court ex. rel. Carson City,* 94 Nev. 42, 574 P.2d 272 (1978).

"The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay." *Nelson v. Heer,* 121 Nev. 832, 122 P.3d 1252, (2005).

As to Breckenridge, there is simply no reason to require a bond where, as here, there is no financial award to protect pending appeal and when Breckenridge is overprotected by its interest in the Property. Furthermore, Breckenridge will retain its ability to evict the Plaintiffs from the real property following the appeal if the Court's Orders are affirmed. As to the other Defendants, the Lincicomes' Carson City property located at 2763 Carriage Crest, is not exempt from execution and would be subject to any judgment lien recorded against it.

Therefore, Plaintiffs respectfully request that this Court issue a stay of all proceedings.

Alternately, Plaintiffs request that this Court enter an order allowing them to post their interest in the real property located at 2763 Carriage Crest Drive, Carson City, Nevada, as security to be subject to judgment as the Court determines appropriate upon remand.

Generally, the party seeking a stay is required to post a bond "that will permit full satisfaction of the judgment." *McCulloch v. Jeakins,* 99 Nev. 122, 123, 659 P.2d 302, 303 (1983)*; see also NRCP 62 (d); Nelson v. Heer,* 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005) (holding that "alternate security" can be substituted for a bond).

"A district court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond, when unusual circumstances exist and so warrant. *Id.; see also Athridge v. Iglesias,* 464 F. Supp. 2d 19, 24 (D.D.C. 2006) (holding that "courts have discretion to approve other forms of security than a supersedeas bond").

To determine whether to accept alternate security, this Court considers:

> (1) the complexity of the collection process;
> (2) the amount of time required to obtain a judgment after it is affirmed on appeal;
> (3) the degree of confidence that the district court has in the ability of funds to pay the judgment;
> (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and
> (5) whether the defendant is in such a precarious financial position that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Nelson, 121 Nev. at 836, 122 P.3d at 1254 (internal quotations omitted). Again, these factors all weigh in favor of accepting the Lincicomes' Property as security for the stay.

First, allowing the real property listed above to be security for the stay will not complicate the collection process since the collection process would simply be allowing judgment to be recorded against the Property.

Second, if the Lincicomes lose on appeal, the stay will end promptly upon remand, and Breckenridge will be free to seek possession of 70 Riverside Drive in Dayton, and judgment may be entered against the Lincicomes' Carson City property for payment of any awarded costs.

V. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request a stay pending appeal be issued until the Nevada Supreme Court has determined the issues on appeal. Further, Plaintiffs

respectfully request that no bond be required, or in the alternative their real property located in Carson City serve as adequate security.

AFFIRMATION

The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not contain the social security number of any person or other personal information as defined by NRS 603A.040.

Dated this 14th day of September, 2021.

MILLWARD LAW, LTD

By: _____
Michael G. Millward, Esq.
NSB# 11212
Attorney for Plaintiffs

INDEX TO EXHIBITS

Exhibit 1	Declaration in Support of Breckenridge Property Fund 2016 LLC's Motion for Summary Judgment Against Plaintiff	3 pages
Exhibit 2	Zillow Valuation for 70 Riverside Drive, Dayton, Nevada	1 page

Exhibit 1

John T. Steffen (4390)
Matthew K. Schriever (10745)
Alex R. Velto (14961)
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
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Fax (310) 730-5967
caseynelson@wedgewood-inc.com
Attorney for Defendant, Counterclaimant, and Cross-Plaintiff Breckenridge Property Fund 2016, LLC

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants. AND RELATED MATTERS.	Case No.: 18-CV-01332 Dept No.: II **DECLARATION IN SUPPORT OF BRECKENRIDGE PROPERTY FUND 2016 LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF**

The undersigned, Jason Campbell declares under penalty of perjury that the following assertions are true:

1. I am an authorized agent of Breckenridge Property Fund 2016, LLC ("Breckenridge").

2. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true. I make this declaration in support of Breckenridge's motion for summary judgment against Plaintiffs.

3. On January 4, 2019, Breckenridge purchased real property located at 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") at a foreclosure sale conducted pursuant to NRS 107. ("Foreclosure Sale").

4. Breckenridge was the highest bidder and paid $294,000.01 to purchase the Subject Property at the Foreclosure Sale.

5. Breckenridge relied on the fact that the noticed Foreclosure Sale was valid because Plaintiffs failed to post the court-ordered bond.

6. Breckenridge had no role in this dispute prior to its purchase of the Subject Property at the Foreclosure Sale.

7. Breckenridge is entitled to an order quieting title in its favor because there were no defects in the Foreclosure Sale and any rights, title, or interest that Plaintiffs previously had in the Subject Property has been terminated by way of the Foreclosure Sale

8. I declare under penalty of perjury of the laws of the United States and the State of Nevada that these facts are true to the best of my knowledge and belief.

///

///

///

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person.

Jason Campbell, authorized representative of
Breckenridge Property Fund 2016, LLC

Exhibit 2

Zillow

Back to Your homes

70 Riverside Dr
Dayton, NV 89403

EDIT FACTS LIST HOME MORE

Refinance now and save

Mortgage rates are near historic lows. Find a lender in minutes and see if you could save.

Start saving

Zillow Group Marketplace, Inc. NMLS #1303160

Your Home Value

Zestimate

$537,500

Zestimate range

$495,000 - $581,000

Exhibit 17

FILED

2021 SEP 24 AM 10:57

Bayley Baptist

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not contain personal information, pursuant to NRS 603A.040

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * * * *

ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, a Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC, substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MCM-2018-NPL2, substituted in for DOE 3; and DOES 4-10.

Defendants.

BRECKENRIDGE PROPERTY FUND 2016, LLC

Counterclaimant,

vs.

ALBERT ELLIS LINCICOME, JR., an individual; VICENTA LINCICOME, an individual; and DOE OCCUPANTS 1-5.

Counterdefendants.

OPPOSITION TO BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS

COME NOW, Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME by and through their attorneys, Michael G. Millward, Esq., of Millward Law, Ltd., and Justin M. Clouser, Esq., of Clouser Hempen Wasick Law Group, Ltd., and hereby submit their *Opposition to Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents* (hereinafter "Opposition").

This Opposition is supported by and based upon *Plaintiffs' Motion for Stay Pending Appeal* filed on September 15, 2021, which was filed in response *to Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents* filed on or about September 8, 2021. *Plaintiffs' Motion for Stay Pending Appeal* is incorporated herein by this reference as Plaintiffs' Opposition. This Opposition is additionally supported by the documents previously admitted as evidence in this Court, and the pleadings and papers on file herein.

Respectfully submitted 22nd day of September, 2021

MILLWARD LAW, LTD.

By: _____

Michael G. Millward, Esq.
NSB: 11212
Attorney for Petitioner
1591 Mono Ave.
Minden, NV 89423
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Exhibit 18

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THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants. AND RELATED MATTERS.	Case No.: 18-CV-01332 Dept No.: II **DEFENDANT BRECKENRIDGE PROPERTY FUND 2016, LLC'S OPPOSITION TO PLAINTIFFS' MOTION TO STAY PENDING APPEAL**

COMES NOW Breckenridge Property Fund 2016, LLC ("Breckenridge"), by and through its attorneys of record, Hutchison & Steffen, PLLC and hereby submits this opposition to Plaintiffs' Motion for Stay Pending Appeal ("Stay Motion"). This opposition is made and based upon the following points and authorities, the pleadings and papers on file, the attached affidavits and exhibits, and any oral argument this court may entertain.

DATED this 30th day of September, 2021.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As this Court is well aware, this case pertains to the foreclosure of real property commonly known as 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") that took place on or about January 4, 2019 at which time Breckenridge purchased the Subject Property. Since that time the Plaintiffs Albert Ellis Lincicome, Jr. and Vicenta Lincicome ("Plaintiffs") have wrongfully been in possession of the Subject Property without making a single rental payment to Breckenridge, the rightful owner of the Subject Property. Ironically, the Plaintiffs recognize in this Stay Motion that this Court has correctly admonished them several times that they will not get their home for free. *See* Stay Motion at p. 6. Plaintiffs state that they are not seeking that relief (*id.*) but then proceed to argue throughout the entirety of their Stay Motion that they should receive exactly that: continued wrongful possession of the Subject Property – which they do not own – for free, to the detriment of Breckenridge.

Further, this Court has granted Breckenridge summary judgment on its claims and against Plaintiffs on their claims. Plaintiffs then continued to manipulate the Court system by filing an appeal which appears to lack any good faith basis and which will likely be dismissed. Not only that, Plaintiffs continue to request that this Court permit them to remain squatting in the Subject Property, paying no rent, and continuing to violate Breckenridge's rights with no consequences whatsoever. Given the current situation, there is no good faith basis for the Plaintiffs to continue – for years now – their ongoing violation of Breckenridge's rights through a stay pending their appeal.[1] Accordingly, Breckenridge respectfully requests that this Court deny the Plaintiffs' Stay Motion in its entirety.

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[1] In addition, Breckenridge has filed a Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents which is set to be heard by this Court on October 13, 2021.

II. STATEMENT OF FACTS

1. On or about May 23, 2007, Plaintiffs executed a Note and Deed of Trust that was secured by the Subject Property. ***See Exhibit #1.***

2. Plaintiffs subsequently defaulted on that loan obligation resulting in a Notice of Default and Notice of Sale being recorded against the Subject Property. ***See Exhibits #2 and #3.***

3. On November 7, 2018, Plaintiffs filed a complaint for injunctive relief, contractual claims, and declaratory relief regarding the scheduled foreclosure sale of the Subject Property.

4. On November 8, 2018, Plaintiffs recorded a lis pendens on the Property and also filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.

5. On December 31, 2018, the Court entered an order enjoining the foreclosure on the Subject Property **if** the Plaintiffs timely posted of a bond in the amount of $172,610.67 and additional security in the amount of $2,105.10 per month thereafter.

6. Plaintiffs failed to post the bond and the Subject Property went to foreclosure sale on or about January 4, 2019, at which time Breckenridge purchased the Subject Property at the NRS 107 foreclosure sale for $294,000.01, relying on the fact that the noticed foreclosure sale was valid because Plaintiff failed to post the requisite bond. ***See Exhibit #4.***

7. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's ownership of the Subject Property was recorded. ***See Exhibit #5.***

8. The Plaintiffs were in possession of the Property at the time Breckenridge purchased the Property and have been in possession since that date. On or about January 28, 2019, Breckenridge served a Three-Day Notice to quit to the Plaintiffs ("Three-Day Notice"). ***See Exhibit #6.***

9. Notwithstanding the Three-Day Notice, the Plaintiffs have remained in possession of the Subject Property up to and including the present time.

10. Breckenridge has made repeated demand on the Plaintiffs to vacate the Subject Property, but Plaintiffs, without cause or reason, have refused to vacate the Subject Property.

11. The Plaintiffs continue in possession of the Subject Property notwithstanding the termination of the tenancy by services of the aforesaid Three-Day Notice.

12. The Plaintiffs' actions are in violation of NRS § 40.250-255 and Breckenridge is entitled to possession of the Subject Property as prescribed in NRS § 40.290-420.

13. On December 20, 2019, Plaintiffs filed their Second Amended Complaint, wherein they brought claims against Breckenridge for Declaratory Relief and Quiet Title.

14. Breckenridge subsequently filed a Counterclaim against Plaintiffs through which it claims ownership to the Subject Property, sought to quiet title in its favor, sought other monetary damages, as well as possession of the Property through a claim for writ of restitution ("Restitution Claim").

15. In addition, Breckenridge sought payment of "reasonable rents for the period of time from service of the Three-Day Notice until such time as the [Plaintiffs] vacate the Subject Property." *See* Breckenridge's Counterclaim on file herein, at ¶ 34.

16. Because the Plaintiffs remained in possession of the Subject Property even after service of the Three-day Notice, Plaintiffs should be required to pay rent to Breckenridge from February 1, 2019, until the date they vacate the Subject Property.

17. Ultimately, this Court made a determination granting Breckenridge' counterclaims and denying Plaintiffs' claims. The Plaintiffs have been and continue to reap a windfall by being able to stay in the Subject Property without having to make any payments. To add to that windfall, the Plaintiffs have an incentive to delay final resolution because every month of delay is another month of living rent free.

18. Based on the current rental market, a range of $2,250.00 - $2,500.00 is a fair market rental value for the Subject Property. ***See Exhibit #7.*** That rental range is consistent with the monthly security of $2,105.10 per month that this court previously ordered to stay foreclosure.[2]

19. Plaintiffs have been in the Subject Property from February 1, 2019, to the present, August, 2021, or a total of 31 months, which would equate to rent in the principal amount of not less than $69,750 - $77,500.

20. Accordingly, Breckenridge requests this Court issue an order and judgment against the Plaintiffs, in this range (and additional amounts due at this rate by entry of such an order) for rents due to Breckenridge due to the Plaintiffs' continued wrongful possession of the Subject Property.

21. On June 23, 2021, this Court entered its Order on Breckenridge's Motion for Summary Judgment ("MSJ Order") granting Breckenridge summary judgment on its claims against the Plaintiffs.

22. In its MSJ Order this Court made numerous findings of fact and conclusions of law, adopted herein by reference, including but not limited to the findings that Breckenridge purchased the Property at a proper foreclosure sale and is therefore entitled to summary judgment regarding its claims to title of the Property as against Plaintiffs.

III. LAW AND ARGUMENT

A. PLAINTIFFS' APPEAL IS MERITLESS. THEY SHOULD NOT BE PERMITTED TO CONTINUE TO UNLAWFULLY SQUAT IN THE SUBJECT PROPERTY, RENT FREE, DURING THE PENDENCY OF THEIR BASELESS APPEAL.

Plaintiffs' appeal lacks merit since, among other reasons, it is not an appeal from a final judgment. There has been no determination as to the rents owed Breckenridge, and additional issues remain pending which prevent the Plaintiffs' appeal from being heard at this time. Breckenridge

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[2] Plaintiffs did not dispute this amount when proffered as part of Breckenridge's motion requesting Plaintiff's post rental payments with the Court.

intends to file a motion addressing this now that the settlement program was clearly a delay tactic. Breckenridge will not go into specific details as to amounts or number but suffice it to say the Plaintiffs did not participate in settlement negotiations in good faith and their request to enter the settlement program appears to have merely been a bad faith tactic to continue to drag this out improperly.

Further, the Plaintiffs' motive for improper delay is transparent. As noted above, on or about January 4, 2019, Breckenridge purchased the Subject Property at the NRS 107 foreclosure sale for $294,000.01. The Three-Day Notice was served on the Plaintiffs on January 28, 2019. NRS § 40.255(1)(c) provides for removal of a person who holds over and continues in possession of real property after a 3-day written notice to surrender has been served upon the person:

> (c) Where the property or mobile home has been sold under a power of sale granted by NRS 107.080 to the trustee of a deed of trust executed by the person, or by another person under whom the person claims, and the title under such sale has been perfected;

Nev. Rev. Stat. Ann. § 40.255 (West). Breckenridge is the sole owner of the Property by virtue of purchasing the Property at a valid foreclosure sale conducted pursuant to NRS Chapter 107 on January 4, 2019. Service of the Three-Day Notice terminated the Plaintiffs' right to remain in the Property. Despite this, the Plaintiffs refused to vacate the Property within the three days as required by NRS 40.280 *et seq*. Rather, the Plaintiffs continued to squat in the Property without Breckenridge's permission or consent. Plaintiffs have paid no rent to Breckenridge during the time they are illegally squatting in the Property. Plaintiffs had no objective basis in law or fact to remain in the Property after foreclosure. Breckenridge was vested with title to the Property and the foreclosure proceeded properly.

Plaintiffs' continued occupation of the Property was in clear violation of NRS § 40.255. Plaintiffs' Stay Motion is merely the next step in a continued pattern of requested delay and vexatious litigation. Therefore, Breckenridge requests that the Stay Motion be denied.

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B. PLAINTIFFS WILL NOT SUFFER IRREPARABLE HARM WITHOUT A STAY ANY MORE THAN BRECKENRIDGE WILL SUFFER IRREPARABLE HARM IF A STAY IS GRANTED. EITHER WAY, THIS FACTOR IS NEUTRAL. MOREOVER, THE OBJECT OF THE APPEAL WILL NOT BE DEFEATED IF THE STAY MOTION IS DENIED.

Plaintiffs fail to mention that their requested relief continues to harm Breckenridge, who has now been without possession of its Subject Property or even a single rental payment from Plaintiffs despite their improper and unjust possession of the Subject Property, from the time it was purchased by Breckenridge. "Unjust enrichment occurs whenever a person has and retains a benefit which in equity and good conscience belongs to another. Unjust enrichment is the unjust retention of a benefit to the loss of another." *Topaz Mutual Co. v. Marsh*, 108 Nev. 845, 856 (1992); *Nevada Industrial Development v. Benedetti*, 103 Nev. 360, 363 (footnote 2) (1987).

Plaintiffs have been unjustly enriched by being allowed to remain in the Subject Property without paying rent or a mortgage payment since February, 2019. The foreclosure in this matter occurred over two and a half years ago and Plaintiffs were not making payments to their lender prior to that time either. The Plaintiffs are squatting in the Subject Property without Breckenridge's permission. They are aware that the Subject Property has been foreclosed. However, Plaintiffs continue to occupy the Subject Property without paying fair market rent to Breckenridge's detriment.

Moreover, the object of the appeal will not be defeated by denial of the Stay Motion. If the Plaintiffs prevail – and if their improper appeal survives a motion to dismiss – they will be able to seek the relief they deem appropriate. The harm suffered by Breckenridge with a stay is at least equal to any by Plaintiffs if a stay was not granted. At this point, there is no basis to reasonably conclude the Plaintiffs' appeal will succeed, and in the interim, Breckenridge's right to possess the Subject Property and be paid fairly for rent are being egregiously violated by Plaintiffs' improper and unreasonable delays. Accordingly, these factors strongly favor denial of the Stay Motion.

C. WHILE PLAINTIFFS' STAY MOTION SHOULD BE DENIED IN ITS ENTIRETY, AT A MINIMUM A BOND IN THE FULL AMOUNT OF THE APPROPRIATE JUDGMENT SHOULD BE REQUIRED.

In their Stay Motion, Plaintiffs correctly note that a party seeking a stay is required to post a bond "that will permit full satisfaction of the judgment." NRCP 62(d); *McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983). However, Plaintiffs then unreasonably state that their continued wrongful possession of the Subject Property during the pendency of their meritless appeal should be permitted with no bond whatsoever. This is wholly improper, and also underscores the jurisdictional defects in the Plaintiffs' appeal as the amounts owed by them for their improper failure to pay rents has not yet been decided and is the subject of a pending motion by Breckenridge. Regardless, there is no basis to require anything less than the full amount of a bond as required under Nevada law.

Further, while the property values may have increased recently, there is no guarantee that they will not decrease, and often do so rapidly. Breckenridge has no protection from this likely event happening and the longer Plaintiffs are allowed to delay the inevitable upholding of this Court's decisions the more harm they will cause to Breckenridge. Accordingly, while the Stay Motion should be denied, in the event that it is not the Plaintiffs should be required to post a bond in the full amount of the Subject Property that they are wrongfully preventing Breckenridge from possessing, despite the Plaintiffs' lack of any ownership interest in the Subject Property.

V. CONCLUSION

For all these reasons, Breckenridge respectfully requests that this Court deny the Plaintiffs' Stay Motion in its entirety, and grant such other and further relief as the Court deems appropriate.

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding

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document filed in this court does not contain the social security number of any person

DATED this 30th day of September, 2021.

HUTCHISON & STEFFEN, PLLC

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Attorneys for Defendant
Breckenridge Property Fund 2016 LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of **DEFENDANT BRECKENRIDGE PROPERTY FUND 2016, LLC'S OPPOSITION TO PLAINTIFFS' MOTION TO STAY PENDING APPEAL** via U.S. Mail to the parties designated below.

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Attorney for Bank of America

DATED this 30th day of September, 2021.

Danielle Kelley
An Employee of HUTCHISON & STEFFEN

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

DOC # 407150
05/25/2007 04 34 PM
Official Record
Requested By
STEWART TITLE OF NEVADA
Lyon County - NV
Mary C Milligan - Recorder
Page 1 of 20 Fee $58 00
Recorded By DLW RPTT

0407150

Assessor's Parcel Number
29-401-17

I hereby affirm that this document submitted for recording does not contain a social security number

/s/ LYNDA KLEIN
FUNDER

Recording Requested By
SIERRA PACIFIC MORTGAGE COMPANY, INC
280 BRINKBY STREET, SUITE 100
RENO, NV 89509
775-826-3700

[Space Above This Line For Recording Data]

Loan No 0000479436

DEED OF TRUST

MIN 1000703-0000479436-5

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21 Certain rules regarding the usage of words used in this document are also provided in Section 16

(A) "Security Instrument" means this document, which is dated MAY 23, 2007 (together with all Riders to this document

(B) "Borrower" is VICENTA LINCICOME, A MARRIED WOMAN

Borrower is the trustor under this Security Instrument

(C) "Lender" is SIERRA PACIFIC MORTGAGE COMPANY, INC.

Lender is a CORPORATION organized and existing under the laws of CALIFORNIA

Lender's address is 50 IRON POINT CIRCLE, STE 200, FOLSOM, CA 95630

(D) "Trustee" is GREENHEAD INVESTMENTS, INC., A CALIFORNIA CORPORATION

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(E) "MERS" is Mortgage Electronic Registration Systems, Inc MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns MERS is the beneficiary under this Security Instrument MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P O Box 2026, Flint, Michigan 48501-2026, tel (888) 679-MERS

(F) "Note" means the promissory note signed by Borrower and dated MAY 23, 2007
The Note states that Borrower owes Lender Dollars
(U S $ 381,150.00 THREE HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED FIFTY and NO/100) plus interest Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 1, 2037

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property"

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower The following Riders are to be executed by Borrower [check box as applicable]

[xx Adjustable Rate Rider
[ ] Balloon Rider
[ ] 1-4 Family Rider
[ ] V A Rider
[ ] Condominium Rider
[ ] Planned Unit Development Rider
[ ] Biweekly Payment Rider
[ ] Second Home Rider
[xx] Other(s) [specify] INTEREST ONLY RIDER

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers

(M) "Escrow Items" means those items that are described in Section 3

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for (i) damage to, or destruction of, the Property, (ii) condemnation or other taking of all or any part of the Property, (iii) conveyance in lieu of condemnation, or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S C §2601 et seq) and its implementing regulation, Regulation X (24 C F R Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument

Loan No: 0000479436

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS This Security Instrument secures to Lender (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note, and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of LYON
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A."

which currently has the address of 70 RIVERSIDE DRIVE [Street],
DAYTON [City], Nevada 89403 [Zip Code] ("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property All replacements and additions shall also be covered by this Security Instrument All of the foregoing is referred to in this Security Instrument as the "Property " Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property, and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument

BORROWER COVENANTS that Borrower is lawfully 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

Loan No: 0000479436

Unofficial Copy

not obligated to apply such payments at the time such payments are accepted If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority (a) interest due under the Note, (b) principal due under the Note, (c) amounts due under Section 3 Such payments shall be applied to each Periodic Payment in the order in which it became due Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property, (b) leasehold payments or ground rents on the Property, if any, (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10 These items are called "Escrow Items" At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time Any such waiver may only be in writing In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9 If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender

4. Charges; Liens Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement, (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded, or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan

5 Property Insurance Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires What Lender requires pursuant to the preceding sentences can change during the term of the Loan The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably Lender may require Borrower to pay, in connection with this Loan, either (a) a one-time charge for flood zone determination, certification and tracking services, or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense Lender is under no obligation to purchase any particular type or amount of coverage Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained Any amounts

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disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance Lender shall have the right to hold the policies and renewal certificates If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender Lender may make proof of loss if not made promptly by Borrower Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower Such insurance proceeds shall be applied in the order provided for in Section 2

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim The 30-day period will begin when the notice is given In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due

6 Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control

7 Preservation, Maintenance and Protection of the Property; Inspections Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration

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Lender or its agent may make reasonable entries upon and inspections of the Property If it has reasonable cause, Lender may inspect the interior of the improvements on the Property Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause

8 Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence

9 Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property Lender's actions can include, but are not limited to (a) paying any sums secured by a lien which has priority over this Security Instrument, (b) appearing in court, and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note

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Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed Borrower is not a party to the Mortgage Insurance

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums)

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance " Further

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund

(b) Any such agreements will not affect the rights Borrower has " if any " with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11 Assignment of Miscellaneous Proceeds, Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value Any balance shall be paid to Borrower

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2

12 Borrower Not Released; Forbearance By Lender Not a Waiver Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy

13 Joint and Several Liability; Co-signers; Successors and Assigns Bound Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer") (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument, (b) is not personally obligated to pay the sums secured by this Security Instrument, and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender

14. Loan Charges Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note) Borrower's

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acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge

15. Notices All notices given by Borrower or Lender in connection with this Security Instrument must be in writing Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender Borrower shall promptly notify Lender of Borrower's change of address If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure There may be only one designated notice address under this Security Instrument at any one time Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender If any notice required by this Security Instrument is also required under Applicable Law the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision

As used in this Security Instrument (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender, (b) words in the singular shall mean and include the plural and vice versa, and (c) the word "may" gives sole discretion without any obligation to take any action

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument

18 Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law

If Lender exercises this option, Lender shall give Borrower notice of acceleration The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower

19 Borrower's Right to Reinstate After Acceleration If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument, (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate, or (c) entry of a judgment enforcing this Security Instrument Those conditions are that Borrower (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred, (b) cures any default of any other covenants or agreements, (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged Lender may require that Borrower pay such reinstatement sums and expenses

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in one or more of the following forms, as selected by Lender (a) cash; (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity, or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred However, this right to reinstate shall not apply in the case of acceleration under Section 18

20. Sale of Note, Change of Loan Servicer, Notice of Grievance The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 16) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20

21. Hazardous Substances. As used in this Section 21 (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials, (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection, (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law, and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law Nothing herein shall create any obligation on Lender for an Environmental Cleanup

NON-UNIFORM COVENANTS Borrower and Lender further covenant and agree as follows

22 Acceleration; Remedies Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify, (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lenders' election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale Lender or its designee may purchase the Property at any sale

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it Such person or persons shall pay any recordation costs Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law

25 Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U S $ MAXIMUM ALLOWED BY LAW

UNOFFICIAL COPY

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it

Vicenta Lincicome (Seal) -Borrower
VICENTA LINCICOME

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

Loan No: 0000479436

STATE OF NEVADA, Clark County ss.

This instrument was acknowledged before me on May 23 2007, by Vicenta Lincicome

Carol Costa

My Commission Expires 11-4-08

CAROL COSTA
NOTARY PUBLIC
STATE OF NEVADA
No 92 0121 6 My Appt Exp Nov 4, 2008

WHEN RECORDED MAIL TO

MIP INSURING DEPARTMENT
SIERRA PACIFIC MORTGAGE COMPANY, INC.
50 IRON POINT CIRCLE, STE 200
FOLSOM, CA 95630
916-932-1700

Unofficial Copy

ADJUSTABLE RATE RIDER

(1 Year LIBOR Index - Rate Caps)
(Assumable after Initial Period)

THIS ADJUSTABLE RATE RIDER is made this 23rd day of MAY, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure the Borrower's Adjustable Rate Note (the "Note") to SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender") of the same date and covering the property described in the Security Instrument and located at

70 RIVERSIDE DRIVE
DAYTON, NV 89403
(Property Address)

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES
The Note provides for an initial interest rate of 6.875 %. The Note provides for changes in the interest rate and the monthly payments, as follows

4 INTEREST RATE AND MONTHLY PAYMENT CHANGES
(A) Change Dates
The interest rate I will pay may change on the first day of JUNE 2017, and may change on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index
Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U.S.

Loan No: 0000479436

Unofficial Copy

dollar-denominated deposits in the London market, as published in *The Wall Street Journal* The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index "

If the Index is no longer available, the Note Holder will choose a new Index which is based upon comparable information The Note Holder will give me notice of this choice

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0 125%) Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments The result of this calculation will be the new amount of my monthly payment

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11 875 % or less than 2.250 % Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO percentage points (2.000 %) from the rate of interest I have been paying for the preceding 12 months My interest rate will never be greater than 11.875 %

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1 UNTIL BORROWER'S INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION A ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL BE IN EFFECT AS FOLLOWS.

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by

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Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law

If Lender exercises this option Lender shall give Borrower notice of acceleration The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower

2 AFTER MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT DESCRIBED IN SECTION 11(A) ABOVE SHALL THEN CEASE TO BE IN EFFECT, AND UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL INSTEAD BE DESCRIBED AS FOLLOWS

Transfer of the Property or a Beneficial Interest in Borrower As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law Lender also shall not exercise this option if (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee, and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower

Loan No: 0000479436

UNOFFICIAL COPY

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

[Sign Original Only]

Loan No: 0000479436

Unofficial Copy

INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

Property Address 70 RIVERSIDE DRIVE
DAYTON, NV 89403

THIS ADDENDUM is made this 23rd day of MAY 2007 and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date as this Addendum executed by the undersigned and payable to
SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender")

THIS ADDENDUM supersedes Section 4(C) of the Rider None of the other provisions of the Rider are changed by this Addendum

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index for such Change Date The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0 125%) Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date

During the Interest-Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest-Only Period unless I make a voluntary prepayment of principal during such period If I make a voluntary prepayment of principal during the Interest-Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest at the then current interest rate on the lower principal balance At the end of the Interest-Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest-Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note The result of this calculation will be the new amount of my monthly payment After the end of the Interest-Only Period, my payment amount will not be reduced due to voluntary prepayments

Loan No: 0000479436

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

[Sign Original Only]

Loan No: 0000479436

Unofficial Copy

EXHIBIT "A"
LEGAL DESCRIPTION

Order No: 06041897-JA

The land referred to herein is situated in the State of Nevada, County of LYON, described as follows:

LOT 42 AS SHOWN ON THE OFFICIAL MAP OF GOLD CANYON ESTATES, PHASE 2, FILE IN THE OFFICE OF THE LYON COUNTY, NEVADA RECORDER, ON OCTOBER 20, 2005, AS DOCUMENT NO. 365687.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF, LYING BELOW THE NATURAL ORDINARY HIGH WATER LINE OF THE CARSON RIVER.

ASSESSOR'S PARCEL NO. 029-401-17

Unofficial Copy

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

DOC# 572258
11/03/2017 10:29AM
Official Record
Requested By
SERVICELINK TITLE AGENCY INC.
Lyon County - NV
Dawna L. Warr - Recorder
Page: 1 of 6 Fee: $288.00
Recorded By BKC RPTT: $0.00

0572258

APN: 029-401-17

WHEN RECORDED MAIL TO:
Sables, LLC
c/o Zieve Brodnax & Steele
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169

TS No. : 16-42397

NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO SELL THE REAL PROPERTY UNDER DEED OF TRUST

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business day prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this Notice of Default may be recorded (which date of recordation appears on this notice). This amount is $265,872.39 as of 10/31/2017 and will increase until your account becomes current.

NOTICE IS HEREBY GIVEN THAT: SABLES, LLC, a Nevada limited liability company is either the original trustee, or the duly appointed substituted Trustee, or acting as agent for the Trustee or the Beneficiary under a under a Deed of Trust dated 5/29/2007, executed by VICENTA LINCICOME, A MARRIED WOMAN, as trustor to secure obligations in favor of Mortgage Electronic Registration Systems, Inc., as nominee for SIERRA PACIFIC MORTGAGE COMPANY, INC. its successors and assigns, as Beneficiary, recorded 6/25/2007, instrument no. 407150 The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 476808 and recorded on 5/4/2011 of Official Records in the office of the County recorder of Lyon, County, Nevada securing, among other obligations including

One note(s) for the Original sum of $381,150.00, that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by Beneficiary; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:

The monthly installment which became due on 9/1/2008, along with late charges, and all subsequent monthly installments.

You are responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to; foreclosure trustee fees and costs, advances and late charges.

Furthermore, as a condition to bring your account in good standing, you must provide the undersigned with written proof that you are not in default on any senior encumbrance and provide proof of insurance.

BREOK000060

Unofficial Copy

T.S. No.: 16-42397

Nothing in this Notice of Default should be construed as a waiver of any fees owing to the beneficiary under the Deed of Trust, pursuant to the terms and provisions of the loan documents.

That by reason thereof the present Beneficiary under such deed of Trust has executed and delivered to said duly appointed Trustee a written Declaration of Default and Demand for Sale and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. As to owner-occupied property, where reinstatement is possible, the time to reinstate may be extended to 5 days prior to the date of sale pursuant to NRS 107.080. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:

PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee
c/o Fay Servicing, LLC
c/o SABLES, LLC, a Nevada limited liability company
3753 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
Beneficiary Phone: 800-495-7166
Trustee Phone: (702) 664-1774

To reach a person with authority to negotiate a loan modification on behalf of the lender:

Lauren Jowers
800-495-7166

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.
REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

Attached hereto and incorporated herein by reference is the Affidavit of Authority in Support of Notice of Default and Election to Sell pursuant to NRS 107.080.

Unofficial Copy

T.S. No.: 16-42397

You may wish to consult a credit counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with names and addresses of local HUD approved counseling agency by calling their approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to HUD's website: http://portal.hud.gov.

Dated: 11/1/2017

SABLES, LLC, a Nevada limited liability company, as Trustee
Sables, LLC
c/o Zieve Brodnax & Steele
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
(702) 948-8566

Michael Busby, Trustee Sale Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 11/1/2017, before me, Christine O'Brien, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

CHRISTINE O'BRIEN
Notary Public - California
Orange County
Commission # 2167057
My Comm. Expires Oct 8, 2020

Unofficial Copy

Affidavit of Authority

(Nevada Revised Statute §107.080 as amended effective June 1, 2013)

Re: TS# 16-42397
Borrower Name: VICENTA LINCICOME
Property Address: 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403

I, Veronica Talley, am the Foreclosure Specialist of Fay Servicing, LLC, the current servicer for the beneficiary of the deed of trust described in the notice of default and election to sell to which this affidavit is attached ("Deed of Trust"). The following facts are based upon my personal review of documents that are of public record in the State of Nevada and personal knowledge acquired by my personal review of the business records of the beneficiary, which are within my custody and control. The business records of the beneficiary contain entries made in the ordinary course of business at or about the time the events reflected therein occurred.

1(a). The full name and business address of the current trustee of record for the Deed of Trust is Sables LLC, a Nevada Limited Liability Company, 3753 Howard Hughes Parkway, Suite 200, Las Vegas, Nevada 89169

1(b). The full name and business address of the current holder of the Note secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services – PROF .

1(c). The full name and business address of the current beneficiary for the obligation or debt secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services – PROF

1(d). The full name and business address of the current servicer for the obligation secured by the Deed of Trust is Fay Servicing, LLC, 440 S. LaSalle St., Suite 2000, Chicago, IL 60605

2. From my review of the documents of public record and the business records of the current beneficiary and a title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to Chapter 692A of the NRS, the name of each assignee and each recorded assignment of the Deed of Trust.

2(a). Assignee Name: PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee
Instrument and Recording Information: Assignment of Deed of Trust recorded on 11/25/2016 Instrument No. 544042

2(b). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP
Instrument and Recording Information: Corporation Assignment of Deed of Trust recorded on 08/15/2011 Instrument No. 480360

2(c). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP
Instrument and Recording Information: Assignment of Mortgage recorded on 11/10/2010 Instrument No 467719

3. The current beneficiary under the Deed of Trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the Deed of Trust.

4. From my review of the documents of public record and the business records of the current beneficiary, the current trustee has authority to exercise the power of sale with respect to the property

Unofficial Copy

encumbered by the Deed of Trust, pursuant to instruction from the current beneficiary of record and current holder of the note secured by the Deed of Trust.

5. From my review of the documents of public record and the business records of the current beneficiary, the beneficiary, servicer of the obligation, or an attorney of the beneficiary or servicer has sent to VICENTA LINCICOME, a written statement of: (I) the amount of payment required to make good the deficiency in performance of payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement; (II) the amount in default; (III) the principal amount of the obligation or debt secured by the deed of trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the power of sale; and (VI) contact information for obtaining the most current amounts due and the local or toll-free telephone number that VICENTA LINCICOME may call to receive the most current amounts due and a recitation of the information in this affidavit.

6. The borrower or obligor of the loan secured by the Deed of Trust may call Fay Servicing, LLC at 800-495-7166 to receive the most current amounts due and a recitation of the information contained in this Affidavit.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this Affidavit was executed on October 5, 2016.

By: Fay Servicing, LLC, its attorney in fact

Veronica Talley
(Print Name)

Veronica Talley
(Signature)

Foreclosure Specialist IV
(Title)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Texas

County of Denton

On October 6th 2016 before me, Allison Ann Johnston, Notary Public, personally appeared, Veronica Talley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Allison Ann Johnston
Signature

ALLISON ANN JOHNSTON
Notary Public, State of Texas
My Commission Expires
April 27, 2019

Affidavit of Authority to Exercise the Power of Sale
Revised 6/1/2013

Unofficial Copy

Declaration of Mortgage Servicer Pursuant to NR 107.510

T.S. Number:	16-42397
Borrower(s):	VICENTA LINCICOME
Mortgage Servicer:	Fay Servicing, LLC
Property Address:	70 RIVERSIDE DRIVE DAYTON, Nevada 89403

The undersigned, as an authorized agent or employee of the mortgage servicer named below, declares that:

1. ☒ The mortgage servicer has contacted the borrower pursuant to NRS 107.510 (2), to "assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale". Thirty (30) days, or more, have passed since the initial contact was made.

2. ☐ The mortgage servicer has exercised due diligence to contact the borrower pursuant to NRS 107.510 (5), to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.

3. ☐ No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to NRS 107.410.

4. ☐ During the preceding annual reporting period, the Lender has foreclosed on 100 or fewer real properties located in this state and therefore, pursuant to NRS 107.460, the provisions of NRS 107.400 to 107.560, inclusive, do not apply.

5. ☐ The loan is not a "residential mortgage loan" as defined in NRS 107.450.

I certify that this declaration is accurate, complete and supported by competent and reliable evidence which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

Dated: 12-5-2016

By:

Unofficial Copy

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EXHIBIT PAGE ONLY

EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Doc #: 587470
10/12/2018 02:27 PM Page: 1 of 2
OFFICIAL RECORD
Requested By: SERVICELINK TITLE AGENCY INC
Lyon County, NV
Dawna L. Warr, Recorder
Fee: $39.00 RPTT: $0.00
Recorded By: mkassebaum

APN No.: 029-401-17

[Recording requested by:]

[When recorded mail to:]
Sables LLC
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, Nevada 89148

T.S. No. 16-42397

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 5/23/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

TRUSTOR: VICENTA LINCICOME, A MARRIED WOMAN
Duly Appointed Trustee: Sables LLC, a Nevada Limited Liability Company
Recorded 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011 Official Records in the office of the Recorder of Lyon County, Nevada, Described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State ofNevada, described as follows:

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Date of Sale: 11/9/2018 at 11:00 AM

Unofficial Copy

Place of Sale: 31 S. Main Street Yerington, Nevada 89447
Lyon County Courthouse
Estimated Sale Amount: $666,632.22
Street Address or other common designation of real property: 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403

A.P.N. No.: 029-401-17

The undersigned Trustee disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above. If no street address or other common designation is shown, directions to the location of the property may be obtained by sending a written request to the beneficiary within 10 days of the date of first publication of this Notice of Sale.

Date: 10/11/2018

Sables LLC, a Nevada Limited Liability Company
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
Phone: (702) 948-8565
Sale Information: (714) 848-9272 www.elitepostandpub.com
For Non-Automated Sale Information, call: (702) 664-1774

Michael Busby, Trustee Sale Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 10/11/2018, before me, A.J. Buckelew Notary Public, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

A.J. Buckelew
Signature of Notary

A. J. BUCKELEW
Notary Public - California
Orange County
Commission # 2255941
My Comm. Expires Aug 26, 2022

THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND
ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE.

Unofficial Copy

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EXHIBIT PAGE ONLY

EXHIBIT 4

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

John T. Steffen (4390)
Matthew K. Schriever (10745)
Alex R. Velto (14961)
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel (702) 385-2500
Fax (702) 385-2086
mschriever@hutchlegal.com

Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9157
Fax (310) 730-5967
caseynelson@wedgewood-inc.com
Attorney for Defendant, Counterclaimant, and Cross-Plaintiff Breckenridge Property Fund 2016, LLC

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 8/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50, Defendants. AND RELATED MATTERS.	Case No.: 18-CV-01332 Dept No.: II **DECLARATION IN SUPPORT OF BRECKENRIDGE PROPERTY FUND 2016 LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF**

The undersigned, Jason Campbell declares under penalty of perjury that the following assertions are true:

1. I am an authorized agent of Breckenridge Property Fund 2016, LLC ("Breckenridge").

2. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true. I make this declaration in support of Breckenridge's motion for summary judgment against Plaintiffs.

3. On January 4, 2019, Breckenridge purchased real property located at 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") at a foreclosure sale conducted pursuant to NRS 107. ("Foreclosure Sale").

4. Breckenridge was the highest bidder and paid $294,000.01 to purchase the Subject Property at the Foreclosure Sale.

5. Breckenridge relied on the fact that the noticed Foreclosure Sale was valid because Plaintiffs failed to post the court-ordered bond.

6. Breckenridge had no role in this dispute prior to its purchase of the Subject Property at the Foreclosure Sale.

7. Breckenridge is entitled to an order quieting title in its favor because there were no defects in the Foreclosure Sale and any rights, title, or interest that Plaintiffs previously had in the Subject Property has been terminated by way of the Foreclosure Sale

8. I declare under penalty of perjury of the laws of the United States and the State of Nevada that these facts are true to the best of my knowledge and belief.

///

///

///

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person.

Jason Campbell, authorized representative of
Breckenridge Property Fund 2016, LLC

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EXHIBIT PAGE ONLY

EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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EXHIBIT PAGE ONLY

EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

70 RIVERSIDE DR

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:
Breckenridge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NV 89146

Forward Tax Statements to the address given above

Recorded As An Accommodation Only Without Liability

Doc #: 591393
01/25/2019 08:21 AM Page: 1 of 2
OFFICIAL RECORD
Requested By: FIRST AMERICAN TITLE INSURANCE C
Lyon County, NV
Margie Kassebaum, Recorder
Fee: $38.00 RPTT: $1,146.56
Recorded By: inhumlidad

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397
Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: $ 1148.55
The Grantee Herein WAS NOT the Foreclosing Beneficiary.
The Amount of the Unpaid Debt was $671,249.37
The Amount Paid by the Grantee was $294,000.01
Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:
All that certain real property situate in the County of Lyon, State of Nevada, described as follows:
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.
EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:
Breckenridge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NV 89146

Forward Tax Statements to the address given above

Recorded As An Accommodation Only Without Liability

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397
Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: $1148.55
The Grantee Herein WAS NOT the Foreclosing Beneficiary.
The Amount of the Unpaid Debt was $671,249.37
The Amount Paid by the Grantee was $294,000.01
Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:
All that certain real property situate in the County of Lyon, State of Nevada, described as follows:
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.
EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

TRUSTEE'S DEED UPON SALE

T.S. #: 16-42397
Order #: 160069595-NV-VOO

Trustee having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Breach and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified return receipt mail, postage pre-paid to each person entitled to notice in compliance with Nevada Revised Statutes 107.080.

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 1/4/2019. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being $ $294,000.01, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, SABLES, LLC, a Nevada limited liability company, as Trustee, has this day, caused its name to be hereunto affixed.

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey Neal

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 1/15/2019 before me, the undersigned, J. Develasco Notary Public, personally appeared Geoffrey Neal who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

J. Develasco
#2147185 Expires 3/21/20

WITNESS my hand and official seal.

Signature _____ (Seal)
J. Develasco
J. Develasco

J. DEVELASCO
Notary Public - California
Orange County
Commission # 2147185
My Comm. Expires Mar 21, 2020

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a) 029-401-17
   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
   [ ] Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page: _____
Date of Recording: _____
Notes:

3. a. Total Value/Sales Price of Property $ $294,000.01
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ $294,000.01
   d. Real Property Transfer Tax Due $ 1148.56
4. If Exemption Claimed:
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____
5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity AGENT

Signature _____ Capacity AGENT

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Sables, LLC, a Nevada limited liability Company	Print Name: Breckenridge Property Fund, 2016, LLC
Address: 3753 Howard Hughes Parkway, Suite 200, Las Vegas, NV 89169	Address: 2320 Potosi St. Ste 130 Las Vegas, NV 89146

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name: First American Escrow #: 4611
Address: 1980 W Charleston
City: Las Vegas State: NV Zip: 89125

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

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EXHIBIT PAGE ONLY

EXHIBIT 6

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

THREE-DAY NOTICE TO QUIT

TO: VICENTA LINCICOME
TENANT AND SUBTENANT AND ALL OCCUPANTS
70 RIVERSIDE DR.
DAYTON, NEVADA 89403

Or any occupants of the above-named property or any persons in possession of the above-mentioned property.

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED AND DEMAND IS MADE that you surrender possession of the property to the undersigned at or before noon of the third (3) day after receipt of this Notice pursuant to Sections 40.255, 40.280, and 40.290 to 40.420 of the Nevada Revised Statutes.

YOU ARE HEREBY NOTIFIED that if you are a tenant of the prior owner of the Property, you are to refer to the Notice to Tenant which is attached as Exhibit A to this Three-Day Notice to Quit. If you need another copy of the Notice to Tenant, please contact the undersigned below.

UPON YOUR FAILURE TO VACATE OR SURRENDER THE PREMISES AS DEMANDED, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC

CASEY J. NELSON, ESQ.
Nevada Bar # 12259
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorney for Plaintiff
Breckenridge Property Fund 2016, LLC

EXHIBIT A

EXHIBIT A

NOTICE TO TENANT

TO: VICENTA LINCICOME
TENANT AND SUBTENANT AND ALL OCCUPANTS
70 RIVERSIDE DR.
DAYTON, NEVADA 89403

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED OF A CHANGE OF OWNERSHIP. The new owner of the property is BRECKENRIDGE PROPERTY FUND 2016, LLC, 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146.

YOU MUST CONTACT US AND ESTABLISH YOUR BONA FIDE TENANCY in the property **within three (3) business days** of receipt of this Notice.

IN ORDER TO ESTABLISH YOUR TENANCY, within three (3) business days of receipt of this Notice you must furnish a copy of your fully executed, current lease or rental agreement and proof of all past payments to Breckenridge Property Fund 2016, c/o the owner's attorney, Casey J. Nelson, Esq., at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Failure to produce valid documentation clearly demonstrating a bona fide tenancy will result in eviction proceedings immediately being brought against all occupants.

A LEASE OR TENANCY shall be considered bona fide only if:

1) The mortgagor/prior owner or the child, spouse, or parent of the mortgagor/prior owner under the contract is not the tenant or occupant;
2) The lease or tenancy was the result of an arms-length transaction; and
3) The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy

The new owner reserves the right to challenge the authenticity and validity of any purported lease or tenancy based upon other terms, conditions, or factors which appear fraudulent or which are not otherwise standard terms within residential leases in the geographic area.

YOU ARE HEREBY NOTIFIED that if you are a bona fide tenant or subtenant in the property, **you must still vacate the property within either 1) 90 days of this notice; or 2) upon the expiration of the remainder of the term of your bona fide lease, whichever date is later.**

YOU ARE HEREBY NOTIFIED that you must continue to pay rent to the new owner throughout the remainder of your tenancy in order to avoid eviction proceedings being brought against you for non-payment of rent.

Rent shall be remitted to BRECKENRIDGE PROPERTY FUND 2016, LLC at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Your failure to pay rent to the new owner throughout the notice period or comply with any other term of the agreement or applicable law shall constitute a breach of the lease or rental agreement and may result in eviction proceedings.

YOU ARE HEREBY NOTIFIED that upon your failure to timely establish your tenancy or upon your failure to fully vacate or surrender the premises as demanded, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC

CASEY J. NELSON, ESQ.
Nevada Bar # 12259
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorney for Plaintiff
Breckenridge Property Fund 2016, LLC

Attorney or Party without Attorney:				For Court Use Only
Wedgewood, LLC Casey J. Nelson, Esq. (SBN 12259) 2320 Potosi Street, Suite 130 Las Vegas, NV 89146 Telephone No: (702) 305-9157 Attorney For: Plaintiff	Ref. No. or File No.: 70 RIVERSIDE DR.			
Insert name of Court, and Judicial District and Branch Court:				
Plaintiff: BRECKENRIDGE PROPERTY FUND 2016, LLC Defendant: VICENTA LINCICOME; TENANT AND SUBTENANT AND ALL OCCUPANTS				
AFFIDAVIT OF SERVICE	Hearing Date:	Time:	Dept/Div:	Case Number:

1. *At the time of service I was at least 18 years of age and not a party to this action.*

2. I served copies of the Three-Day Notice to Quit, Notice to Tenant

3. a. *Party served:* Vicenta Lincicome; Tenant and Subtenant and All Occupants
   b. *Person served:* Posted

4. *Address where the party was served:* 70 Riverside Drive, Dayton, NV 89403

5. *I served the party:*
   a. By Posting. On: Mon, Jan 28 2019 (2) at: 02:20 PM by posting a copy of the documents in a conspicuous place on the property.
   b. By Mailing. On: Mon, Jan 28 2019 by mailing a copy of the documents, addressed as shown in Item 4, via Certified Mail Issued by United States Post Office from: Las Vegas, NV.

6. *Person Who Served Papers:*
   a. Toni Ruckman (R-052005, Washoe)
   b. FIRST LEGAL
      2920 N. Green Valley Parkway, Suite 514
      Henderson, NV 89014
   c. (702) 671-4002
   d. *The Fee for Service was:*

Pursuant to NRS 53.045

7. *I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.*

01/29/2019 — *(Date)*

Toni L Ruckman — *(Signature)*

7018 1830 0002 1005 0251

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

DAYTON, NV 89403

OFFICIAL USE

Certified Mail Fee $2.50 $2.80

Extra Services & Fees (check box, add fee as appropriate) $0.00

☐ Return Receipt (hardcopy) $ $0.00

☐ Return Receipt (electronic) $ $0.00

☐ Certified Mail Restricted Delivery $ $0.00

☐ Adult Signature Required $ $0.00

☐ Adult Signature Restricted Delivery $

Postage $0.55

Total Postage and Fees $6.85

JAN 28 2019
Hallmark
Hors

01/28/2019
55105770

Sent To VICENTA LINCICOME

Street and Apt. No. TENANT/SUBTENANT/ALL OCCUPANTS

City, State, ZIP+4® 70 RIVERSIDE DR.
DAYTON, NV 89403-9055

PS Form 3800, August 2006 See Reverse for Instructions

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EXHIBIT PAGE ONLY

EXHIBIT 7

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

FILED

2021 JUN 23 PM 4:07

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Victoria Tovar
DEPUTY

Case No.: 18-CV-01332

Dept. No.: II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * *

ALBERT ELLIS LINCICOME, JR. and
VICENTA LINCICOME,

Plaintiffs,

vs.

SABES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013 M4 LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICAN, N.A.; BRECKENRIDGE PROPERTY FUND 2016, A Utah limited liability company; NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, LLC substituted in for DOE 1; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION, substituted in for DOE 2; MNCM-2018-NPL@, substituted in for DOE 3; and DOES 4-10.

Defendants.

ORDER ON BRECKENRIDGE MOTION FOR SUMMARY JUDGMENT

I. STATEMENT OF THE CASE

On March 18, 2021, Breckenridge Property Fund 2016, LLC ("Breckenridge") filed a Motion for Summary Judgment. On April 15, 2021, the Plaintiffs filed an Opposition. On May 10, 2021,

Breckenridge filed a Reply.

II. ISSUE PRESENTED

Should the Court grant Breckenridge's Motion for Summary Judgment?

III. SUMMARY OF DECISION

The Court finds that no genuine material issues of fact exist and Breckenridge is entitled to summary judgment as a matter of law.

IV. PRINCIPLES OF LAW

A. Standard of Review

NRCP 56(c) requires a court to enter summary judgment in favor of a party when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. " NRCP 56(c). A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Posada v. City of Reno*, 109 Nev. 448 (1993).

When reviewing a motion for summary judgment, the evidence and all reasonable inferences drawn from the evidence, must be viewed in a light most favorable to the non-moving party. *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213 (2006). Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a matter of law. *Wood v. Safeway, Inc.*, 106 Nev. 601, 603 (1990).

B. NRS 40.010

NRS 40.010 states, "An action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim."

D. NRS 111.180

NRS 111.180 states:

> 1. Any purchaser who purchases an estate or interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property is a bona fide purchaser.
> 2. No conveyance of an estate or interest in real property, or charge upon real property, shall be deemed fraudulent in favor of a bona fide purchaser unless it appears that the subsequent purchaser in such conveyance, or person to be benefited by such charge, had actual knowledge, constructive notice or reasonable cause to know of the fraud intended.

E. NRS 40.250

NRS 40.250 states:

> A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, of the property or mobile home or any part thereof, after the expiration of the term for which it is let to the tenant. In all cases where real property is leased for a specified term or period, or by express or implied contract, whether written or parol, the tenancy terminates without notice at the expiration of the specified term or period.

V. FINDINGS OF FACT

1. In May of 2007, Vicenta Lincicome financed a property known as 70 Riverside Drive, Dayton Nevada 89403 with a loan in the amount of $381,150.00 secured by a recorded deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and Mortgage Electronic Registration Systems, Inc. "MERS" as the beneficiary and nominee of the lender. Vicenta Lincicome executed documents creating the deed of trust and note and understood she had a 30-year maturity date.

2. On August 15, 2011, MERS recorded an assignment of the deed of trust, transferring the interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP.
3. On November 25, 2015, BANA recorded an assignment of the deed of trust transferring its interest to U.S. Bank.
4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
6. In July 2009, BANA offered the Plaintiffs a loan modification agreement "LMA." The new loan balance was $417,198.58. The Plaintiffs were provided a post office box to send payments.
7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch in Carson City on September 1, 2009. The Plaintiffs attempted to make the second payment at a BANA Branch but it was rejected as BANA's computer system did not recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their deposition testimony states they were aware of the breach at that time.
8. The Plaintiffs made no other attempt to mail the payments. BANA then notified the Plaintiffs in October of 2009 stating that the loan had not been modified. However, then BANA signed the LMA and recorded it in March of 2011.
9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the property at $381,000. The Plaintiffs made no payments at the time of bankruptcy filing or during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.

10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no payments on the offer. BANA offered another modification on April 2015 but the loan was service released to Fay Servicing prior to the final payment.

11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final decree was filed by the Bankruptcy Court in July of 2015.

12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of default.

13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank and Fay Servicing as interested parties.

14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make three payments of $2462.30 as an offered trial period plan. The payments had to be made on April 1, 2018, May 1, 2018 and June 1, 2018.

15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in lieu of foreclosure. A certificate for foreclosure was issued.

16. The Plaintiffs did not place the required monthly payments in a bank account or escrow account. Plaintiffs spent all of their income on either items. Plaintiffs do not have sufficient funds to pay off what is owed under any theory as to what instrument controls the computation of what is owed.

17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that they could not afford to make payments on the mortgage. The Plaintiffs have never averred

to the Court that they are ready, willing, and able to perform on the original mortgage or subsequent modifications.

18. The foreclosing party recorded a Notice of Default and Notice of Sale against the subject property.

19. On November 7, 2018, the Plaintiffs filed a complaint for injunctive relief, contractual claims and declaratory relief regarding the foreclosure sale of the subject property.

20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction with the Court.

21. On December 31, 2018, the Court entered an order enjoining the foreclosure sale if the Plaintiffs posted a bond in the amount of $172,610.67 and additional security in the amount of $2,105.10 per month thereafter. The Plaintiffs did not file the bond.

22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the property for $294,000.01.

23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of the subject property was recorded.

VI. ANALYSIS

The Court incorporates the legal findings, factual findings and analysis contained in its separate "ORDER DENYING PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT/ GRANTING MOTIONS FOR SUMMARY JUDGMENT FILED BY BANA, PROF-2013 M4 LEGAL TRUST, US BANK AND FAY SERVICING LLC." As Breckenridge purchased the subject property at the foreclosure sale, Breckenridge is entitled to summary judgment regarding their claims to title of the property.

VII. CONCLUSIONS OF LAW

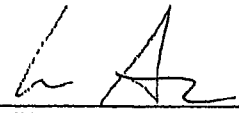
Breckenridge is entitled to a motion for summary judgment in its favor.

ORDER

Therefore, good cause appearing, **IT IS HEREBY ADJUDGED and ORDERED** that Breckenridge's Motion for Summary Judgment is **GRANTED.**

IT IS HEREBY FURTHER ORDERED that the hearing on Motions set for July 28, 2021 is **VACATED**. The Court found the pleadings sufficient to enter an order without argument.

DATED: This 23rd day of June, 2021.



HON. LEON ABERASTURI
DISTRICT JUDGE

Certificate of Mailing

I hereby certify that I, Guoc Thai, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

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DATED: This 23rd day of June, 2021.

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Attorney for Defendant / Counterclaimant
Breckenridge Property Fund 2016, LLC

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants. AND RELATED ACTIONS	Case No.: 18-CV-01332 Dept No.: II **BRECKENRIDGE PROPERTY FUND 2016'S REPLY IN SUPPORT OF MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS**

Breckenridge hereby incorporates it Opposition to Plaintiffs' Motion for Stay Pending Appeal as its reply in support of its Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents.

Dated this 5th day of October 2021.

HUTCHISON & STEFFEN, PLLC

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Attorneys for Defendant
Breckenridge Property Fund 2016 LLC

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a true and correct copy of the **BRECKENRIDGE PROPERTY FUND 2016'S REPLY IN SUPPORT OF MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS** via U.S. Mail to the parties designated below.

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DATED this 5th day of October 2021.

Danielle Kelley
An Employee of HUTCHISON & STEFFEN

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FILED
2021 SEP 28 AM 9:28
TANYA SCHULTZ
CLERK
THIRD JUDICIAL DISTRICT
Andrea Anderson

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED MATTERS.

Case No.: 18-CV-01332
Dept No.: II

ORDER GRANTING EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING ON BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS

ORDER GRANTING EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING ON BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS

Defendant/Counterclaimant/Cross-plaintiff Breckenridge Property Fund 2016 ("Breckenridge"), having filed and served its EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING ON BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS ("Application"), the Court having read and considered the Application, good cause appearing,

IT IS HEREBY ORDERED that the Application is hereby GRANTED.

IT IS HEREBY FURTHER ORDERED that a hearing on Breckenridge's MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS shall take place on the 13th of October, 2021, at the hour of 1:30 PM in front of Department No. II of this Honorable Court, or as soon

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thereafter as the parties may be heard.

IT IS SO ORDERED.

DATED this 28th day of September, 2021.

HON. DISTRICT COURT JUDGE

Respectfully Submitted By:

HUTCHISON & STEFFEN, PLLC

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Certificate of Mailing

I hereby certify that I, Hiedi Andersen, am an employee of the Honorable Leon Aberasturi, District Judge, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

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DATED this 28th day of September, 2021.

Employee of Honorable Leon Aberasturi

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Attorneys for Intervenor

FILED

2021 NOV -5 AM 11:05

TANYA SELLERS
COURT ADMINISTRATOR
Bayley Baptist
DEPUTY

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; and DOES 1-50., Defendants. BRECKENRIDGE PROPERTY FUND 2016, LLC, Defendant in Intervention.	Case No.: 18-CV-01332 Dept No.: II **ORDER CONCERNING:** **BRECKENRIDGE PROPERTY FUND 2016, LLC'S MOTION FOR ENTRY OF ORDER GRANTING PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS** **AND** **PLAINTIFFS' MOTION FOR STAY PENDING APPEAL**

On October 12, 2021, at 1:30 p.m., the Court held a hearing in the above-captioned matter to consider Defendant in Intervention Breckenridge Property Fund 2016, LLC's Motion for Entry of Order Granting Writ of Permanent Restitution and Payment of Overdue Rents and on Plaintiffs' Motion for Stay Pending Appeal. Todd W. Prall and Casey J. Nelson appeared on behalf of Defendant in Intervention Breckenridge Property Fund 2016, LLC. Michael G. Millward appeared on behalf of the Plaintiffs. Ramir M. Hernandez appeared on behalf of Fay Servicing, LLC and US Bank Prof-2013-M4 Legal Title Trust. Paige L. Magaster appeared on behalf of Bank of America, N.A.

The Court, after hearing arguments of counsel and sworn testimony from Plaintiffs Albert Ellis Lincicome, Jr., and Vincenta Lincicome, and for good cause, enters the following Findings of Fact, Conclusions of Law, and Order.

A. Findings of Fact.

1. On June 23, 2021, the Court entered an order denying Plaintiffs' motion for partial summary judgment and granting summary judgment in favor of Defendants Bank of American, N.A, Shellpoint Mortgage Servicing, Prof-2013 M4 Legal Trust, U.S. Bank, N.A. as Legal Trustee (the and Fay Servicing, LLC (hereinafter the "Banks MSJ Order") and certified the judgment as final under NRCP 54(b).

2. On June 23, 2021, the Court entered a separate order granting summary judgment in favor of Breckenridge Property Fund 2016, LLC ("Breckenridge") on its First and Third Claims for Relief for Quiet Title and Writ of Possession (hereinafter, the "Breckenridge MSJ Order").

3. The Breckenridge MSJ Order and the Banks MSJ Order are collectively the MSJ Orders.

4. In the MSJ Orders, the Court made numerous findings of fact and conclusions of law which are adopted herein by reference.

5. In granting summary judgment in favor of Breckenridge, the Court found that Breckenridge purchased the Property at a properly noticed foreclosure sale and is therefore entitled to both title to and possession of the real property at issue in this case, which is located at 70 Riverside Drive, Dayton, Nevada 89403 (the "Property").

6. On July 23, 2021, Plaintiffs filed a Notice of Appeal, which sought review of both the MSJ Orders, among other things.

7. On September 9, 2021, Breckenridge filed a Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents (the "Motion for Permanent Writ of Restitution")

8. On or about September 14, 2021, Plaintiffs served their Motion for Stay Pending Appeal (the "Motion for Stay").

9. On or about September 22, 2021, Plaintiffs served an opposition to the Motion for Writ of Permanent Restitution in which Plaintiffs simply incorporated the Motion for Stay as their opposition.

10. On October 1, 2021, Breckenridge filed an opposition to the Motion for Stay.

11. On October 6,2021, Breckenridge filed a Reply in Support of the Motion for Permanent Writ of Restitution.

12. On September 28, 2021, the Court entered an Order Granting Ex Parte Application for Order shortening Time for Hearing on Breckenridge's Motion for Permanent Writ of Restitution, which set a hearing on Breckenridge's motion for October 13, 2021 at 1:30 p.m.

13. Breckenridge purchased the Property at a properly noticed foreclosure sale on January 4, 2019 for $294,000.00. A Three-Day Notice to vacate the Property was served on the Plaintiffs on January 28, 2019.

14. Plaintiffs have continued to live in the Property from February 1, 2021 to the present, which is a total of 32 months through the end of September 2021.

15. Based on the current rental market and the evidence provided by Breckenridge, the Court finds that a fair market rental value for the Property is $2,500 per month.

16. Plaintiffs testified concerning their assets at the hearing on October 13, 2021. Plaintiffs testified that they have a rental property that is secured by a trust deed located Carson City, Nevada. The debt secured by the deed of trust is somewhere between $225,000 and $250,000, with a potential market value of around $325,000. The rental income they receive from the property is only a few hundred dollars more than the mortgage payment each month.

17. Plaintiffs testified that they have a retirement account with approximately $125,000.00 and that they live on approximately $3,000.00 per month in social security income.

18. Plaintiffs testified that they have a significant amount of medical bills.

19. Plaintiffs testified that they did not believe they could make a monthly rental payment for the Property in the amount of $2,500.

B. Conclusions of Law.

20. NRS § 40.255(1)(c) provides for removal of a person who holds over and continues in possession of real property after a 3-day written notice to surrender has been served upon the person "where the property . . . has been sold under a power of sale granted by NRS 107.080 to the trustee of a deed of trust executed by the person . . . , and the title under such sale has been perfected . . . ." Nev. Rev. Stat. Ann. § 40.255 (West).

21. Plaintiffs' continued occupation of the Property was and is in clear violation of NRS § 40.255 and Breckenridge is entitled to permanent possession of the Property as prescribed in NRS §§ 40.290 to 40.420. Therefore, Breckenridge is entitled to a permanent writ of restitution for the Property.

22. Plaintiffs have requested a stay of the proceedings in this Court to enforce the MSJ Orders, including Breckenridge's request for a permanent writ of restitution.

23. The Nevada Supreme Court has noted that "generally, in determining whether to issue a stay pending disposition of an appeal, [a court] considers the following factors:

(1) whether the object of the appeal will be defeated if the stay is denied,

(2) whether appellant will suffer irreparable or serious injury if the stay is denied,

(3) whether respondent will suffer irreparable or serious injury if the stay is granted, and

(4) whether appellant is likely to prevail on the merits in the appeal.

Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

24. The Nevada Supreme Court has "not indicated that any one factor carries more weight than the others" although some courts have recognized "that if one or two factors are especially strong, they may counterbalance other weak factors." *Id.*

25. Here, rather than focusing on these factors, the Court believes a stay is warranted under NRCP 62(d) so long as Plaintiffs meet the requirements of securing Breckenridge's interests.

26. NRCP 62(d) provides:

Stay Pending an Appeal.

(1) *By Supersedeas Bond.* If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.

(2) *By Other Bond or Security.* If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

27. The amended rule, which appears to have added subsection (2) essentially adopts the case law from Nevada and the federal courts that had recognized that the rule "allows an appellant to obtain a

stay pending appeal as of right upon the posting of a supersedeas bond for the full judgment amount, but that courts retain the inherent power to grant a stay in the absence of a full bond." *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005), as modified (Jan. 25, 2006) (citations omitted).

28. Here, the appeal was taken upon a certification of a final judgment pursuant to NRCP 54(b) prior to Breckenridge obtaining a final judgment. However, Breckenridge has demonstrated that it will be entitled to damages against Plaintiffs based on the fair market monthly rental value of the Property multiplied by the number of months in the Property.

29. Based on the facts presented, the Court finds that the approximately fair market monthly rental value for the Property is $2,500.00. The Court further finds that an adequate supersedeas bond in this case would be the amount of a judgment were it to be entered today plus another 24 months of rental payments. This amount is $80,000.00 (32 months * $2,500.00) plus $60,000.00 (24 months * $2,500), which equals $140,000.00.

30. Plaintiffs, however, request that the Court consider allowing Plaintiffs to provide other types of security in place of a "full judgment" bond. Specifically, Plaintiffs ask for the Court to approve the other real property owned by Plaintiffs, or the real property Plaintiffs own in Carson City that they rent out (the "Carson City Property").

31. "The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay." *Id.* at 835, 122 P.3d at 1254. "[T]he focus is properly on what security will maintain the status quo and protect the judgment creditor pending an appeal." *Id.* at 835-36, 122 P.3d at 1254.

32. The Nevada Supreme Court has recognized five factors to consider in determining whether other alternative security for less than a full supersedeas bond:

(1) the complexity of the collection process;

(2) the amount of time required to obtain a judgment after it is affirmed on appeal;

(3) the degree of confidence that the district court has in the availability of funds to pay the judgment;

(4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and

(5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Id. at 836, 122 P.3d at 1254.

33. The Court finds that the facts and circumstances of this case do not warrant allowing an alternative security other than a supersedeas bond.

34. Because Plaintiffs only asset being submitted as alternative to a bond is the Carson City Property, which has a mortgage on it, and a retirement account, the complexity of collecting on the proposed collateral is very high.

35. Because the current appeal is based on a Rule 54(b) certification, there will be a significant amount of time between an appeal and when Breckenridge can obtain a judgment in this case. Breckenridge will be required to complete the process of obtaining a judgment.

36. The Court is not confident that there will be funds available to pay Breckenridge for any judgment. Plaintiffs testimony demonstrates that their income is such that they would not be able to pay such a judgment.

37. Finally, although Plaintiffs do not appear to be in a strong financial situation, there is no evidence indicating that requirement a full supersedeas bond would place any other creditor in an unsecure position.

38. As noted above the Court finds that that a reasonable fair market monthly rental rate for the Property is $2,500. The Court further finds that a reasonably expected judgment against Plaintiffs would be the amount of rent due from February 1, 2019 to the culmination of the appeal, which is anticipated to be an approximate 56 months and which would equal $140,000.00

39. Based on this findings and conclusions, the Court finds that Breckenridge is entitled to a permanent write of restitution.

40. The Court further finds, however, that Plaintiffs should be granted a stay pending appeal which would become effective upon the posting of a $140,000.00 supersedeas bond from which Breckenridge may recover its damages should it prevail on appeal. Plaintiffs shall have until November 12, 2021 to post the supersedeas bond.

41. The Court authorizes the issuance of a permanent writ of restitution effective November 15, 2021 allowing Breckenridge to remove the Plaintiffs and their belongings from the Property. Should Plaintiffs post the $140,000.00 supersedeas bond with the Court by 5:00 p.m. on November 12, 2021, the permanent writ of restitution shall issue, but will be stayed pending the appeal.

C. Order

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Breckenridge's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that the Permanent Writ of Restitution shall issue effective immediately on November 15, 2021.

IT IS FURTHER ORDERED that all other relief sought in Breckenridge's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue is DENIED.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Stay Pending Appeal is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that Plaintiffs' shall be granted a stay pending appeal upon the posting of a $140,000.00 supersedeas bond.

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IT IS FURTHER ORDERED that Plaintiffs' shall have until November 12, 2021 to post the $140,000.00 supersedeas bond, otherwise no stay pending appeal shall be granted and Breckenridge may proceed with execution upon the writ of restitution.

DATED this 3rd day of November 2021.

DISTRICT COURT JUDGE

Respectfully submitted by:	Approved as to form and content by:
Dated this 28th day of October, 2021	Dated this _____ day of _____, 2021
HUTCHISON & STEFFEN, PLLC (#9154) for Brenoch Wirthlin, Esq. Nevada Bar No. 10282 10080 W. Alta Dr., Suite 200 Las Vegas, NV 89145 *Attorneys for Defendant, Breckenridge Property Fund 2016, LLC*	MILLWARD LAW, LTD. Refused to Sign Michael Millward, Esq. Nevada Bar No. 11212 1591 Mono Ave. Minden, NV 89423 *Attorneys for Plaintiffs*
Approved as to form and content by:	Approved as to form and content by:
Dated this 28 day of October, 2021	Dated this 22nd day of October, 2021
AKERMAN LLP Paige L. Magaster, Esq. Nevada Bar No. 15557 1635 Village Center Circle, Ste. 200 Las Vegas, Nevada 89134 *Attorneys for Defendant Bank of America, N.A.*	WRIGHT, FINLAY & ZAK, LLP Ramir M. Hernandez, ~~Esq.~~ Nevada Bar No. 13146 7785 W. Sahara Avenue, Suite 200 Las Vegas, Nevada 89117 *Attorneys for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC*

Exhibit 22

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FILED
2021 NOV 22 AM 9:52
TANYA SCHULTZ
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Bayley Baptist

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME, Plaintiff, v. SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC, a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50., Defendants. AND RELATED MATTERS.	Case No.: 18-CV-01332 Dept No.: II **PERMANENT WRIT OF RESTITUTION**

THE STATE OF NEVADA TO THE SHERIFF OR CONSTABLE OF LYON COUNT, GREETING.

WHEREAS on October 3, 2019, Defendant in Intervention/Counterclaimant Breckenridge Property Fund 2016, LLC ("Counterclaimant") filed its Intervenor's Counterclaim ("Counterclaim") pursuant to which Counterclaimant asserted, among other things, claims for quiet title and writ of restitution regarding that certain real property at issue located at 70 Riverside Drive, Dayton, Nevada 89403 ("Property");

WHEREAS on March 18, 2021, Counterclaimant filed its Motion for Summary Judgment ("Counterclaimant's MSJ") seeking judgment on all counterclaims;

WHEREAS on June 23, 2021, this Court entered its Order on Breckenridge Motion for Summary Judgment ("Order") pursuant to which it granted the Counterclaimant's MSJ in its entirety;

WHEREAS in the Order this Court made numerous findings of fact and conclusions of law, adopted herein by reference, including but not limited to the findings that Counterclaimant purchased the Property at a proper foreclosure sale and is therefore entitled to summary judgment regarding its claims to title of the Property as against plaintiffs Albert Ellis Lincicome, Jr. and Vicenta Lincicome;

WHEREAS on September 9, 2021, Counterclaimant filed a Motion for Entry of Order Granting Permanent Restitution and Payment of Overdue Rents.

WHEREAS on September 14, 2021, Plaintiffs filed and served their Motion for Stay Pending Appeal.

WHEREAS on October 12, 2021, at 1:30 p.m., after further briefing had been filed on the motions filed on October 9, 2021 and September 14, 2021, the Court held a hearing on the two motions.

WHEREAS based on the evidence presented, the Court granted Plaintiff's Motion for Stay Pending Appeal, but required Plaintiffs to post a supersedeas bond of $140,000.00 to be paid by November 12, 2021, at 5:00 p.m. in order for the stay to be entered.

WHEREAS the court also granted Counterclaimant's request for a permanent writ of restitution and ordered that a permanent writ of restitution should be issued that states it is effective as of November 15, 2021 if no supersedeas bond was posted by November 12, 2021.

WHEREAS pursuant to the Order Counterclaimant should have permanent restitution of the Property effective as of November 15, 2021.

WHEREAS, so long as this writ is delivered to you on or after November 15, 2021 and there has been no supersedeas bond posted with the Court:

YOU ARE THEREFORE COMMANDED to take with you the force of the County, if necessary, and cause the said Albert Ellis Lincicome, Jr. and Vicenta Lincicome and any tenants or sub-tenants to be removed from the Property on November 16, 2021 at 9:00 a.m. or as soon as reasonably possible thereafter and allow the Counterclaimant to have permanent peaceable restitution of the same.

GIVEN UNDER MY HAND this 17th day of November, 2021.

DISTRICT COURT JUDGE

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person

Respectfully Submitted:
HUTCHISON & STEFFEN, PLLC

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Brenoch R. Wirthlin (10282)
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Attorney for Defendant, Counterclaimant, and Cross-Plaintiff Breckenridge Property Fund 2016, LLC

Exhibit 23

Case No.: 18-CV-01332

Dept. No.: II

FILED

2022 JAN 19 AM 8:24

Victoria Tower

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * * * *

ALBERT ELLIS LINCICOME, JR., and VICENTA LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; FAY SERVICING, LLC a Delaware limited liability company and subsidiary of Fay Financial, LLC; PROF-20130MF LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal Title Trustee; for BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016; NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; MCM-2018-NPL2 and DOES 1-50.,

Defendants.

ORDER ON ATTORNEY'S FEES AND COSTS

On July 20, 2021, Breckenridge Property Fund ("Breckenridge") filed a Motion for Attorney Fees and Cost. On August 5, 2021, Plaintiffs filed an Opposition to Breckenridge's Motion for Attorney Fees and Cost. On September 2, 2021, Breckenridge filed a Reply in Support of its Motion for Attorney Fees and Cost.

I. FINDINGS OF LAW

Nevada Law permits an award of attorneys' fees whenever authorized by statute, rule, or contract. *See U.S. Design & Const. Corp. v. Int'l Broth. Of Elec. Workers*, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002). NRS 18.010 states:

> 1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.
> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
> (a) When the prevailing party has not recovered more than $20,000; or
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.
> 3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.
> 4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

NRS 18.010(2) sets forth situations whereby the court may properly award attorneys' fees: when the prevailing party has not recover more than $20,000 or, without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. NRS 18.010(2).

In *Capanna v. Orth*, 134 Nev. 888, 895 (2018) the Nevada Supreme Court held:

> NRS 18.010(2) (b) allows the district court to award attorney fees to a prevailing party "when the court finds that the claim, counterclaim ... or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party."
>
> "The court shall liberally construe the provisions of [NRS 18.010(2)(b)] in favor of awarding attorney's fees in all appropriate situations," and "[i]t is the intent of the Legislature that the court award attorney's fees pursuant to [NRS

18.010(2)(b)] ... in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses." *Id.* "For purposes of NRS 18.010(2) (b), a claim is frivolous or groundless if there is no credible evidence to support it." *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009).

There must be evidence in the record supporting the proposition that the claim was brought or the defense maintained "without reasonable grounds or to harass the other party." *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005). Further, the decision to award attorney fees is within the sound discretion of the district court and will not be overturned absent a manifest abuse of discretion. *Id.*

NRS 107.080 states:

1. Except as otherwise provided in NRS 106.210, 107.0805, 107.085 and 107.086, if any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

2. The power of sale must not be exercised, however, until:

(a) In the case of any deed of trust coming into force:

(1) On or after July 1, 1949, and before July 1, 1957, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period of 15 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment; or

(2) On or after July 1, 1957, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period of 35 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment.

(b) The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of the recorder of the county wherein the trust property, or some part thereof, is situated a notice of the breach and of the election to sell or cause to be sold the property to satisfy the obligation.

(c) The beneficiary or its successor in interest or the servicer of the obligation or debt secured by the deed of trust has instructed the trustee to exercise the power of sale with respect to the property.

(d) Not less than 3 months have elapsed after the recording of the notice or, if the notice includes an affidavit and a certification indicating that, pursuant to NRS 107.130, an election has been made to use the expedited procedure for the exercise of the power of sale with respect to abandoned residential property, not less than 60 days have elapsed after the recording of the notice.

3. The 15- or 35-day period provided in paragraph (a) of subsection 2 commences on the first day following the day upon which the notice of default

and election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor or, to the person who holds the title of record on the date the notice of default and election to sell is recorded, and, if the property is operated as a facility licensed under chapter 449 of NRS, to the State Board of Health, at their respective addresses, if known, otherwise to the address of the trust property or, if authorized by the parties, delivered by electronic transmission. The notice of default and election to sell must describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the deficiency in performance or payment is made good and any costs, fees and expenses incident to the preparation or recordation of the notice and incident to the making good of the deficiency in performance or payment are paid within the time specified in subsection 2.

4. The trustee, or other person authorized to make the sale under the terms of the deed of trust, shall, after expiration of the applicable period specified in paragraph (d) of subsection 2 following the recording of the notice of breach and election to sell, and before the making of the sale, give notice of the time and place thereof by recording the notice of sale and by:

(a) Providing the notice to each trustor, any other person entitled to notice pursuant to this section and, if the property is operated as a facility licensed under chapter 449 of NRS, the State Board of Health, by personal service, by electronic transmission if authorized by the parties or by mailing the notice by registered or certified mail to the last known address of the trustor and any other person entitled to such notice pursuant to this section;

(b) Posting a similar notice particularly describing the property, for 20 days successively, in a public place in the county where the property is situated; and

(c) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the property is situated or, if the property is a time share, by posting a copy of the notice on an Internet website and publishing a statement in a newspaper in the manner required by subsection 3 of NRS 119A.560.

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. Except as otherwise provided in subsection 7, a sale made pursuant to this section must be declared void by any court of competent jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section;

(b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within 30 days after the date on which the trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder of the county in which the property is located; and

(c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 5 days after commencement of the action.

6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 5 within 90 days after the date of the sale.

7. Upon expiration of the time for commencing an action which is set forth in subsections 5 and 6, any failure to comply with the provisions of this section or any other provision of this chapter does not affect the rights of a bona fide purchaser as described in NRS 111.180.

8. If, in an action brought by the grantor or the person who holds title of record in the district court in and for the county in which the real property is located, the court finds that the beneficiary, the successor in interest of the beneficiary or the trustee did not comply with any requirement of subsection 2, 3 or 4, the court must award to the grantor or the person who holds title of record:

(a) Damages of $5,000 or treble the amount of actual damages, whichever is greater;

(b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor in interest of the beneficiary or the trustee complies with the requirements of subsections 2, 3 and 4; and

(c) Reasonable attorney's fees and costs.

Ê unless the court finds good cause for a different award. The remedy provided in this subsection is in addition to the remedy provided in subsection 5.

9. The sale or assignment of a proprietary lease in a cooperative vests in the purchaser or assignee title to the ownership interest and votes in the cooperative association which accompany the proprietary lease.

10. After a sale of property is conducted pursuant to this section, the trustee shall:

(a) Within 30 days after the date of the sale, record the trustee's deed upon sale in the office of the county recorder of the county in which the property is located; or

(b) Within 20 days after the date of the sale, deliver the trustee's deed upon sale to the successful bidder. Within 10 days after the date of delivery of the deed by the trustee, the successful bidder shall record the trustee's deed upon sale in the office of the county recorder of the county in which the property is located.

11. Within 5 days after recording the trustee's deed upon sale, the trustee or successful bidder, whoever recorded the trustee's deed upon sale pursuant to subsection 10, shall cause a copy of the trustee's deed upon sale to be posted conspicuously on the property. The failure of a trustee or successful bidder to effect the posting required by this subsection does not affect the validity of a sale of the property to a bona fide purchaser for value without knowledge of the failure.

12. If the successful bidder fails to record the trustee's deed upon sale pursuant to paragraph (b) of subsection 10, the successful bidder:

(a) Is liable in a civil action to any party that is a senior lienholder against the property that is the subject of the sale in a sum of up to $500 and for reasonable attorney's fees and the costs of bringing the action; and

(b) Is liable in a civil action for any actual damages caused by the failure to comply with the provisions of subsection 10 and for reasonable attorney's fees and the costs of bringing the action.

13. The county recorder shall, in addition to any other fee, at the time of recording a notice of default and election to sell collect:

(a) A fee of $150 for deposit in the State General Fund.

(b) A fee of $95 for deposit in the Account for Foreclosure Mediation Assistance, which is hereby created in the State General Fund. The Account must be administered by the Interim Finance Committee and the money in the Account may be expended only for the purpose of:

(1) Supporting a program of foreclosure mediation; and

(2) The development and maintenance of an Internet portal for a program of foreclosure mediation pursuant to subsection 16 of NRS 107.086.

(c) A fee of $5 to be paid over to the county treasurer on or before the fifth day of each month for the preceding calendar month. The county recorder may direct that 1.5 percent of the fees collected by the county recorder pursuant to this paragraph be transferred into a special account for use by the office of the county recorder. The county treasurer shall remit quarterly to the organization operating the program for legal services that receives the fees charged pursuant to NRS 19.031 for the operation of programs for the indigent all the money received from the county recorder pursuant to this paragraph.

14. The fees collected pursuant to paragraphs (a) and (b) of subsection 13 must be paid over to the county treasurer by the county recorder on or before the fifth day of each month for the preceding calendar month, and, except as otherwise provided in this subsection, must be placed to the credit of the State General Fund or the Account for Foreclosure Mediation Assistance as prescribed pursuant to subsection 13. The county recorder may direct that 1.5 percent of the fees collected by the county recorder be transferred into a special account for use by the office of the county recorder. The county treasurer shall, on or before the 15th day of each month, remit the fees deposited by the county recorder pursuant to this subsection to the State Controller for credit to the State General Fund or the Account as prescribed in subsection 13.

15. The beneficiary, the successor in interest of the beneficiary or the trustee who causes to be recorded the notice of default and election to sell shall not charge the grantor or the successor in interest of the grantor any portion of any fee required to be paid pursuant to subsection 13.

The Nevada Supreme Court in *Las Vegas Development Group, LLC v Blaha*, 134 Nev. 252, 256 (2018) held:

> NRS 107.080 governs nonjudicial deed-of-trust foreclosure sales and sets forth the substantive requirements and procedures for such sales. Subsection 5(a) states that a sale under "this section may be declared void" if the individual "authorized to make the sale does not substantially comply with the provisions of this section or any applicable provision of NRS 107.086 and 107.087." 2010 Nev. Stat. 26th Spec. Sess., ch. 10, § 31, at 78. Subsection 5(b) requires that such an action be commenced "within 90 days after the date of the sale." *Id.* Subsection 6

> allows 120 days to commence an action if proper notice is not given. *Id.* Thus, if the person authorized to conduct the sale fails to substantially comply with NRS 107.086, NRS 107.087, or one of NRS 107.080(5)'s provisions, it can render the sale void. By the statute's plain language, challenges to those violations are subject to the time limitations in subsections 5 and 6. However, the language of NRS 107.80 presumes that the person making this sale is authorized to do so as trustee or as the person designated under the terms of the deed of trust or transfer in trust. In this case, it is alleged that the security interest of the deed of trust was extinguished by the prior HOA foreclosure sale leaving the person to conduct the sale without authority to do so.
>
> According to Blaha, we previously determined that NRS 107.080 applies to all challenges to a nonjudicial foreclosure sale in *Building Energetix Corp. v. EHE, LP*, 129 Nev. 78, 85–86, 294 P.3d 1228, 1234 (2013). We disagree. *Building Energetix* involved a delinquent-tax certificate issued to the county treasurer prior to a nonjudicial foreclosure sale. *Id.* at 79–80, 294 P.3d at 1230. The issue was "whether, consistent with NRS 107.080(5), a trust-deed beneficiary who acquires such property on credit bid at the foreclosure sale can later redeem, or obtain reconveyance of, the property from the county treasurer." *Id.* at 79, 294 P.3d at 1230. Thus, we were not confronted with, nor did we decide, whether NRS 107.080 applies to all challenges to an NRS Chapter 107 nonjudicial foreclosure sale.
>
> Blaha also contends that the application of NRS 107.080(5)–(6) to all claims challenging an NRS Chapter 107 foreclosure sale is consistent with the legislative history of the statute, which indicates that the legislators were concerned about individuals having the ability to reverse a foreclosure sale indefinitely. While that concern was stated at the hearing on the legislation, it was in the context of the statutory violations of NRS 107.080. *See* Hearing on S.B. 217 Before the Senate Judiciary Comm., 74th Leg. (Nev., March 21, 2007); Hearing on S.B. 217 Before the Assembly Judiciary Comm., 74th Leg. (Nev., May 2, 2007). The legislators did not discuss scenarios where the deed of trust is void. Thus, we conclude that the legislative history supports the plain language of NRS 107.080 and demonstrates that the legislators were not contemplating challenges to a foreclosing entity's authority. *See* Hearing on S.B. 217 Before the Senate Judiciary Comm., 74th Leg. (Nev., March 21, 2007).

The Nevada Supreme Court in *Brunzell v Golden Gate Nat. Bank, 85 Nev. 345 (1969)*, set forth factors a trial court must consider when evaluating the amount of attorneys' fees requested under NRS 18.010. In *Logan v Abe*, 131 Nev. 260, 267 (2015) the Nevada Supreme Court held:

> In determining the amount of fees to award, the [district] court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the requested amount is reviewed in light of the" *Brunzell* factors. *Haley v. Eighth Judicial Dist. Court*, —— Nev. ——, ——, 273 P.3d 855, 860 (2012) (internal quotations omitted). While it is preferable for a district court to expressly analyze each factor relating to an award

of attorney fees, express findings on each factor are not necessary for a district court to properly exercise its discretion. *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, ——Nev. ——, ——, 283 P.3d 250, 258 (2012).

Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in an action for the recovery of real property or a possessory right thereto. NRS. 18.020 states:

> 1. In an action for the recovery of real property or a possessory right thereto.
> 2. In an action to recover the possession of personal property, where the value of the property amounts to more than $2,500. The value must be determined by the jury, court or master by whom the action is tried.
> 3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500.
> 4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
> 5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court.

NRS 18.110 states:

> 1. The party in whose favor judgment is rendered, and who claims costs, must file with the clerk, and serve a copy upon the adverse party, within 5 days after the entry of judgment, or such further time as the court or judge may grant, a memorandum of the items of the costs in the action or proceeding, which memorandum must be verified by the oath of the party, or the party's attorney or agent, or by the clerk of the party's attorney, stating that to the best of his or her knowledge and belief the items are correct, and that the costs have been necessarily incurred in the action or proceeding.
> 2. The party in whose favor judgment is rendered shall be entitled to recover the witness fees, although at the time the party may not actually have paid them. Issuance or service of subpoena shall not be necessary to entitle a prevailing party to tax, as costs, witness fees and mileage, provided that such witnesses be sworn and testify in the cause.
> 3. It shall not be necessary to embody in the memorandum the fees of the clerk, but the clerk shall add the same according to the fees of the clerk fixed by statute.
> 4. Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs.

II. Arguments

A. Breckenridge

Breckenridge argues that its claims to superior title in this matter were supported by the record and well-founded Nevada law. Breckenridge did not become involved in this matter until it purchased the subject property at the foreclosure sale after the Plaintiffs failed to post the bond required by the Court.

Breckenridge took title to the Property pursuant to NRS 107.080, which states "every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption." Breckenridge argued that the majority of allegations in the Second Amended Complaint occurred prior to the foreclosure sale, which Breckenridge played no role in. Plaintiffs failed to put forth any evidence to support that they had the ability to pay the underlying obligation and foreclosure was not justified.

Breckenridge argues that the Plaintiffs filed this lawsuit as a last-minute attempt to stave off the foreclosure. They failed to post the required bond, the foreclosure sale occurred, and therefore the Plaintiffs had no claim to superior title over Breckenridge. The Plaintiffs' allegations of wrongful foreclosure after discovery was completed were not and could not have been established or proven by any legal and factual support.

Breckenridge asserts that attorneys' fees are proper under NRS 18.010(2) because the Plaintiffs brought or maintained a claim against Breckenridge without reasonable grounds or to harass the prevailing party because it could not be supported by any credible evidence at trial. Breckenridge argues that the requested fees meet the *Brunzell* factors. Breckenridge asserts that costs must be awarded as the Plaintiffs did not file a motion to re-tax the costs pursuant to NRS 18.110.

B. Plaintiffs

Plaintiffs argue that their claims were brought upon reasonable grounds and not for the purpose of harassment. Plaintiffs point to this Court's 12/31/18 Order which stated that "Plaintiff is likely to prevail on a Homeowner Bill of Rights claims." Plaintiffs also argued that Breckenridge knew about the underlying litigation prior to purchasing the property at the time of

the foreclosure sale. Without providing any authority, Plaintiffs argued that any award should stay pending an appeal. The Court will not consider a stay without being presented any authority.

Finally, the Court notes that Plaintiffs did not argue that the requested attorneys' fees did not comply with statute or case law.

III. Issue presented

Did the Plaintiffs bring or maintain their claims against Breckenridge "without reasonable grounds or to harass" Breckenridge?

IV. Conclusions of Law

The facts clearly establish that the original action was brought against the foreclosing parties to prevent foreclosure on the property. Breckenridge was brought into the action after the Plaintiffs failed to obtain the preliminary injunction by failing to post the required bond. The evidence brought at the preliminary injunction hearing was in stark contrast to what was brought out in discovery.

NRS 107.080 provides an avenue to set aside a foreclosure sale if the foreclosing party or parties did not substantially comply with the provisions of the statute. Plaintiffs during the injunction hearing raised issues as to whether the foreclosing parties had adequately provided notice of what the deficiency was due based upon allegations of non-performance and intervening agreements. Based upon the limited evidence and case law provided, the Court found that the Plaintiffs had a likelihood of success at this preliminary stage.

The gravamen of Breckenridge's arguments correctly focus upon the Plaintiffs maintaining the action after it was clear that they had no basis to claim that a wrongful foreclosure had occurred or that the foreclosing parties had failed to substantially comply with NRS 107.080. Facts raised in discovery clearly presented a picture that was wholly different than what had been presented to the Court during the preliminary injunction hearing. At the completion of discovery, it was clear that the foreclosing parties had substantially complied with NRS 107.080.

The evidence also established that the Plaintiffs had abused the foreclosure mediation program in a previous action. The Plaintiffs never had the ability or desire to make payments on

the loan obligation. The maintenance of the action appears to the Court as done to prolong the Plaintiffs' ability to live rent free.

This Court has previously commented on how unreasonable Plaintiffs' legal theory that one or two unaccepted payments years ago would excuse the Plaintiffs from making years of mortgage payments. Plaintiffs provided no authority that a lender could not require them to make tender of back payments. Plaintiffs were given a second opportunity to settle the matter even after reneging on the agreement reached during the foreclosure mediation several years prior.

The Plaintiffs provided no legal authority that the failure to have an exact amount owed in the required notices compelled a finding that substantial compliance could not occur. The Court cannot find that the Plaintiffs presented novel legal theories concerning the application of NRS 107.080 or actions concerning wrongful foreclosure. See, e.g. *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588 (2009). Plaintiffs' claims were maintained without reasonable grounds as to Breckenridge.

The Plaintiffs did not contest the amounts requested for attorneys' fees. The Court reviewed the pleading and finds that Breckenridge has properly supported the amount requested as required under *Brunzell*. The character of the work, the work actually performed, the qualities of the advocacy and the result obtained warrant an award of the amount requested.

Breckenridge also correctly cited to NRS 18.110. The Plaintiffs did not file a motion to retax the costs. The Court thereby orders the costs requested.

Based upon the above and good cause appearing, **IT IS HEREBY ADJUDGED and ORDERED** that Breckenridge's Motion for Attorneys' Fees and Costs is **GRANTED.**

IT IS HEREBY FURTHER ORDERED that a Judgment in favor of Breckenridge in the amount of Forty Four Thousand Six Hundred Forty Eight Dollars ($44,648.00) for attorneys' fees is **AWARDED.**

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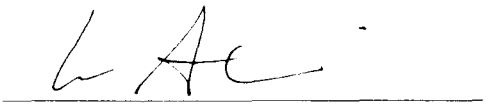
IT IS HEREBY FURTHER ORDERED that a Judgment in favor of Breckenridge in the amount of Three Thousand Seven Hundred Eighty Eight Dollars and One Cent ($3,788.01) for costs is **AWARDED.**

DATED: This 18th day of January, 2022.



HON. LEON ABERASTURI
DISTRICT JUDGE

Certificate of Mailing

I hereby certify that I, Quc Thai, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

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DATED: This 18th day of January, 2022.

Employee of Hon. Leon Aberasturi

Exhibit 24

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT ELLIS LINCICOME, JR.; AND VICENTA LINCICOME,
Appellants,
vs.
SABLES, LLC, A NEVADA LIMITED LIABILITY COMPANY, AS TRUSTEE OF THE DEED OF TRUST GIVEN BY VICENTA LINCICOME AND DATED 5/23/2007; FAY SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND SUBSIDIARY OF FAY FINANCIAL, LLC; PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A., AS LEGAL TITLE TRUSTEE; BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, LLC, A UTAH LIMITED LIABILITY COMPANY; NEWREZ, LLC, D/B/A SHELLPOINT MORTGAGE SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; AND MCM-2018-NPL2,
Respondents.

No. 83261

FILED

JAN 19 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER PARTIALLY DISMISSING APPEAL

Respondent Breckenridge Property Fund 2016, LLC has filed a motion to dismiss this appeal as it relates to it. Appellants oppose the motion, and Breckenridge has filed a reply.

Having considered the parties arguments and the documents before this court, we conclude that the June 23, 2021, "Order on Breckenridge Motion for Summary Judgment" is not appealable as it does not dispose of all the claims and issues raised by Breckenridge. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final

22-01881

judgment). Although this order grants summary judgment in favor of Breckenridge and states that "Breckenridge is entitled to summary judgment regarding their claims to title of property," the order does not appear to resolve Breckenridge's claims for slander of title, writ of restitution, unjust enrichment, and rent or monies for possession of the subject property, or award any amount of damages for these claims.[1] *Cf. Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 127 Nev. 86, 90, 247 P.3d 1107, 1109 (2011) ("[A] judgment must confer some right that may be enforced without further orders of the court and which puts an end to the litigation." (alteration and internal quotation marks omitted)). And no other statute or court rule appears to authorize an appeal from this order. *See Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013). Accordingly, Breckenridge's motion to dismiss is granted, and this appeal is dismissed as it relates to Breckenridge.

However this appeal may proceed as to the remaining respondents as the June 23, 2021, "Order Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgement Filed by BANA, Prof-2013 M4 Legall Trust, US Bank and Fay Servicing LLC" appears to have been properly certified as final under NRCP 54(b).

Appellants' motion for an extension of time to file the opening brief and appendix is granted. The opening brief and appendix were filed on December 29 and 30, 2021. However, the opening brief is deficient as the certificate of compliance does not state the exact word count contained in the brief. *See* NRAP 28.2(a)(4); NRAP 32(a)(7)(A)(ii); NRAP Form 9.

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[1]Appellants' docketing statement did not mention these claims nor did it provide this court with a copy of the claims as required. *See* Docketing Statement items 23 and 27.

Accordingly, the clerk of this court shall strike the opening brief filed on December 29, 2021. Appellants shall have 14 days from the date of this order to file an opening brief that complies with this court's formatting rules and this order. Thereafter, briefing shall proceed as provided in NRAP 31(a)(1).

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Stiglich

_____, J.
Herndon

cc: Hon. Leon Aberasturi, District Judge
Clouser Hempen Wasick Law Group, Ltd.
Millward Law, Ltd.
Hutchison & Steffen, LLC/Las Vegas
Wedgewood, LLC
Wright, Finlay & Zak, LLP/Las Vegas
Akerman LLP/Las Vegas
ZBS Law, LLP
Third District Court Clerk