

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRP FUND VI, LLC, a Nevada Limited
Liability Company,

Appellant,

vs.

QUALITY LOAN SERVICE
CORPORATION, a foreign corporation;
PHH MORTGAGE CORPORATION, a
foreign corporation; FEDERAL
NATIONAL MORTGAGE
ASSOCIATION, a National Banking
Entity,

Respondents.

Appeal Case No. 84407

District Court Case No. A-22-84407-1
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**RESPONDENTS PHH MORTGAGE CORPORATION AND FEDERAL
NATIONAL MORTGAGE ASSOCIATION'S RESPONSE TO
APPELLANT'S EMERGENCY MOTION UNDER NRAP 27(e) FOR
INJUNCTION / STAY PENDING APPEAL**

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made so that the judges of this court may evaluate possible disqualification or recusal.

1. Counsel and law firms that have appeared for Respondents PHH Mortgage Corporation (“PHH”) and Federal National Mortgage Association (“Fannie Mae”): Christina V. Miller, Esq. of the law firm Wright, Finlay & Zak, LLP.¹

2. On June 1, 2019, Ocwen Loan Servicing, LLC merged with and into PHH Mortgage Corporation, a New Jersey corporation, with PHH Mortgage Corporation surviving the merger. PHH Mortgage Corporation is 100% directly owned by PHH Corporation, a Maryland Corporation. PHH Corporation is 100% directly owned by Ocwen Financial Corporation. Ocwen Financial Corporation, a publicly-traded Florida corporation. No publicly held corporation owns more than 10% of Ocwen Financial Corporation’s stock.

¹ Dana Jonathan Nitz, Esq., R. Samuel Ehlers, Esq., Bradley T. Wibicki, Esq., Krista Nielsen, Esq. and Natalie Lehman, Esq. are no longer associated with the law firm of Wright, Finlay & Zak, LLP.

3. Fannie Mae, presently under the conservatorship of the Federal Housing Finance Agency, does not have a parent corporation and according to SEC filings, no publicly held corporation owns more than 10% of Fannie Mae's common (voting) stock.

Dated this 28th day of March, 2022.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	vi
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND	2
The Loan and Foreclosure Under the Deed of Trust.	2
The HOA Foreclosure Sale, Prior Quiet Title Action and TRP’s Acquisition of the Property.	4
III. LEGAL STANDARD	6
IV. LEGAL ARGUMENT	7
A. TRP’s Emergency Motion is procedurally defective under NRAP 27(e)(3).	7
B. TRP Has Not Demonstrated that Moving for a Stay in District Court Would Have Been Impracticable as Required Under NRAP 8(a)(2).	8
C. This Court Should Deny TRP’s Motion Because It Will Not Suffer Irreparable or Serious Injury and Its Arguments Lack Merit under Nevada Law.	9
i. TRP Fails to Address the Majority of the Factors Governing Motions to Stay Under NRAP 8(c).	9
ii. TRP’s Arguments Fail on the Merits.	10
iii. The Bankruptcy Discharge Did Not Make the Loan Wholly Due.	11
iv. The Prior Quiet-Title Litigation Negates TRP’s Claim.	16
v. TRP Seeks an Absurd Result.	16
vi. The Statute That Includes NRS 106.240 Requires Tolling upon Notice of Pending Litigation.	18

vii. Equitable Considerations Require Tolling NRS 106.240’s Ten-Year Period During Litigation Concerning the Lien’s Validity.....	19
viii. The COVID-19 Foreclosure Moratorium Tolled the NRS 106.240 Clock.	22
ix. The Recorded Rescission Renders NRS 106.240 Inoperative.....	23
V. CONCLUSION.....	26
CERTIFICATE OF COMPLIANCE.....	27
CERTIFICATE OF SERVICE	29

TABLE OF AUTHORITIES

Cases

<i>Bank of Am., NA v. SFR Invs. Pool 1, LLC</i> , 849 F. App'x 211 (9th Cir. 2021) (unpublished disposition).....	24, 25, 26
<i>Bank of Am., NA v. Summit Real Estate Group</i> , No. 20-16624, 2021 WL 5507377 (9th Cir. Nov. 24, 2021) (unpublished disposition).....	24
<i>Bank of N.Y. Mellon v. Holmes</i> , No. A-1-CA-38114, 2021 WL 2557793, at *3 (N.M. Ct. App. June 22, 2021)	16
<i>Berezovsky v. Moniz</i> , 869 F.3d 923 (9th Cir. 2017)	21
<i>Closson v. Bank of New York Mellon</i> , No. 2:20-cv-02229-APG-DJA, 2021 WL 3723154, at *2 (D. Nev. Aug. 20, 2021)	25
<i>Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n</i> , 117 Nev 835, 34 P.3d 546, 551 (2001).....	18
<i>Copper Creek (Marysville) Homeowners Ass'n v. Kurtz</i> , No. 82083-4-I, 2022 WL 152492, at *7 (Wash. Ct. App. Jan. 18, 2022).....	15
<i>Coury v. Tran</i> , 895 P.2d 650, 653 (Nev. 1995)	18
<i>Daisy Tr. v. Wells Fargo Bank, N.A.</i> , 135 Nev. Adv. Op. 30, 445 P.3d 846 (2019)	21
<i>Diaz v. BBVA ISA</i> , No. 2 CA-CV 2021-0046, 2022 WL 71832, at * (Ariz. Ct. App. Jan. 7, 2022).....	15
<i>Edmundson v. Bank of Am.</i> , 378 P.3d 272, 276 (Wash. App. 2016)	14, 15
<i>G & P Investment Enterprises, LLC v. John Clarkson et al.</i> , Eighth Judicial District Court, Case No. A-13-689733-C	5
<i>Glass v. Select Portfolio Servicing, Inc.</i> , No. 78325, 2020 WL 3604042, at *1 (Nev. July 1, 2020) (unpublished disposition).....	23, 24, 26
<i>Griffin v. Oceanic Contractors, Inc.</i> , 458 U.S. 564 (1982)	17

<i>Holt v. Reg'l Tr. Servs. Corp.</i> , 266 P.3d 601, 606 (Nev. 2011)	24
<i>Hunt v. Warden</i> , 903 P.2d 826, 827 (Nev. 1995)	17
<i>In re Mirchou</i> , 588 B.R. 555, 571 (D. Nev. Bankr. 2018).....	13
<i>Jarvis v. Federal Nat'l Mortg. Ass'n</i> , No. 16-cv-5194, 2017 WL 1438040, at *3 (W.D. Wash. April 24, 2017).....	13, 14, 15
<i>Kabler v. HSBC Bank USA, Nat. Ass'n</i> , No. 16-cv-07138, 2018 WL 1384551, at *5 (Kan. Dist. Ct. Mar. 16, 2018)	15
<i>LaSalle Bank N.A. v. Hammer Family 1994 Trust</i> , No. 59420, 2015 WL 1423421, at *1 (Nev. 2015) (unpublished disposition)	18
<i>LBM Fin. LLC v. Shamus Holdings, Inc.</i> , No. CIV. 09-11668-FDS, 2010 WL 4181137, at *4 (D. Mass. Sept. 28, 2010)	16
<i>McCullough v. World Wrestling Ent., Inc.</i> , 172 F. Supp. 3d 528, 551–55 (D. Conn. 2016)	22
<i>Morgan c. Eighth Jud. Dist. Ct. of State ex rel. County of Clark</i> , No. 70655, 2016 WL 3541178, at *1 n.2 (Nev. June 27, 2016).....	7
<i>Nelson v. Heer</i> , 122 P.3d 1252, 1254 (Nev. 2005).....	9
<i>Pro-Max Corp. v. Feenstra</i> , 117 Nev. 90, 16 P.3d 1074 (2001)	20, 22
<i>Ramanathan v. Bank of New York Mellon</i> , No. 2:19-cv-02009, 2021 WL 4486320 (D. Nev. Sept. 30, 2021)	12
<i>Saticoy Bay LLC Series10717 Refectory v. Bank of Am., N.A.</i> , No. 82153, 2021 WL 5276630, at *1 (Nev. Nov. 10, 2021) (unpublished disposition)	24
<i>Saticoy Bay LLC, Series 2920 Bayliner Ave. v. US Bank Nat'l Ass'n</i> , No. 82323, 2021 WL 5276381, at *1 (Nev. Nov. 10, 2021) (unpublished disposition)	24
<i>SFR Invs. Pool 1 v. U.S. Bank, N.A.</i> , No. 81293, 2021 WL 4238769, at *1 (Nev. Sept. 16, 2021) (unpublished disposition)	24
<i>Sgro & Roger v. Eighth Jud. Dist. Ct. of State of Nev. in and for County of Clark</i> , No. 76418, 2018 WL 3624635, at *1 n.2 (Nev. July 20, 2018)	7

<i>Shadow Wood HOA v. N.Y. Cmty. Bancorp.</i> , 132 Nev. 49, 57, 366 P.3d 1105, 1111 (2016)	20
<i>State v. Eighth Jud. Dist. Ct. (Logan D.)</i> , 129 Nev. 492, 507, 306 P.3d 369, 380 (2013)	19
<i>TRP Fund VI, LLC v. Quality Loan Service Corporation, et al.</i> , Eighth Judicial District Court, District of Clark County, Case. No A-22-848493-C	8
<i>TRP Fund VIII, LLC v. NewRez LLC</i> , No. 20-17129, 2021 WL 5823701 (9th Cir. Dec. 8, 2021) (unpublished disposition)	24
<i>Wilmington Sav. Fund Soc’y, FSB v. Fernandez</i> , 62 Misc. 3d 622, 625 (N.Y Sup. Ct. 2018), <i>aff’d</i> , 179 A.D. 3d 79 (2019)	15

Statutes

11 U.S.C. § 524	13
NRS 107.550(3)	24
NRS 108.260	18

Other Authorities

Stat. of Nev. (1917)	18
----------------------------	----

Rules

NRAP 26.1(a)	ii
NRAP 27(d)(1)	27
NRAP 27(d)(2)	27
NRAP 27(e)	1, 6, 7, 8
NRAP 27(e)(3)	6, 7
NRAP 32(a)(4)	27
NRAP 32(a)(5)	27

NRAP 32(a)(6).....	27
NRAP 8	6
NRAP 8(a)(2)	6, 8, 9
NRAP 8(c).....	7, 8, 9, 10

I. INTRODUCTION

On March 1, 2022, the district court held a hearing on Appellant TRP Fund VI, LLC's ("TRP") Motion for Preliminary Injunction ("Motion"). Having considered the parties' written briefs and oral arguments presented at the hearing, the district court found that TRP did not show "[t]hat it has a reasonable probability of success on the merits of its claims." *See* TRP's Emergency Motion under NRAP 27(e) at Exhibit 1, at 2. Specifically, the district court held that (1) the bankruptcy discharge did not make the loan "wholly due"; and that (2) NRS 106.240 is a conclusive presumption, thereby allowing the court to take equitable considerations into account to determine whether the 10-year period was tolled. *Id.* at 2-3. As such, the district court denied TRP's Motion and dissolved the Temporary Restraining Order that had been entered on February 17, 2022. *Id.* at 3.

TRP has now filed this Emergency Motion under NRAP 27(e) for Injunction/Stay Pending Appeal ("Emergency Motion") in order to prevent foreclosure under the first position Deed of Trust from proceeding.

The Emergency Motion should be summarily denied for failure to include the necessary NRAP 27(e) Certificate thereby rendering the Emergency Motion procedurally defective. Moreover, as discussed in detail below, the district court's ruling was proper and correctly denied injunctive relief to TRP because TRP's claims are defeated by Nevada law. Emergency stay relief must be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Loan and Foreclosure Under the Deed of Trust.

On or about June 30, 2008, Mitzi L. Clarkson and John Clarkson (“Borrowers”) purchased the Property and obtained a loan in the amount of \$276,720.00, secured by a Deed of Trust identifying GMAC Mortgage, LLC dba ditech (“GMAC”) as the Lender and Mortgage Electronic Registration Systems, Inc. (“MERS”) as the beneficiary solely as a nominee for Lender and Lender’s successors and assigns (the “Deed of Trust”) (the promissory note (“Note”) and Deed of Trust are collectively referred to herein as the “Loan”).² The Deed of Trust states that the “Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full no later than July 1, 2038.”³

The Deed of Trust further states that “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 or sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law.”⁴

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² A true and correct copy of the Deed of Trust, recorded against the Property on June 30, 2008, as Instrument Number 20080630-0004237, is attached hereto as **Exhibit 1**.

³ *Id.*

⁴ *Id.* at p.14, ¶ 22 (emphasis added).

On December 15, 2011, the Deed of Trust was assigned to GMAC Mortgage, LLC.⁵ On July 31, 2013, the Deed of Trust was then assigned to Ocwen Servicing, LLC (“Ocwen”).⁶ PHH is the successor by merger to Ocwen. Fannie Mae is now the beneficiary of record of the Deed of Trust pursuant to an assignment recorded against the Property on February 15, 2022.

On December 21, 2012, a Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust (“First Notice of Default”) was recorded against the Property.⁷ A Notice of Rescission of the First Notice of Default (“Rescission”) was then recorded against the Property on March 4, 2020.⁸ The Rescission expressly states “that the present beneficiary and/or the present trustee, **does hereby rescind, cancel and withdraw said [First Notice of Default], and does hereby revoke any acceleration of the loan thereby[.]**”⁹

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⁵ A true and correct copy of the Assignment of Deed of Trust, recorded against the Property on December 15, 2011, as Instrument Number 201112150003046, is attached hereto as **Exhibit 2**.

⁶ A true and correct copy of the Assignment of Deed of Trust, recorded against the Property on July 31, 2013, as Instrument Number 201307310003015, is attached hereto as **Exhibit 3**.

⁷ A true and correct copy of the First Notice of Default, recorded against the Property on December 21, 2012, as Instrument Number 20121221-0003251, is attached as **Exhibit 4**.

⁸ A true and correct copy of the Rescission, recorded against the Property on March 4, 2020, as Instrument Number 20200304-0001978, is attached as **Exhibit 5**.

⁹ *Id.* (emphasis added).

On October 11, 2021, a second Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust (“Second Notice of Default”) was recorded against the Property.¹⁰ A Notice of Trustee’s Sale was then recorded against the Property on January 21, 2022, setting the original sale date for February 18, 2022.¹¹

The HOA Foreclosure Sale, Prior Quiet Title Action and TRP’s Acquisition of the Property.

On September 11, 2013, Alessi & Koenig LLC, on behalf of Majestic Hills Community Association (“HOA”) foreclosed on its lien for unpaid assessments selling the Property to G & P Investment Enterprises LLC (“G & P”) for \$38,100.00 (“HOA Sale”).¹² G & P sold its interest in the Property to TRP on or about July 26, 2016.¹³

¹⁰ A true and correct copy of the Second Notice of Default, recorded against the Property on October 11, 2021, as Instrument Number 20211011-0001465, is attached as **Exhibit 6**.

¹¹ A true and correct copy of the Notice of Trustee’s Sale, recorded against the Property on January 21, 2022, as Instrument Number 20220121-0001551, is attached as **Exhibit 7**.

¹² A true and correct copy of the HOA’s Notice of Delinquent Assessment (Lien), recorded against the Property on January 19, 2012, as Instrument Number 20120119-0002124, is attached as **Exhibit 8**, the HOA’s Notice of Trustee’s Sale, recorded against the Property on August 13, 2013, as Instrument Number 20130813-0001284, is attached as **Exhibit 9**, and the resulting Trustee’s Deed Upon Sale, recorded against the Property on September 30, 2013, as Instrument Number 201309300002011, is attached hereto as **Exhibit 10**.

¹³ A true and correct copy of the Grant, Bargain, Sale Deed to TRP, recorded against the Property on July 26, 2016, as Instrument Number 20160726-0001174, is attached as **Exhibit 11**.

After the HOA Sale, G & P, predecessor in interest to TRP, filed an action for quiet title and declaratory relief against the Borrowers and Ocwen seeking a judicial declaration that the Deed of Trust was extinguished by the HOA Sale. *See G & P Investment Enterprises, LLC v. John Clarkson et al.*, Eighth Judicial District Court, Case No. A-13-689733-C (“Prior Quiet Title Action”). G & P’s counsel filed a Notice of Lis Pendens (“Lis Pendens”) on October 4, 2013, and recorded it against the Property on October 10, 2013.¹⁴

Ocwen counterclaimed, challenging the validity of the HOA Sale, amongst other causes of action. The Prior Quiet Title Action resulted in a judgment in favor of Ocwen, finding that Fannie Mae owned the Loan and that the Federal Foreclosure Bar protected Fannie Mae’s interest from being extinguished by the HOA Sale.¹⁵ Accordingly, the title was quieted such that “[t]he Deed of Trust encumbering the property that was executed by Mitzi L. Clarkson and John Clarkson and recorded with the Clark County Recorder’s Office on June 30, 2008, as Instrument No. 20080630-0004237 remains in full force and effect.”¹⁶ TRP appealed and the

¹⁴ A true and correct copy of the Lis Pendens, recorded against the Property on October 10, 2013, as Instrument Number 20131010-0000610, is attached as **Exhibit 12**.

¹⁵ A true and correct copy of the Order Granting Ocwen’s Motion for Reconsideration of Its Motion for Summary Judgment, entered on September 26, 2019 and recorded on February 25, 2021 as Instrument Number 20210225-0004412, is attached as **Exhibit 13**.

¹⁶*Id.*

Nevada Court of Appeals affirmed the judgment in favor of Ocwen and against TRP, concluding that “[t]he district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Ocwen’s deed of trust and that TRP took the property subject to it.”¹⁷

III. LEGAL STANDARD

NRAP 27(e)(3) states that:

A motion filed under this subdivision shall be accompanied by a certificate of the movant or the movant’s counsel, if any, entitled “NRAP 27(e) Certificate,” that contains the following information:

- (A) The telephone numbers and office addresses of the attorneys for the parties and the telephone numbers and addresses for any pro se parties;
- (B) Facts showing the existence and nature of the claimed emergency; and
- (C) When and how counsel for the other parties and any pro se parties were notified and whether they have been served with the motion; or, if not notified and served, why that was not done.

(Emphasis added).

Under NRAP 8, this Court has the discretion to deny motions for stay or injunction pending appeal. NRAP 8(a)(2) requires a movant to move first in the district court to stay the case, or “show that moving in the district court would be

¹⁷ A true and correct copy of the Order of Affirmance, filed on January 29, 2021, and recorded against the Property on February 25, 2021, as Instrument Number 20210225-0004413, is attached as **Exhibit 14**.

impracticable.” The Rule also provides that when deciding whether to issue a stay or injunction, this Court will consider factors, including “(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.” NRAP 8(c).

IV. LEGAL ARGUMENT

A. TRP’s Emergency Motion is procedurally defective under NRAP 27(e)(3).

Here, TRP has failed to attach the necessary NRAP 27(e) Certificate to the Emergency Motion, thereby making this Emergency Motion procedurally defective. *See Sgro & Roger v. Eighth Jud. Dist. Ct. of State of Nev. in and for County of Clark*, No. 76418, 2018 WL 3624635, at *1 n.2 (Nev. July 20, 2018) (noting that “petitioner’s failure to provide ... an NRAP 27(e) certification constitutes [a] bas[i]s on which to deny” the motion); *Morgan c. Eighth Jud. Dist. Ct. of State ex rel. County of Clark*, No. 70655, 2016 WL 3541178, at *1 n.2 (Nev. June 27, 2016) (denying petitioner’s emergency motion and noting that “counsel failed to comply with the requirements set forth in NRAP 27(e)”).

Moreover, TRP did not even attempt to comply with the requirement to notify

the undersigned counsel of its intent to seek emergency relief from this Court prior to filing the Emergency Motion, as is required under Rule 27(e). This is a further violation of NRAP 27(e) justifying a summary denial of the Emergency Motion.

B. TRP Has Not Demonstrated that Moving for a Stay in District Court Would Have Been Impracticable as Required Under NRAP 8(a)(2).

NRAP 8(a)(2) requires a movant who has moved for a stay pending appeal to have first moved for such a stay in the district court, or “show that moving in the district court would be impracticable.”

TRP fails to demonstrate that moving in the district court would have been impracticable. *See* Mot. at 8-9. The district court’s order denying TRP’s preliminary injunction was issued on March 10, 2022. *See* Order Denying Motion for Preliminary Injunction and Dissolving Temporary Restraining Order, *TRP Fund VI, LLC v. Quality Loan Service Corporation, et al.*, Eighth Judicial District Court, District of Clark County, Case. No A-22-848493-C. Instead of immediately appealing the decision and moving to stay in the district court, TRP waited eleven days to file its Motion with this Court. The only reason TRP offers for its failure to comply with Rule 8(c) is that it believes its motion would not have prevailed in the district court, as the district court had already denied its motion for a preliminary injunction. Indeed, TRP summarily concludes that because the district court “declined to prevent the [HOA Sale]” by denying its request for a preliminary injunction, “[r]equesting a stay pending appeal from the same district court judge

would” simply be a “waste of time and resources” and that it was “left with no alternative but to seek a stay from the Court” given the April 1, 2022 date of the upcoming foreclosure sale. *See* Mot. at 8-9. But futility is not the standard required under the Rule; rather the Rule requires TRP to demonstrate that moving in the district court was “impracticable.” NRAP 8(a)(2). Indeed, this requirement is “grounded in the district court’s vastly greater familiarity with the facts and circumstances of the particular case” and the fact that the district court is “better positioned to resolve any factual disputes”). *Nelson v. Heer*, 122 P.3d 1252, 1254 (Nev. 2005). TRP has failed to demonstrate why it would have been “impracticable” to pursue a motion with the district court in the first instance, and this Court should deny TRP’s Motion on this basis alone. *See Nelson*, 122 P.3d at 1254-55 (denying motion to stay pending appeal where motion was not made to the district court in the first instance).

C. This Court Should Deny TRP’s Motion Because It Will Not Suffer Irreparable or Serious Injury and Its Arguments Lack Merit under Nevada Law.

Even if this Court considers the merits of TRP’s Emergency Motion, denial is still appropriate under NRAP 8(c).

i. **TRP Fails to Address the Majority of the Factors Governing Motions to Stay Under NRAP 8(c).**

TRP fails to discuss with any specificity most of the specific factors this Court is to consider in deciding whether to issue a stay pending appeal. Under NRAP 8(c),

this Court considers the following factors when making a decision on such a motion: “(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.” In its Motion, TRP addresses its argument on the merits (factor 4), but fails to address with any specificity the remaining factors.

With respect to irreparable harm, TRP only twice obliquely references “irreparable harm” if the foreclosure sale were to proceed. *See* Mot. at 8, 23. But TRP does not explain with any detail or supporting caselaw why it would suffer irreparable harm if its Motion were denied. Moreover, TRP has recorded a lis pendens against the property, giving notice to all prospective purchasers that the foreclosure sale is subject to the outcome of this lawsuit. TRP has not cited to any authority suggesting that a purchaser at the foreclosure sale would become a bona fide purchaser. TRP has not argued that its lis pendens would not provide adequate notice to such a prospective purchaser.

ii. TRP’s Arguments Fail on the Merits.

Nor is TRP likely to prevail on the merits in the appeal, *see* NRAP 8(c) (describing “whether appellant/petitioner is likely to prevail on the merits in the

appeal” as one factor in deciding on a motion to stay pending appeal), as TRP’s allegations are defeated by publicly recorded documents and Nevada law.

iii. The Bankruptcy Discharge Did Not Make the Loan Wholly Due.

TRP contends that a bankruptcy discharge makes the loan “wholly due” for NRS 106.240 purposes, because no further payments are due thereafter. That is not correct, for at least three reasons.

First, the NRS 106.240 clock begins only when the loan becomes wholly due “according to the terms” of the deed of trust. A bankruptcy discharge, even if assumed to make the loan wholly due, operates according to bankruptcy law, not “according to the terms” of the deed of trust. TRP’s counsel, in other cases, has sought to explain away this flaw in its argument by asserting that the deed of trust automatically incorporates all applicable law, and that therefore the bankruptcy discharge inherently takes effect “according to the terms” of the deed of trust. That argument is too clever by half. It would obliterate the distinction between the *intrinsic* terms of the contract and the *extrinsic* law that applies regardless of the contract’s terms. By enacting the statutory phrase “according to the terms thereof,” the Legislature plainly intended to *exclude*, not include, matters extrinsic to the contract, such as the operation of generally applicable law. Similarly, TRP’s counsel has asserted elsewhere that the fact the deed of trust includes a choice-of-law clause specifying that it is governed by federal law means that the contract incorporates

federal law. *See* Emergency Motion at 17. That is also incorrect. The clause means only that federal law will govern the interpretation, construction, and application of the terms to which the parties agreed—not that the parties adopted all federal laws as their own contractual undertakings.

Indeed, that issue has already been decided by at least one court in federal district court. *See Ramanathan v. Bank of New York Mellon*, No. 2:19-cv-02009, 2021 WL 4486320 (D. Nev. Sept. 30, 2021). The plaintiff in *Ramanathan*, like TRP here, argued that “the debtors’ discharge from bankruptcy ... triggered the ten-year period under 106.240” *Id.* at *2. The district court rejected that argument, holding that “[f]or the debt to become wholly due within § 106.240’s meaning, it must be ‘according to the terms thereof.’” *Id.* at *4. The court explained that this means “the debt must be wholly due by the terms of the original maturity date or because the lender has accelerated the debt according to the terms of the parties’ agreement.” *Id.* The court held that neither had happened, explaining that “although the bankruptcy discharge relieved the debtors of personal liability on the debt, *that happened by operation of the bankruptcy proceeding, not by the lender’s option to accelerate under the terms of the note and deed of trust.*” *Id.* (emphasis added). The same is true here: Even if the bankruptcy discharge is assumed to have made the debt wholly due, it did not do so “under the terms thereof,” and therefore cannot have triggered the NRS 106.240 clock.

Second, even if bankruptcy law were assumed to be incorporated into the contract, the bankruptcy discharge did not make the loan “wholly due.” A bankruptcy discharge *excuses* the borrower from its obligation to make further payments and *precludes* the lender from enforcing the borrower’s personal credit obligation; it does not render the loan “wholly due.” *See* 11 U.S.C. § 524. TRP’s argument, ultimately, is that a legal mechanism that *negates* an obligation simultaneously makes it “*wholly due*”; that makes no sense. Deeds of trust embody a security interest in the corresponding property, and unlike the personal debt obligations they secure, deeds of trust remain enforceable after a bankruptcy discharge. As the Bankruptcy Court has explained, a “Chapter 7 discharge relieve[s] the Debtor of his personal liability for his prebankruptcy debts, but [does] not affect the [corresponding] liens.” *In re Mirchou*, 588 B.R. 555, 571 (D. Nev. Bankr. 2018).

Third, the case upon which TRP relies is inapplicable and has been effectively abrogated. TRP points the Court to an unpublished Ninth Circuit decision that TRP says holds that a “bankruptcy discharge has the effect of making the discharge date the actual maturity date of the debt.” Emergency Motion at 18 (citing *Jarvis v. Federal Nat’l Mortg. Ass’n*, 726 F. App’x. 666 (9th Cir. 2018) (unpublished)). TRP misreads the decision, which holds that because a bankruptcy discharge eliminated a borrower’s liability for future installment payments, the last installment date before the discharge triggered Washington’s statute of limitations for enforcing the

obligation. The Ninth Circuit specifically cited a Washington decision holding that “the statute of limitations runs against each installment from the time it becomes due,” and reasoned that because no payments were due after the discharge, the limitations period ran from the prior installment’s due date. *Jarvis*, 726 F. App’x at 666–67 (quoting *Edmundson v. Bank of Am.*, 378 P.3d 272, 276 (Wash. App. 2016)). The decision says nothing about the debt becoming “wholly due” or the discharge date becoming “the actual maturity date,” as TRP mistakenly contends. *See id.* Nor does the district court decision in the case support TRP. It is true that the district court states that a bankruptcy “discharge of a borrower’s personal liability on his loan—the cessation of his installment obligations—is the analog to a note’s maturation” for statute-of-limitations purposes. *Jarvis v. Federal Nat’l Mortg. Ass’n*, No. 16-cv-5194, 2017 WL 1438040, at *3 (W.D. Wash. April 24, 2017). But that is because “[i]n both cases, no more payments could become due,” not because the loan has been accelerated or payment of the outstanding balance has otherwise become due. *Id.* Indeed, contrary to TRP’s argument, the district court recognized that a bankruptcy discharge does *not itself* authorize “the creditor to require [the borrower] to pay in full immediately.” *Id.*

Moreover, the Washington Court of Appeals has since rejected *Jarvis*’s interpretation of Washington law. *See Copper Creek (Marysville) Homeowners Ass’n v. Kurtz*, No. 82083-4-I, 2022 WL 152492, at *7 (Wash. Ct. App. Jan. 18,

2022). In *Copper Creek*, the Washington Court of Appeals concluded that federal courts’ interpretation of *Edmundson* as announcing a new rule that a bankruptcy discharge begins the clock on the statute of limitations governing foreclosure is “error” and that that is “not the law in Washington.” *Id.*

Even if the Washington Court of Appeals had not clarified state law on the issue, the *Edmundson* and *Jarvis* decisions are of limited persuasive value, as they are both at odds with the weight of authority on this issue. *See, e.g., Diaz v. BBVA ISA*, No. 2 CA-CV 2021-0046, 2022 WL 71832, at * (Ariz. Ct. App. Jan. 7, 2022) (finding that discharge of debt in bankruptcy is not equivalent of maturation of debt and “while the [borrowers] received relief of their personal obligation to [lender] when their debt was discharged in bankruptcy, the deed of trust they executed to secure that personal obligation was not extinguished”); *Wilmington Sav. Fund Soc’y, FSB v. Fernandez*, 62 Misc. 3d 622, 625 (N.Y Sup. Ct. 2018), *aff’d*, 179 A.D. 3d 79 (2019) (“[O]ther jurisdictions have encountered a similar factual scenario and have held that a discharge in bankruptcy does not accelerate the debt”); *Kabler v. HSBC Bank USA, Nat. Ass’n*, No. 16-cv-07138, 2018 WL 1384551, at *5 (Kan. Dist. Ct. Mar. 16, 2018) (“[borrower’s] bankruptcy protects [borrower] against personal liability, but it did not accelerate or extinguish the lien under the law”); *Bank of N.Y. Mellon v. Holmes*, No. A-1-CA-38114, 2021 WL 2557793, at *3 (N.M. Ct. App.

June 22, 2021) (“Borrower’s discharge did not trigger the accrual of time to file for foreclosure under the statute of limitations”).

The law and common sense are in accord. A bankruptcy discharge excuses the borrower from paying but leaves an obligation partially unmet; it does not make the obligation “wholly due.”

iv. The Prior Quiet-Title Litigation Negates TRP’s Claim.

Even if the bankruptcy discharge did somehow trigger the NRS 106.240 clock, the long-running Prior Quiet Title Action to determine the Deed of Trust’s validity tolled it. The 10-year period has therefore not run out, and as a result TRP’s Emergency Motion should be denied.

v. TRP Seeks an Absurd Result.

Tolling the ten-year period during the pendency of the Prior Quiet Title Action would comport with NRS 106.240’s purpose: to clear abandoned and forgotten liens from the record, thereby making title marketable without the need for quiet-title litigation. As one federal court explained, ancient-lien statutes “have the obvious purpose of clearing titles of old and obsolete mortgages.” *LBM Fin. LLC v. Shamus Holdings, Inc.*, No. CIV. 09-11668-FDS, 2010 WL 4181137, at *4 (D. Mass. Sept. 28, 2010). It would make no sense to apply NRS 106.240 here, as the lien was obviously not abandoned or forgotten.

Terminating a lien under NRS 106.240 where that lien's validity was recently litigated between the lienholder and the titleholder's predecessor in interest for over seven years of the ten-year period would violate the canon against interpreting statutes to require absurd results. No one could reasonably believe the lien had been simply left to lie fallow, and invalidating it as "old and obsolete" or abandoned and forgotten would make a mockery of judgment confirming its validity. As the U.S. Supreme Court has explained, "interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564 (1982).¹⁸ Under the circumstances, TRP cannot plausibly claim to believe that Ocwen, or subsequently PHH, abandoned the lien or lacks the intent to enforce it. Nor could anyone else checking the land records reasonably infer that Ocwen/PHH did not intend to protect and enforce the lien. Accordingly, this Court should hold that NRS 106.240 did not extinguish the Deed of Trust because the statutory clock was tolled during the pendency of the state-court litigation over the Deed of Trust's validity.

¹⁸ This Court concurs: "When interpreting a statute, this court resolves any doubt as to legislative intent in favor of what is reasonable, and against what is unreasonable. ... A statute should be construed in light of the policy and the spirit of the law, and the interpretation should avoid absurd results." *Hunt v. Warden*, 903 P.2d 826, 827 (Nev. 1995).

vi. The Statute That Includes NRS 106.240 Requires Tolling upon Notice of Pending Litigation.

The statute that includes NRS 106.240 expressly addresses notices of pending litigation, such as the Lis Pendens filed here, and its text and structure confirm NRS 106.240's inapplicability. The legislation providing for NRS 106.240 was captioned "An Act to quiet title to real estate by defining when the lien of an attachment and mortgage *and the notice of the pendency of an action* expires." *See* Stat. of Nev. (1917) at 41 (emphasis added).¹⁹ The section that directly follows NRS 106.240 states that "Notice of the pendency of any action"—including publicly recorded lis pendens—"shall not constitute notice or be of any force or effect *after the expiration of ten years from the time of the filing of such notice.*" *See* Stat. of Nev. (1917) at 41 (emphasis added). That provision remains in effect today. *See* NRS 108.260.

A lis pendens confirms that a live dispute exists where "the title to [a] property is disputed." *LaSalle Bank N.A. v. Hammer Family 1994 Trust*, No. 59420, 2015 WL 1423421, at *1 (Nev. 2015) (unpublished disposition). Thus, a lis pendens "cloud[s] title *before* a sale of property occurs *so that the claims of a party may be resolved*" *Coury v. Tran*, 895 P.2d 650, 653 (Nev. 1995) (emphasis changed). By placing

¹⁹ "The title of a statute may be considered in determining legislative intent." *Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev 835, 34 P.3d 546, 551 (2001).

the pending-litigation provision *after* NRS 106.240, the Legislature manifested its intent that the pending-litigation provision would act as an *exception* to NRS 106.240, *i.e.*, that serving a quiet-title complaint or recording a lis pendens in relation to a mortgage preserves the mortgage until either the matter is resolved or the ten-year period for doing so expires, whichever is later. Holding otherwise could place the two provisions in conflict in situations like those here, as a lis pendens relating to a mortgage could not have any continuing “force or effect” if the underlying mortgage were terminated mid-litigation.

“When two statutory provisions conflict,” Nevada law compels courts to “harmonize conflicting provisions so that the act as a whole is given effect.” *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129 Nev. 492, 507, 306 P.3d 369, 380 (2013) (citations omitted). Read together, the full statute provides that mortgages ordinarily terminate ten years after the debt becomes “wholly due,” except that notices of pending litigation regarding the mortgage forestall that outcome while they remain valid and effective, until ten years after their issuance. Thus, the Lis Pendens filed here automatically tolled NRS 106.240’s 10-year clock.²⁰

- vii. Equitable Considerations Require Tolling NRS 106.240’s Ten-Year Period During Litigation Concerning the Lien’s Validity.

²⁰ See Lis Pendens, **Exhibit 12**.

In any event, because no one could reasonably have doubted PHH's intention to enforce the Deed of Trust once the Prior Quiet Title Action concluded, given the positions PHH's predecessor Ocwen took during that litigation, the NRS 106.240 period was equitably tolled throughout that case.

NRS 106.240's application is not automatic and can be precluded by equitable considerations. In *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074 (2001), the Nevada Supreme Court found that, while the ten-year period under NRS 106.240 had unquestionably passed, the statute did not automatically terminate the lien. *See id.* at 1079. Instead, the court remanded the case for further proceedings on whether an equitable consideration—there, estoppel—precluded that result. *Id.* Had equitable considerations been off limits, there would have been no basis for remand. *Feenstra* is consistent with a long line of decisions holding that Nevada courts retain the power to fashion equitable remedies in cases involving real property. *See, e.g., Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. 49, 57, 366 P.3d 1105, 1111 (2016). *Feenstra*, *Shadow Wood*, and cases like them confirm that equitable considerations can trump NRS 106.240's application. The Court should find that they do so here.

Here, the equities clearly favor PHH, whose predecessor diligently litigated its rights and successfully defeated a prolonged quiet-title challenge brought by TRP. Tolling the ten-year period is also equitable to the public at large, as it would advance the public interest in clear and reliable land records. The land records relating to the

Property contain the HOA-issued Notice of Default and Election to Sell Under Notice of Delinquent Assessment Lien, [Exhibit 8], the First Notice of Default, [Exhibit 4], the Rescission, [Exhibit 5], the HOA-recorded Notice of Trustee's Sale, [Exhibit 9], the assignment of the Deed of Trust to Ocwen, [Exhibit 3], the Trustee's Deed Upon Sale, [Exhibit 10], the Second Notice of Default, [Exhibit 6], and the Notice of Trustee's Sale, [Exhibit 7]. No one could plausibly infer from those records that the lien had been satisfied, abandoned, or forgotten. Holding that the ten-year period under NRS 106.240 continues to run under these circumstances would introduce confusion and uncertainty, not clarity.

Indeed, adopting TRP's position would undermine years of work by this Court, the Ninth Circuit, Nevada courts, and other federal courts in resolving the substantial volume of litigation regarding the effect of HOA foreclosures on Enterprise lien interests. *E.g.*, *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. Adv. Op. 30, 445 P.3d 846 (2019). Those decisions confirm that the Federal Foreclosure Bar preserves liens that Nevada HOA foreclosures could otherwise extinguish, and the clarity the decisions provide has streamlined and reduced burdensome litigation in Nevada courts. Allowing NRS 106.240 to terminate the Deed of Trust here would usher in a wave of new litigation—a wave that already appears to be forming around ancient lien arguments—seeking to effectively re-litigate and erase those results. The public

interest favors resolving title disputes efficiently, not creating incentives for parties like TRP to prolong them.

Finally, TRP contends that NRS 106.240 is a statute of repose. To the extent that argument is advanced to assert that equitable tolling is unavailable, TRP is incorrect. This Court's decision in *Feenstra* demonstrates that equitable considerations can preclude application of NRS 106.240 in appropriate circumstances. *Feenstra* comports with other states' equitable exceptions to statutes of repose; courts recognize and apply such exceptions routinely. *See, e.g., McCullough v. World Wrestling Ent., Inc.*, 172 F. Supp. 3d 528, 551–55 (D. Conn. 2016) (tolling statute of repose under “continuing course of conduct” doctrine).

Accordingly, if the Court holds that NRS 106.240 applies here, an equitable remedy precludes application of the statute, and this Court should deny TRP's request to enjoin the foreclosure sale.

viii. The COVID-19 Foreclosure Moratorium Tolloed the NRS 106.240 Clock.

Even if the Loan was considered to have been accelerated by the Borrowers' bankruptcy discharge, the ten-year clock under NRS 106.240 was tolled during the pendency of the COVID-19 foreclosure moratorium, in effect from March 18,

2020,²¹ through July 31, 2021.²² This further prevented PHH from instituting foreclosure proceedings until August 2021, at the earliest, since this is a GSE-owned loan and therefore subject to the moratorium. At a minimum, even if NRS 106.240 did apply, which it does not, the 10-year period under NRS 106.240 should be tolled for the 16-months that the foreclosure moratorium was in effect and injunctive relief must be denied.

ix. The Recorded Rescission Renders NRS 106.240 Inoperative.

Even if the Court assumes that the bankruptcy discharge triggered the NRS 106.240 clock and neither the foreclosure moratorium nor the prior litigation tolled it, PHH's recordation of the Rescission on March 4, 2020, stopped the clock and reset it, negating any application of the statute to extinguish the Deed of Trust.

As this Court has explained, a rescission notice "effectively cancel[s] the acceleration" and resets NRS 106.240's ten-year clock. *Glass v. Select Portfolio Servicing, Inc.*, No. 78325, 2020 WL 3604042, at *1 (Nev. July 1, 2020) (unpublished disposition). *Glass* held that, under Nevada law, a recorded rescission places the lender and borrower in the same position as if the notice of default had never been recorded. *See id.*; *see also Holt v. Reg'l Tr. Servs. Corp.*, 266 P.3d 601,

²¹ *See* FHFA Press Release dated March 18, 2020, entitled "FHFA Suspends Foreclosures and Evictions for Enterprise-Backed Mortgages", attached hereto as **Exhibit 15**.

²² *See* FHFA Press Release dated June 24, 2021, entitled "FHFA Extends COVID-19 Foreclosure and REO Eviction Moratoriums", attached hereto as **Exhibit 16**.

606 (Nev. 2011) (holding that “[a] notice of rescission renders moot disputes concerning the notice of default or its timing,” and thus “resets the right-to-cure and other time periods provided by law for the debtor’s protection”); NRS 107.550(3) (Upon the recording of a rescission of a notice of default, the “beneficiary of the deed of trust is thereupon restored to its former position and has the same rights as though ... a notice of default and election to sell had not been recorded.”). This Court has repeatedly confirmed its decision in *Glass. Saticoy Bay LLC Series10717 Refectory v. Bank of Am., N.A.*, No. 82153, 2021 WL 5276630, at *1 (Nev. Nov. 10, 2021) (unpublished disposition); *Saticoy Bay LLC, Series 2920 Bayliner Ave. v. US Bank Nat’l Ass’n*, No. 82323, 2021 WL 5276381, at *1 (Nev. Nov. 10, 2021) (unpublished disposition); *SFR Invs. Pool 1 v. U.S. Bank, N.A.*, No. 81293, 2021 WL 4238769, at *1 (Nev. Sept. 16, 2021) (unpublished disposition).

The Ninth Circuit has repeatedly confirmed this same principle of Nevada law. *Bank of Am., NA v. SFR Invs. Pool 1, LLC* (“*BANA v. SFR*”), 849 F. App’x 211 (9th Cir. 2021) (unpublished disposition); *TRP Fund VIII, LLC v. NewRez LLC*, No. 20-17129, 2021 WL 5823701 (9th Cir. Dec. 8, 2021) (unpublished disposition); *Bank of Am., NA v. Summit Real Estate Group*, No. 20-16624, 2021 WL 5507377 (9th Cir. Nov. 24, 2021) (unpublished disposition). For instance, in *BANA v. SFR*, Fannie Mae challenged a district court’s ruling that NRS 106.240 extinguished its lien notwithstanding a recorded rescission of the notice of default. Fannie Mae’s

servicer had recorded a notice of default and election to sell under the deed of trust, which had the effect of declaring all sums secured by the deed of trust immediately due and payable and causing the property to be sold to satisfy the debt. Two years later, the servicer issued a rescission notice stating that the servicer rescinded, cancelled, and withdrew the notice of default. The Ninth Circuit reversed the district court and held that, under Nevada law, the “rescission notice decelerated the demand for full payment [and] the notice rendered NRS 106.240 inapplicable.” *BANA v. SFR*, 849 F. App’x at 212–13.²³

Those holdings apply with equal force here. The Borrowers’ failure to make their mortgage payments led the servicer to record the First Notice of Default, and the Borrower’s default predates and appears to have precipitated the bankruptcy discharge. The Rescission stated that the beneficiary or trustee of the Deed of Trust “does hereby rescind, cancel and withdraw said [Notice of Default], and does hereby revoke any acceleration of the loan” **Exhibit 4**. Thus, the Recission had the effect of “cancel[ing] the demand for full payment of the note,” rendering NRS

²³ Numerous district court decisions are to the same effect. *See, e.g., Closson v. Bank of New York Mellon*, No. 2:20-cv-02229-APG-DJA, 2021 WL 3723154, at *2 (D. Nev. Aug. 20, 2021) (“a rescission of the notice of default was recorded. The rescission decelerated the same debt that was the subject of both the lender communications and the recorded notice of default. Consequently, the debt was no longer ‘wholly due’ under [NRS] 106.240, so the ten-year period to extinguish the lien has not run.”).

106.240 inapplicable. *BANA v. SFR*, 849 F. App'x at 212. As with the rescission in *Glass*, the Recission here states that it is “only an election, without prejudice, not to cause a sale to be made,” but as *Glass* confirms, the Rescission stops and resets the NRS 106.240 clock nevertheless. **Exhibit 4**; *see Glass*, 2020 WL 3604042, at *1.

V. CONCLUSION

Based on the foregoing, Respondents respectfully request that the Court deny TRP's Emergency Motion.

Dated this 28th day of March, 2022.

WRIGHT, FINLAY & ZAK, LLP

/s/ Christina V. Miller

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Nevada Bar No. 12448

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Mortgage and Federal National

Mortgage Association

CERTIFICATE OF COMPLIANCE

I hereby certify that this opposition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this opposition has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point, Times New Roman style. I further certify that I have made a good faith effort to comply with the page-limitation set forth in NRAP 27(d)(2) but have been unable to address all arguments raised by Appellant within the limitation. Therefore, a separate motion for permission to enlarge the page limitation will be filed concurrently with this Response. I further certify that this opposition complies with the formatting requirements of NRAP 27(d)(1). Finally, I hereby certify that I have read this opposition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 28th day of March, 2022.

WRIGHT, FINLAY & ZAK, LLP

/s/ Christina V. Miller

Christina V. Miller, Esq.

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Attorney for Respondents PHH

Mortgage and Federal National

Mortgage Association

CERTIFICATE OF SERVICE

I certify that I electronically filed on the 28th day of March, 2022, the foregoing **RESPONDENTS PHH MORTGAGE CORPORATION AND FEDERAL NATIONAL MORTGAGE ASSOCIATION'S RESPONSE TO APPELLANT'S EMERGENCY MOTION UNDER NRAP 27(e) FOR INJUNCTION / STAY PENDING APPEAL** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[X] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

Lansford W. Levitt
4230 Christy Way
Reno, NV 89519

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Jason Craig

An Employee of Wright Finlay Zak, LLP

Exhibit 1

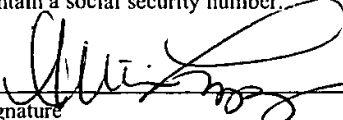
Exhibit 1

Exhibit 1

17

(21)

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


Signature

Print name & title Daydra Crampton Processor

20080630-0004237

Fee: \$34.00

N/C Fee: \$0.00

06/30/2008

14:58:58

T20080129928

Requestor:

EQUITY TITLE OF NEVADA

Debbie Conway

JLB

Clark County Recorder Pgs: 21

APN# 191-01-418-004

~~Recording Requested By:~~

Name: GMAC Mortgage, LLC dba ditech

Address: 3200 Park Center Dr. Suite 150

Accommodation Only

City/State/Zip: Costa Mesa , CA 92626

#08750196.Deed of Trust

If legal description is a metes & bounds description furnish the following information:

Legal Description obtained from
of document), Book
recorded
County Recorder office.

Page
(date) in the

Document #

(type

If Surveyor, please provide name and address.

*All attached legal
Description*

This page added to provide additional information required by NRS 111.312 Sections 1-4.
(Additional recording fee applies)

This cover page must be typed.

000657034449

NV Affirmation Cover Sheet - 2/06

VMP ®-368C(NV) (0602)



Assessor's Parcel Number:

191-01-418-004

Return To: *Mortgage Statements To.*
GMAC Mortgage, LLC dba ditech
3200 Park Center Dr. Suite 150
Costa Mesa, CA 92626

Prepared By:

Daydra Crampton

Recording Requested By:

GMAC Mortgage, LLC dba ditech
3200 Park Center Dr. Suite 150
Costa Mesa, CA 92626

4099 [Space Above This Line For Recording Data]
#08750196. DEED OF TRUST MIN 100037506570344490

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 06/26/2008

together with all Riders to this document.

(B) "Borrower" is Mitzi L. Clarkson and John Clarkson, Wife and Husband

Mitzi L. Clarkson by JC As Joint Tenants
JC

Borrower is the trustor under this Security Instrument.

(C) "Lender" is GMAC Mortgage, LLC dba ditech

000657034449

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
WITH MERS *Mitzi L. Clarkson by JC*

Form 3029 1/01

VMP-6A(NV) (0510)

Page 1 of 15

Initials: *JC*

VMP Mortgage Solutions, Inc.



Lender is a **Residential Mortgage Lender**

organized and existing under the laws of **Delaware**

Lender's address is **3200 Park Center Dr. Suite 150, Costa Mesa, CA 92626**

(D) "Trustee" is **ETS Services, LLC**

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

(F) "Note" means the promissory note signed by Borrower and dated **06/26/2008**

The Note states that Borrower owes Lender **Two Hundred Seventy Six Thousand Seven**

Hundred Twenty

Dollars

(U.S. \$ **276,720.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **July 1, 2038**

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

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

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

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

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

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

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

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


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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time to **000657034449**

Initials: *MLC by J E*

 -6A(NV) (0510)

Page 2 of 15

Form 3029 1/01

time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

The Assessor's Parcel Number (Property Tax ID#) for the Real Property is 191-01-418-004. See Attached Legal Description

Parcel ID Number: **191-01-418-004**
1700 Ravanusa Drive
Henderson


which currently has the address of
[Street]
[City], Nevada **89052-3104** [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

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 **-6A(NV) (0510)**

Page 3 of 15

Initials: MLC by JC
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Form 3029 1/01

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

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

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


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

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

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

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

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 -6A(NV) (0510)

Page 4 of 15

Initials: MLC by SC
JE

Form 3029 1/01

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

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 6A(NV) (0510)

Page 5 of 15

Form 3029 1/01

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

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


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

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

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

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

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-6A(NV) (0510)

Page 6 of 15

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Form 3029 1/01

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

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 6A(NV) (0510)

Page 7 of 15

Initials: MLC by JL

Form 3029 1/01

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

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

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

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


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

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

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

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

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 -6A(NV) (0510)

Page 8 of 15

Initials: JE

Form 3029 1/01

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

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

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

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

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


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

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

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

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

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 6A(NV) (0510)

Page 9 of 15

Initials: MLC by JL
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Form 3029 1/01

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

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

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

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

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

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

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VMP-6A(NV) (0510)

Page 10 of 15

Initials: *MLC by JC*
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Form 3029 1/01

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

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VMP-6A(NV) (0510)

Initials: *MLC by dc*
dc

Page 11 of 15

Form 3029 1/01

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.

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VMP-6A(NV) (0510)

Page 12 of 15

Initials: MC by JC

Form 3029 1/01

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

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

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


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

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

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

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

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 6A(NV) (0510)


Page 13 of 15

Initials: dl

Form 3029 1/01


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

Witnesses:

 (Seal)
MITZI CLARKSON -Borrower

by her Attorney In Fact John Clarkson

by her Attorney in fact

 (Seal)
JOHN CLARKSON -Borrower

____ (Seal)
-Borrower

-Borrower

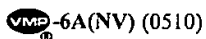
_____ (Seal)
-Borrower

-Borrower

-Borrower

-Borrower

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Page 14 of 15

Form 3029 1/01

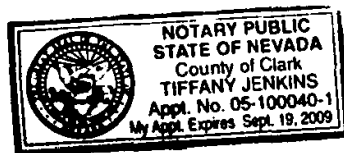
STATE OF NEVADA
COUNTY OF *Clark*

This instrument was acknowledged before me on *June 26, 2008* by
John Clarkson

*All attached Trust for
MITI Clarkson*

Tiffany Jenkins

Mail Tax Statements To:



VMP-6A(NV) (0510)

Page 15 of 15

MLC by [Signature]
Initials: *OC*

Form 3029 1/01

Escrow No.: 08750196

NOTARY ACKNOWLEDGEMENTATTACHED TO:
DEED OF TRUSTSTATE OF NEVADA)
)SS
COUNTY OF CLARK)

On this 26th day of June, 2008, before
me, a Notary Public in and for said County and State, personally appeared
John Clarkson
known to me to be the person whose name is subscribed to the within instrument
as the Attorney in Fact of Mitzi Clarkson
and who acknowledged to me that _____ (he/she) subscribed the name of
Mitzi Clarkson thereto and _____ (his/her)
own name as Attorney in Fact.

WITNESS my hand and official seal.

(Notarial Seal)

Tiffany Jenkins
Notary Public in and for said County and State

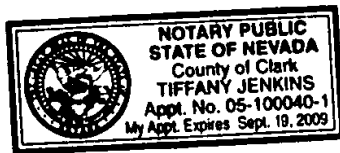


Exhibit A**PARCEL I:**

Lot Four (4) in Block One (1) of **FINAL MAP OF SEVEN HILLS PARCEL T1-UNIT 3**, as shown by map thereof on file in Book 92 of Plats, Page 44, in the Office of the County Recorder of Clark County, Nevada, and amended by Certificate of Amendment recorded December 20, 1999 in Book 991220 as Document No. 00991, and amended by that Certificate of Amendment recorded June 30, 2000 in Book 20000630 as Document No. 00748, of Official Records, Clark County, Nevada.

PARCEL II:

A non-exclusive easement for ingress, egress and recreational use of the private drives and common elements and provided for in and subject to that certain Declaration of Covenants, Conditions and Restrictions for Seven Hills, recorded October 12, 1995 in Book 951012 as Document No. 00849, Official Records.

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this **Twenty-Sixth** day of **June, 2008**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to **GMAC Mortgage, LLC dba ditech**

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: **1700 Ravanusa Drive, Henderson, NV 89052-3104**

[Property Address]

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

(the "Declaration"). The Property is a part of a planned unit development known as **Seven Hills**

[Name of Planned Unit Development]

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

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

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

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MULTISTATE PUD RIDER- Single Family - FannieMae/FreddieMac UNIFORM INSTRUMENT Form 3150 1/01

Wolters Kluwer Financial Services
VMP®-7R (0411).01

Page 1 of 3

Initials: *MLC by JC*
JC



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

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

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

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

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

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

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

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

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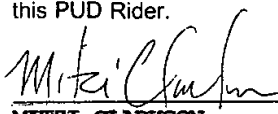
Page 2 of 3

Initials:


MLC by JC
JC

Form 3150 1/01


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



MITZI CLARKSON (Seal)
-Borrower



JOHN CLARKSON (Seal)
-Borrower

by her Attorney In Fact John Clarkson
by her Attorney in fact 

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

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VMP®-7R (0411).01

Page 3 of 3

Form 3150 1/01

Exhibit 2

Exhibit 2

Exhibit 2

APN: 191-01-418-004

Recording Requested By
And When Recorded Mail To:GMAC MORTGAGE, LLC
P.O. BOX 8300
FORT WASHINGTON PA 19034T.S. NO.: 1334186-11
MERS ID: 100037506570344490
MERS PH#: 1-888-679-6377

Inst #: 201112150003046

Fees: \$17.00

N/C Fee: \$0.00

12/15/2011 02:27:15 PM

Receipt #: 1008979

Requestor:

LSI TITLE AGENCY INC.

Recorded By: LEX Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

SPACE ABOVE THIS LINE FOR RECORDER'S USE

110347733

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to
GMAC MORTGAGE, LLC
all beneficial interest under that certain deed of trust dated June 26, 2008, executed by
MITZI L. CLARKSON AND JOHN CLARKSON, WIFE AND HUSBAND AS JOINT TENANTS, trustor,
to ETS SERVICES, LLC, trustee,
and recorded as Instrument No. 20080630-0004237 on June 30, 2008 in book N/A page N/A, of Official
Records in the County Recorder's office of CLARK County, NEVADA describing land therein as

COMPLETELY DESCRIBED IN SAID DEED OF TRUST

together with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Deed of Trust.

Dated:

9-22-11

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
AS NOMINEE FOR GMAC MORTGAGE, LLC DBA DITECH A
RESIDENTIAL MORTGAGE LENDER, ITS SUCCESSOR AND
ASSIGNS

Nicole Veney Nicole Veney
Assistant Secretary

State of

TEXAS

County of

DAWSON

On 9/28/11 before me,

Julie Shewbrooks

a Notary Public, personally appeared

Nicole Veney

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 Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

(Seal)

Signature

Julie Shewbrooks

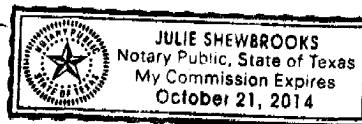


Exhibit 3

Exhibit 3

Exhibit 3

APN: 191-01-418-004

Recording Requested By
And When Recorded Mail To:OCWEN LOAN SERVICING, LLC
1100 VIRGINIA DRIVE
FORT WASHINGTON PA 19034

Inst #: 201307310003015

Fees: \$17.00

N/C Fee: \$0.00

07/31/2013 01:58:50 PM

Receipt #: 1715644

Requestor:

LSI TITLE AGENCY INC.

Recorded By: ANI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

T.S. NO.: 1334186-23

MERS ID: 100037506570344490

SPACE ABOVE THIS LINE FOR RECORDER S USE

110347733**ASSIGNMENT OF DEED OF TRUST**FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to
OCWEN LOAN SERVICING, LLC
C/O 1100 VIRGINIA DRIVE
FORT WASHINGTON PA 19034all beneficial interest under that certain deed of trust dated June 26, 2008, executed by
MITZI L. CLARKSON BY HER ATTORNEY IN FACT JOHN CLARKSON AND JOHN CLARKSON,
WIFE AND HUSBAND AS JOINT TENANTS, trustor, to ETS SERVICES, LLC, trustee,
and recorded as Instrument No. 20080630-0004237 on June 30, 2008 in book N/A page N/A, of Official
Records in the County Recorder's office of CLARK County, NEVADA describing land therein as

COMPLETELY DESCRIBED IN SAID DEED OF TRUST

and all rights accrued or to accrue under said Deed of Trust.

Dated: 7-2-13

GMAC MORTGAGE, LLC

Kelli D. Smith
Kelli D. Smith
Authorized OfficerState of Pennsylvania
County of MontgomeryOn 7-2-13 before me, Patricia Nolan Hoffman
a Notary Public, personally appearedKelli D. Smithwho 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 Pennsylvania that the foregoing paragraph is true and correct.

WITNESS my hand and official seal (Seal)

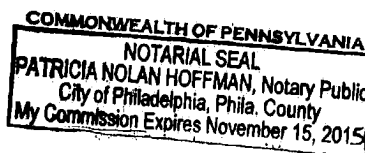
Signature Patricia Nolan Hoffman
Patricia Nolan Hoffman

Exhibit 4

Exhibit 4

Exhibit 4

APN: 191-01-418-004
RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

CAL-WESTERN RECONVEYANCE CORPORATION
P.O. Box 22004
525 East Main Street
El Cajon CA 92022-9004

Inst #: 201212210003251
Fees: \$223.00
N/C Fee: \$25.00
12/21/2012 11:29:53 AM
Receipt #: 1431142
Requestor:
LSI TITLE AGENCY INC.
Recorded By: RNS Pgs: 7
DEBBIE CONWAY
CLARK COUNTY RECORDER

110347733

The Undersigned Hereby Affirms That There Is No Social Security Number Contained In This Document.

**NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO CAUSE
SALE OF REAL PROPERTY UNDER DEED OF TRUST**

T.S. No. 1334186-38

NOTICE IS HEREBY GIVEN: THAT CAL-WESTERN RECONVEYANCE CORPORATION, A California Corporation, is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated June 26, 2008

executed by MITZI L. CLARKSON AND JOHN CLARKSON, WIFE AND HUSBAND AS JOINT TENANTS as Trustor, in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR GMAC MORTGAGE, LLC DBA DITECH A RESIDENTIAL MORTGAGE LENDER, ITS SUCCESSOR AND ASSIGNS as Beneficiary, recorded June 30, 2008, under Instrument No. 20080630-0004237 in book XX page XX, of Official Records in the Office of the County Recorder of CLARK County, Nevada describing land therein as:
COMPLETELY DESCRIBED IN SAID DEED OF TRUST

Securing, among other obligations, one note(s) for the original sum of \$276,720.00 that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the below set out beneficiary; that a breach of, and default in the obligations for which said Deed of Trust is security has occurred in that payment has not been made of

Failure to pay the monthly payment due January 1, 2011 of principal, interest and impounds and subsequent installments due thereafter; plus late charges; together with all subsequent sums advanced by beneficiary pursuant to the terms and conditions of said deed of trust.

The street address and other common designation, if any, of the real property described above is purported to be:

1700 RAVANUSA DRIVE
HENDERSON NV 89052-3104

That by reason thereof, the below set out beneficiary under such Deed of Trust, has executed and delivered to the Trustee, a written Declaration of Default and Demand for Sale, and has deposited with said 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.

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Page 1 of 2

**NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO CAUSE
SALE OF REAL PROPERTY UNDER DEED OF TRUST**

T.S. No. 1334186-38

NOTICE

You may have the right to cure the default herein and reinstate the obligation secured by such Deed of Trust above described. Section 107.080 NRS permits certain defaults to be cured upon the payment of the amounts required by that section without requiring payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within the statutory period set forth in section 107.080 NRS, the right of reinstatement will terminate and the property may thereafter be sold.

HUD approved local Counseling Agency: HOUSING FOR NEVADA
(877)649-1335

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

contact: GMAC MORTGAGE, LLC
c/o GMAC MORTGAGE, LLC
1100 VIRGINIA DRIVE
FORT WASHINGTON PA 19034

(215)734-5000

Loan Modification contact information: LOSS MITIGATION DEPARTMENT
(800)850-4622

For Foreclosure status, please contact: Cal-Western Reconveyance Corp.
525 East Main Street
P.O. Box 22004
El Cajon, CA 92022-9004
(619) 590-9200

CAL-WESTERN RECONVEYANCE CORPORATION

Signature/By

Nicole M. Genet

State of California
County of San Diego

Susan L. Meyers

On DEC 19 2012

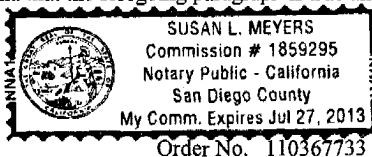
before me,

Nicole M. Genet

a Notary Public, personally appeared _____, 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.

Signature

Date December 19, 2012
Ref. CLARKSON, JOHN



NODNV.DOC

Page 2 of 2

NRS 107.080 Compliance Affidavit**AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE**

TS# 1334186-38

Property Owners:**MITZI L. CLARKSON****JOHN CLARKSON****Trustee Address:**

525 East Main Street

El Cajon, CA 92022

Property Address:**1700 RAVANUSA DRIVE****HENDERSON, NV 89052-3104****Deed of Trust Document Instrument Number:** 20080630-0004237.

Lepketia Dukes, being of lawful age and being first duly sworn on oath, under penalty of perjury, states and deposes as follows:

1. I am the **Authorized Officer** of GMAC Mortgage, LLC ("GMACM"), servicer for GMAC MORTGAGE, LLC, the current beneficiary under the Deed of Trust.
2. I make this affidavit based upon my personal knowledge, review of certain documents which are of public record in the State of Nevada and/or my review of GMACM's business records (collectively, "Records").
3. The full name and business address of the trustee or the trustee's representatives or assignee is:

CAL-WESTERN RECONVEYANCE CORPORATION
525 EAST MAIN STREET
EL CAJON, CA 92022-9004

1 of 4

4. The full name and business address of the current or constructive holder of the note secured by the Deed of Trust is:

GMAC MORTGAGE, LLC
1100 VIRGINIA DRIVE
FORT WASHINGTON, MONTGOMERY COUNTY, PA 19034

5. The full name and business address of the current beneficiary of record of the Deed of Trust is:

GMAC MORTGAGE, LLC
1100 VIRGINIA DRIVE
FORT WASHINGTON, MONTGOMERY COUNTY, PA 19034

6. The full name and business address of the current servicers of the obligation or debt secured by the Deed of Trust is:

GMAC MORTGAGE, LLC
1100 VIRGINIA DRIVE
FORT WASHINGTON, MONTGOMERY COUNTY, PA 19034

7. The full name and last known business address of every prior known beneficiary of the Deed of Trust is:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR
GMAC MORTGAGE, LLC DBA DITECH, ITS SUCCESSORS AND ASSIGNS
P.O. BOX 2026
FLINT, MI 48501-2026

GMAC MORTGAGE, LLC, DBA DITECH
3200 PARK CENTER DR., SUITE 150
COSTA MESA, CA 92626

GMAC MORTGAGE, LLC
1100 VIRGINIA DRIVE
FORT WASHINGTON, PA 19034

GMAC BANK
100 WITMER ROAD
HORSHAM, PA 19044-0936

ALLY BANK
235 FISHER DRIVE
WATERLOO, IA 50701

FEDERAL NATIONAL MORTGAGE ASSOCIATION
3900 Wisconsin Avenue, NW
Washington, D.C. 20016-2806

8. The beneficiary, the successor in interest of the beneficiary, or the trustee under the Deed of Trust has actual or constructive possession of the Note secured by the Deed of Trust.
9. The trustee has been authorized to exercise the power of sale under Chapter 107 of NRS with respect to the property encumbered by the Deed of Trust, pursuant to the instruction of the beneficiary of record (or the authorized representative of the same) and the current holder of the note secured by the Deed of Trust (or the authorized representative of the same).
10. According to the Records, as of 12/5/12, the following is the information regarding the amount in default, the principal amount secured by the Deed of Trust, a good faith estimate of fees imposed and to be imposed because of the default and the costs and fees charged to the debtor in connection with the exercise of the power of sale:
 - a. Missed payments and interest in default: \$ 51,250.09.
 - b. Fees and costs already charged in connection with the exercise of power of sale: \$ 3,346.48.
 - c. Unpaid principal amount of the debt secured by the Deed of Trust: \$266,570.65.
 - d. A good faith estimate of all fees imposed and to be imposed to the debtor because of the default, excluding the foreclosure fees and costs set forth below: TBD.
 - e. A good faith estimate of the total costs and fees to be charged to the debtor in connection with the exercise of the power of sale: \$3,256.41.
 - f. Suspense: \$ 571.67.

11. The following is information regarding the instrument(s) that conveyed the interest of each beneficiary:

Dated 6/26/2008
NOTE

Dated 6/26/2008, Recorded 6/30/2008, Instrument No. 20080630-0004237.
DEED OF TRUST

Dated 9/28/2011, Recorded 12/15/2011, Instrument No. 201112150003046.
ASSIGNMENT OF DEED OF TRUST

The following is the true and correct signature of the affiant:

Affiant Signature:

Print Name:

Lepketia Dukes

Title: **Authorized Officer**

GMAC Mortgage, LLC

Sworn to and subscribed before me.

This ____ day of ____, 20__

Notary Public, State of ____

County of ____

Commissioned Name of Notary Public ____

My Commission Expires ____

SEE

Attached

4 of 4

TSA 133418638

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

1 _____
 2 _____
 3 _____
 4 _____
 5 _____
 6 _____

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of SAN DIEGO

Subscribed and sworn to (or affirmed) before me

on this 5 day of December, 2012

by

(1) Lepketia Dukes

Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(and

(2) _____

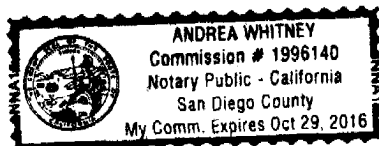
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature

Andrea Whitney

Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document

Affidavit of Authority
to Exercise the Power of Sale

Document Date:

12/5/12

Number of Pages:

3

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT OF SIGNER #1

Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2

Top of thumb here

Exhibit 5

Exhibit 5

Exhibit 5

APN No.: 191-01-418-004
Recording requested by:

When recorded mail to:
Quality Loan Service Corporation
2763 Camino Del Rio South
San Diego, CA 92108

Inst #: 20200304-0001978

Fees: \$42.00

03/04/2020 01:49:42 PM

Receipt #: 4008686

Requestor:

MCCARTHY & HOLTHUS, LLP

Recorded By: CHERIE Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

TS No.: NV-20-879119-MISC

Space above thi

Order No.:

It is hereby affirmed that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030).

**Notice of Rescission of
Notice of Breach and Default and of Election to Cause Sale
of Real Property under Deed of Trust**

NOTICE IS HEREBY GIVEN: That the undersigned is either the original trustee or the duly appointed substituted trustee under a Deed of Trust dated **6/26/2008**, executed by **Mitzi L. Clarkson and John Clarkson, Wife and Husband as Joint Tenants**, as Trustor, to secure certain obligations in favor of **GMAC Mortgage, LLC dba ditech**, as Beneficiary, recorded **6/30/2008**, as **Instrument No. 20080630-0004237** of Official Records in the Office of the Recorder of **CLARK** County, Nevada describing land therein as more fully described on the above referenced Deed of Trust. Said obligations including one note for the sum of **\$276,720.00**.

Whereas, the present beneficiary under that certain Deed of Trust above described, instructed the present trustee to exercise the power of sale with respect to the property; Notice was heretofore given of breach of obligations for which said Deed of Trust is security and of election to cause to be sold the property therein described; and Whereas, a Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust was recorded on 12/21/2012 in the office of the Recorder of **CLARK** County, Nevada, Instrument number 201212210003251, in Book , Page , of Official Records.

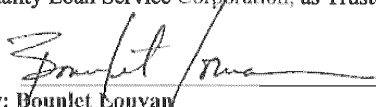
NOW; THEREFORE, NOTICE IS HEREBY GIVEN that the present beneficiary and/or the present trustee, does hereby rescind, cancel and withdraw said Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust, and does hereby revoke any acceleration of the loan thereby, it being understood, however, that this rescission shall not in any manner be construed as waiving or affecting any breach or default past, present or future under said Deed of Trust, or as impairing any right or remedy thereunder, but is, and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Notice, and shall in no way jeopardize or impair any right, remedy or privilege secured to the Beneficiary and/or the Trustee, under said Deed of Trust, nor modify nor alter in any respect any of the terms, covenants, conditions or obligations thereof, and said Deed of Trust and all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust had not been made and given.

**QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT
AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

TS No.: NV-20-879119-MISC
Notice of Rescission

Dated: 2/20/2020

Quality Loan Service Corporation, as Trustee


By: Bounlet Louvan
Its: Assistant Vice President

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

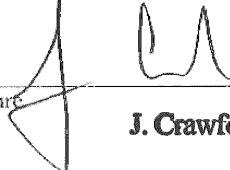
County of: San Diego

On FEB 20 2020 before me, J. Crawford a notary public, personally appeared Bounlet Louvan, 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.

(Seal)


Signature _____
J. Crawford

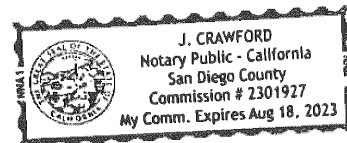


Exhibit 6

Exhibit 6

Exhibit 6

WFG National-Default Services

APN(s): 191-01-418-004

Recording requested by:

same as below

When recorded mail to:

Quality Loan Service Corporation

2763 Camino Del Rio South

San Diego, CA 92108

619-645-7711

Inst #: 20211011-0001465

Fees: \$292.00

10/11/2021 11:15:13 AM

Receipt #: 4733743

Requestor:

WFG National Title Insura

Recorded By: OSA Pgs: 8

Debbie Conway

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

TS No.: NV-21-894434-SH

Space above this line for recorders use only

Order No.: 1982568NVD

Property Address: 1700 RAVANUSA DRIVE, HENDERSON, NV 89052-3104

It is hereby affirmed that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030).

Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust

NOTICE IS HEREBY GIVEN: That **Quality Loan Service Corporation** is either the original trustee or the duly appointed substituted trustee under a Deed of Trust dated **6/26/2008**, executed by MITZI L. CLARKSON AND JOHN CLARKSON, WIFE AND HUSBAND JOINT TENANTS, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR GMAC MORTGAGE, LLC DBA DITECH, Its Successors and Assigns**, as beneficiary, recorded **6/30/2008**, as **Instrument No. 20080630-0004237**, of Official Records in the Office of the Recorder of **CLARK** County, **Nevada** securing, among other obligations including **1 NOTE(S) FOR THE ORIGINAL** sum of **\$276,720.00**, that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the beneficiary; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

The installments of principal and interest which became due on 1/1/2011, and all subsequent installments of principal and interest through the date of this Notice, plus amounts that are due for late charges, delinquent property taxes, insurance premiums, advances made on senior liens, taxes and/or insurance, trustee's fees, and any attorney fees and court costs arising from or associated with the beneficiaries efforts to protect and preserve its security, all of which must be paid as a condition of reinstatement, including all sums that shall accrue through reinstatement or pay-off. This amount owed will increase until your account becomes current. Nothing in this notice shall be construed as a waiver of any fees owing to the Beneficiary under the Deed of Trust pursuant to the terms of the loan documents.

The present Beneficiary under such Deed of Trust 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.

TS No.: **NV-21-894434-SH**
Notice of Default

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 before 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.

For information relating to the foreclosure status of the property and/or to determine if a reinstatement is possible and the amount, if any, to cure the default, please contact:

**PHH Mortgage Corporation
c/o Quality Loan Service Corporation
2763 Camino Del Rio South
San Diego, CA 92108
619-645-7711**

To reach a Loss Mitigation Representative who is authorized to negotiate a loan modification, please contact:

**PHH Mortgage
Contact: Kevin Diller
Department: Loss Mitigation Department
Toll Free: 1-800-936-8303**

You may wish to consult a credit-counseling agency to assist you. The following are two local counseling agencies approved by the Department of Housing and Urban Development (HUD): Nevada Legal Services, Inc., 877-693-2163, <http://www.nlslaw.net>; and Southern Nevada Regional Housing Authority, 702-922-6900, <http://www.snrha.org>. HUD can provide you with the names and addresses of additional local counseling agencies if you call HUD's toll-free telephone number: 800-569-4287. Additional information may also be found on HUD's website: <http://portal.hud.gov/portal/page/portal/HUD/localoffices>.

If you have any questions, you should contact a lawyer or the governmental agency which 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.

QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

TS No.: NV-21-894434-SH
Notice of Default

Dated: 10/01/2021

Quality Loan Service Corporation, as Trustee



By: Tianah Schrock, Assistant Secretary

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

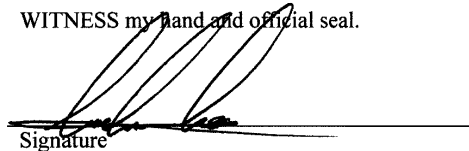
County of: San Diego

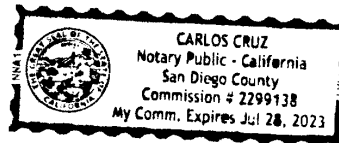
On OCT 08 2021 before me, Carlos Cruz a notary public, personally appeared Tianah Schrock, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized 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.

(Seal)


Signature



AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

Record Title Holder: <u>MITZI L. CLARKSON, JOHN</u> <u>CLARKSON</u> <i>Or</i> Borrower(s): <u>MITZI L. CLARKSON, JOHN</u> <u>CLARKSON</u>	Trustee Name and Address: Quality Loan Service Corp. 2763 Camino Del Rio South San Diego, CA 92108
Property Address: 1700 RAVANUSA DRIVE HENDERSON, NV 89052-3104	Deed of Trust Document: <u>Instrument No. 20080630-0004237</u>

STATE OF Florida)
 COUNTY OF Palm Beach) ss:

The affiant, Kyandra Brown, being first duly sworn upon oath and under penalty of perjury, attests as follows:

1. I am an Contract Management Coordinator of PHH Mortgage Corporation ("PHH"). I am duly authorized to make this Affidavit for PHH in its capacity as the current beneficiary of the subject Deed of trust ("Beneficiary") or the Servicer for the current beneficiary of the Deed of Trust.

2. I have the personal knowledge required to execute this Affidavit from my review of the business records of the beneficiary, the successor in interest of the beneficiary or the servicer of the obligation or debt secured by the deed of trust, my review of the records of the recorder of the county in which the property is located, and/or title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State. I can confirm the accuracy of the information set forth herein. If sworn as a witness, I could competently testify to the facts contained herein.

3. In the regular and ordinary course of business, it is PHH Mortgage Corporation practice to make, collect, and maintain business records and documents related to any loan it originates, funds, purchases and/or services, including the Subject Loan (collectively, "Business Records"). I have continuing access to the Business Records for the Subject Loan, and I am familiar with the Business Records and I have personally reviewed the business records relied upon to compile this Affidavit.

4. The full name and business address of the current trustee or the current trustee's representative or assignee is:

APN: 191-01-418-004

File No.: NV-21-894434-SH

Quality Loan Service Corp.		2763 Camino Del Rio South San Diego, CA 92108
Full Name		Street, City, State, Zip

5. The full name and business address of the current holder of the note secured by the Deed of Trust is:

PHH Mortgage Corporation		One Mortgage Way Mount Laurel, NJ 08054
Full Name		Street, City, State, Zip

6. The full name and business address of the current beneficiary of record of the Deed of Trust is:

PHH Mortgage Corporation		One Mortgage Way Mount Laurel, NJ 08054
Full Name		Street, City, State, Zip

7. The full name and business address of the current servicer of the obligation or debt secured by the Deed of Trust is:

PHH Mortgage Corporation		One Mortgage Way Mount Laurel, NJ 08054
Full Name		Street, City, State, Zip

8. The beneficiary, its successor-in-interest, or the trustee of the Deed of Trust has: (I) actual or constructive possession of the note secured by the Deed of Trust; and/or (II) is entitled to enforce the obligation or debt secured by the Deed of Trust.

9. The beneficiary, its successor in interest, the trustee, the servicer of the obligation or debt secured by the Deed of Trust, or an attorney representing any of those persons, has sent to the obligor or borrower of the obligation or debt secured by the Deed of Trust a written statement containing the following information (I) the amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the underlying obligation or debt, 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 exercise of the power of sale; and (VI) contact information for obtaining the most current amounts due and a local or toll free telephone number where the obligor or borrower of the obligation or debt may call to receive the most current amounts due and a recitation of the information contained in this Affidavit.

APN: 191-01-418-004

File No.: NV-21-894434-SH

10. The borrower or obligor may call the following toll-free or local telephone number to inquire about the default, obtain the most current amounts due, receive a recitation of the information contained in this Affidavit, and/or explore loss mitigation alternatives: (800) 210-8849.

11. Pursuant to my personal review of the business records of the beneficiary, the successor in interest of the beneficiary, and/or the business records of the servicer of the obligation or debt secured by the Deed of Trust; and/or the records of the county recorder where the subject real property is located; and/or the title guaranty or title insurance issued by a title insurer or title agent authorized to do business in the state of Nevada, the following is the (I) date, (II) recordation number (or other unique designation); and (III) assignee of each recorded assignment of the subject Deed of Trust:

Recorded Date	Recording Number	Name of Assignor	Name of Assignee
12/15/2011	201112150003046	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR GMAC MORTGAGE, LLC DBA DITECH, a Residential mortgage Lender Its Successors and Assigns	GMAC MORTGAGE, LLC
7/31/2013	201307310003015	GMAC MORTGAGE, LLC	OCWEN LOAN SERVICING, LLC

APN: 191-01-418-004

File No.: NV-21-894434-SH

PHH Mortgage Corporation

Signed by: Kyandra BrownDated: OCT 5th 2021Print Name: **Kyandra Brown / Contract Management Coordinator**STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of [☒] physical presence or [☐] online notarization, this 5th day of OCT 2021, by **Kyandra Brown** as **Contract Management Coordinator** for PHH Mortgage Corporation who is personally known to me or who has produced N/A as identification.

Shana Golding

Signature of Notary Public

Name of Notary Public: Shana GoldingNotary Commission Expiration Date: Personally known: ☒ OR Produced Identification: N/AType of Identification Produced: N/A

APN: 191-01-418-004

File No.: NV-21-894434-SH

Exhibit 7

Exhibit 7

Exhibit 7

Inst #: 20220121-0001551
Fees: \$42.00
01/21/2022 11:21:06 AM
Receipt #: 4861315
Requestor:
WFG National Title Insura
Recorded By: SOV Pgs: 2
Debbie Conway
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

APN No.: 191-01-418-004

Recording requested by:
Same as below

When recorded mail to:
Quality Loan Service Corporation
2763 Camino Del Rio South
San Diego, CA 92108

Space above this line for recorders use only

TS No.: NV-21-894434-SH

Order No.: 1982568NVD

It is hereby affirmed that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030).

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 6/26/2008. 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 state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank and authorized to do business in this state, will be held by duly appointed trustee. 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.

BENEFICIARY MAY ELECT TO BID LESS THAN THE TOTAL AMOUNT DUE.

Trustor(s): **MITZI L. CLARKSON AND JOHN CLARKSON, WIFE AND HUSBAND JOINT TENANTS**

Recorded: **6/30/2008 as Instrument No. 20080630-0004237** of Official Records in the office of the Recorder of **CLARK County, Nevada;**

Date of Sale: **2/18/2022 at 10:00 AM**

Place of Sale: **At the Office of the Nevada Legal News Located at 930 South 4th Street Las Vegas, Nevada 89101**

Amount of unpaid balance and other charges: **\$515,528.03**

The purported property address is: **1700 RAVANUSA DRIVE, HENDERSON, NV 89052-3104**

This property is sold as-is, lender is unable to validate the condition, defects or disclosure issues of said property and buyer waives the disclosure requirements under NRS 113.130 by purchasing at this sale and signing the receipt of sale. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein. 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.

If the sale is set aside for any reason, including if the Trustee is unable to convey title, the Purchaser at the sale shall be entitled only to a return of the monies paid to the Trustee. This shall be the Purchaser's sole and exclusive remedy. The purchaser shall have no further recourse against the Trustor, the Trustee, the Beneficiary, the Beneficiary's Agent, or the Beneficiary's Attorney.

If you have previously been discharged through bankruptcy, you may have been released of personal liability for this loan in which case this letter is intended to exercise the note holder's rights against the real property only.

QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

TS No.: NV-21-894434-SH

Date: 11/20/22

Quality Loan Service Corporation
2763 Camino Del Rio South
San Diego, CA 92108
619-645-7711 For NON SALE information only
Sale Line: 702-382-2747
Or Login to: <http://www.qualityloan.com>
Reinstatement Line: (866) 645-7711 Ext 5318

Quality Loan Service Corp by: Ronald Alonzo, Assistant Secretary.

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: San Diego

On JAN 20 2022 before me, K. Grant a notary public, personally appeared Ronald Alonzo, 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.

(Seal)

Signature

K. Grant

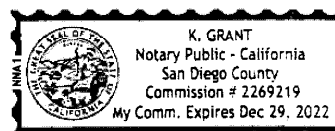


Exhibit 8

Exhibit 8

Exhibit 8

Inst #: 201201190002124
Fees: \$17.00
N/C Fee: \$0.00
01/19/2012 09:34:16 AM
Receipt #: 1040171
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: KGP Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 191-01-418-004

Trustee Sale # 28758-1700

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark County, Nevada, Majestic Hills Community Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **1700 RAVANUSA AVE, HENDERSON, NV 89052** and more particularly legally described as: **LOT 4 BLOCK 1 Book 92 Page 44** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **MITZI & JOHN CLARKSON**

The mailing address(es) is: **1700 RAVANUSA AVE, HENDERSON, NV 89052**

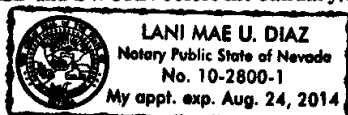
The total amount due through today's date is: **\$601.00**. Of this total amount **\$526.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **January 3, 2012**

By: 
Ryan Kerbow Esq. of Alessi & Koenig, LLC on behalf of **Majestic Hills Community Association**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me **January 3, 2012**

(Seal)



(Signature)


NOTARY PUBLIC

Exhibit 9

Exhibit 9

Exhibit 9

Inst #: 201308130001284

Fees: \$17.00

N/C Fee: \$0.00

08/13/2013 09:00:12 AM

Receipt #: 1730929

Requestor:

ALESSI & KOENIG LLC

Recorded By: RNS Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 191-01-418-004

TSN 28758

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI & KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On **September 11, 2013**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **January 19, 2012**, as instrument number **0002124**, of the official records of **Clark County, Nevada**, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **1700 RAVANUSA DR, HENDERSON, NV 89052-3104**. The owner of the real property is purported to be: **MITZI & JOHN CLARKSON**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **\$4,451.26**. Payment must be in made in the form of certified funds.

Date: **July 23, 2013**

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Majestic Hills Community Association

Exhibit 10

Exhibit 10

Exhibit 10

② 1

Inst #: 201309300002011
 Fees: \$17.00 N/G Fee: \$0.00
 RPTT: \$963.90 Ex: #
 09/30/2013 12:17:48 PM
 Receipt #: 1791811
 Requestor:
 G & P INVESTMENT LLC
 Recorded By: ANI Pgs: 2
 DEBBIE CONWAY
 CLARK COUNTY RECORDER

When recorded mail to and
 Mail Tax Statements to:
G & P Investment Enterprises LLC
9212 Canalino Dr
Las Vegas, NV 89134

A.P.N. No.191-01-418-004

TS No. 28758

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **G & P Investment Enterprises LLC**
 The Foreclosing Beneficiary herein was: **Majestic Hills Community Association**
 The amount of unpaid debt together with costs: **\$4,578.26**
 The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$38,100.00**
 The Documentary Transfer Tax: **\$1,193.40**
 Property address: **1700 RAVANUSA DR, HENDERSON, NV 89052-3104**
 Said property is in [] unincorporated area: City of **HENDERSON**
 Trustor (Former Owner that was foreclosed on): **MITZI & JOHN CLARKSON**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **January 19, 2012** as instrument number **0002124**, in **Clark County**, does hereby grant, without warranty expressed or implied to: **G & P Investment Enterprises LLC** (Grantee), all its right, title and interest in the property legally described as: **SEVEN HILLS PARCEL T1-UNIT 3 LOT 4 BLOCK 1**, as per map recorded in Book **92**, Pages **44** as shown in the Office of the County Recorder of **Clark County Nevada**.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **September 11, 2013** at the place indicated on the Notice of Trustee's Sale.

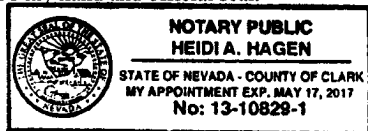
Ryan Kerbow, Esq.

Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC.

State of Nevada)
 County of Clark)

SUBSCRIBED and SWORN before me SEP 12 2013, by Ryan Kerbow

WITNESS my hand and official seal.
 (Seal)



(Signature)

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a. 191-01-418-004
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 RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property \$ 188,737
b. Deed in Lieu of Foreclosure Only (value of property (_____))
c. Transfer Tax Value: \$ 188,737
d. Real Property Transfer Tax Due \$ 963.90

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature [Signature] Capacity: Grantor

Signature [Signature] Capacity: GRANTEE

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi & Koenig, LLC
Address: 9500 W. Flamingo Rd., Ste. 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: G & P Investment Enterprises LLC
Address: 9212 Canalino Dr
City: Las Vegas
State: NV Zip: 89134

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

Print Name: Alessi & Koenig, LLC
Address: 9500 W. Flamingo Rd., Ste. 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit 11

Exhibit 11

Exhibit 11

(4)
-1

A.P.N.: 191-01-418-004
R.P.T.T.: \$ _____
Escrow No.: 16-07-0691-NS

Mail tax bill to and when recorded mail to:
TRP Fund VI, LLC
180 Newport Center Dr. Ste 230
Newport Beach, CA 92660

Inst #: 20160726-0001174
Fees: \$19.00 N/C Fee: \$0.00
RPTT: \$1224.00 Ex: #
07/26/2016 10:28:58 AM
Receipt #: 2827394
Requestor:
TRP FUND VI LLC
Recorded By: RNS Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH, That **G & P Investment Enterprises LLC**, a Nevada limited liability company, for a valuable consideration, the receipt of which is hereby acknowledged, do(es) hereby Grant, Bargain, Sell and Convey to **TRP Fund VI LLC**, a Delaware limited liability company, all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

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

COMMONLY KNOWN ADDRESS:
1700 Ravanusa Dr. Henderson, NV 89053

SUBJECT TO:

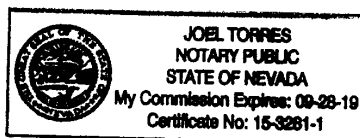
1. Taxes for the current fiscal year, not delinquent, including personal property taxes of any former owner, if any;
2. Restrictions, conditions, reservations, rights, rights of way and easements now of record, if any, or any that actually exist on the property.

TOGETHER WITH all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

IN WITNESS WHEREOF, this instrument has been executed this 22nd day of July, 2016.

G & P Investment Enterprises LLC, a Nevada limited liability company

By: Val Grigorian
Val Grigorian, Manager



State of NEVADA

County of Clark

This instrument was acknowledged before me on the 22nd day of July, 2016, by Val Grigorian, as Manager of G & P Investment Enterprises LLC

[Signature]
NOTARY PUBLIC
My Commission Expires: 9-28-19

EXHIBIT "A"

Lot Four (4) in Block One (1) of SEVEN HILLS PARCEL T1-UNIT 3 as shown by map thereof on file in Book 92 of Plats, Page 44, in the Office of the County Recorder of Clark County, Nevada

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a. 191-01-418-004
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 RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 240,000.00

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

c. Transfer Tax Value: \$ 240,000.00

d. Real Property Transfer Tax Due \$ 1224.00

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 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: buyers rep

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: G&P Enterprises

Address: 7628 Desert Delta Dr

City: Las Vegas

State: NV

Zip: 89128

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: TRP FUND VI LLC

Address: 180 Newport Center Dr #230

City: Newport Beach

State: CA

Zip: 92660

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

Print Name: _____

Escrow # _____

Address: _____

City: _____

State: _____

Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit 12

Exhibit 12

Exhibit 12

Inst #: 201310100000610

Fees: \$19.00

N/C Fee: \$0.00

10/10/2013 08:12:56 AM

Receipt #: 1804829

Requestor:

JUNES LEGAL SERVICES

Recorded By: RNS Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING COVER PAGE(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)APN# 191-01-418-004(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>)**TITLE OF DOCUMENT**

(DO NOT Abbreviate)

Notice of Lis PendensDocument Title on cover page must appear EXACTLY as the first page of the
document to be recorded.**RECORDING REQUESTED BY:**Michael V. InfusoRETURN TO: Name Greene Infuso, LLPAddress 3030 South Jones Blvd., Suite 101City/State/Zip Las Vegas, Nevada 89146**MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)**

Name _____

Address _____

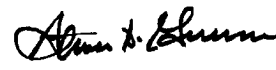
City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly—do not use page scaling.

Electronically Filed
10/04/2013 03:00:05 PM


CLERK OF THE COURT

1 **NOLP**
Michael V. Infuso, Esq., Nevada Bar No. 7388
2 Zachary P. Takos, Esq., Nevada Bar No. 11293
Keith W. Barlow, Esq., Nevada Bar No. 12689
3 **GREENE INFUSO, LLP**
3030 South Jones Boulevard, Suite 101
4 Las Vegas, Nevada 89146
Telephone: (702) 570-6000
5 Facsimile: (702) 463-8401
E-mail: minfuso@greeneinfusolaw.com
6 ztakos@greeneinfusolaw.com
kbarlow@greeneinfusolaw.com

7 Attorneys for Plaintiff
8

9 **EIGHTH JUDICIAL DISTRICT COURT FOR**
10 **CLARK COUNTY, NEVADA**

11 G & P INVESTMENT ENTERPRISES,
LLC, a Nevada limited liability company,
12
13 Plaintiff,

Case No. A-13-689733-C
Dept. No. XVI

14 v.

NOTICE OF LIS PENDENS

15 JOHN CLARKSON, an individual; MITZI
CLARKSON, an individual; OCWEN LOAN
16 SERVICING, LLC, a Delaware limited
liability company; and any and all other
17 persons unknown claiming any right, title,
estate, lien or interest in the Property adverse
18 to the Plaintiff's ownership, or any cloud upon
Plaintiff's title thereto (DOES 1 through 10,
inclusive);

19 Defendants.
20


21 NOTICE IS HEREBY GIVEN pursuant to NRS § 14.010 that an action is pending in the
22 Eighth Judicial District Court in Clark County, Nevada, by the above-named Plaintiff, against
23 Defendants affecting the title to, or possession of, real property located in Clark County, Nevada,
24 commonly known as 1700 Ravanusa Drive, Henderson, Nevada 89052 Assessor's Parcel Number
25 191-01-418-004. The property is more fully described as:
26
27
28

GREENE INFUSO, LLP
3030 South Jones Boulevard, Suite 101
Las Vegas, Nevada 89146
(702) 570-6000

1 SEVEN HILLS PARCEL T1-UNIT 3
2 PLAT BOOK 92 PAGE 44
3 LOT 4 BLOCK 1
4 SEC 01 TWP 23 RNG 61

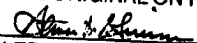
5 DATED this 4th day of October, 2013.

6 **GREENE INFUSO, LLP**

7 
8 Michael V. Infuso, Esq., Nevada Bar No. 7388
9 Zachary P. Takos, Esq., Nevada Bar No. 11293
10 Keith W. Barlow, Esq., Nevada Bar No. 12689
11 3030 South Jones Boulevard, Suite 101
12 Las Vegas, Nevada 89146

13 Attorneys for Plaintiff

14 CERTIFIED COPY
15 DOCUMENT ATTACHED IS A
16 TRUE AND CORRECT COPY
17 OF THE ORIGINAL ON FILE

18 
19 CLERK OF THE COURT

20 OCT 08 2013

21 **GREENE INFUSO, LLP**
22 3030 South Jones Boulevard, Suite 101
23 Las Vegas, Nevada 89146
24 (702) 570-6000

Exhibit 13

Exhibit 13

Exhibit 13

Inst #: 20210225-0004412
Fees: \$42.00
02/25/2021 04:32:50 PM
Receipt #: 4420384
Requestor:
NATIONWIDE LEGAL LLC
Recorded By: MAYSM Pgs: 16
Debbie Conway
CLARK COUNTY RECORDER
Src: FRONT COUNTER
Ofc: MAIN OFFICE

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 191-01-418-004

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

Order Granting Ocwen Loan Servicing's Motion for Reconsideration
of Its Motion for Summary Judgment

Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

Wright, Finlay & Zak, LLP

RETURN TO: Name Wright, Finlay & Zak, LLP

Address 7785 W. Sahara Avenue, Ste. 200

City/State/Zip Las Vegas, Nevada 89117

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name n/a

Address n/a

City/State/Zip n/a

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014

ORDR1 **WRIGHT, FINLAY & ZAK, LLP**2 **R. Samuel Ehlers, Esq.**3 **Nevada Bar No. 9313**4 **7785 W. Sahara Ave, Suite 200**5 **Las Vegas, Nevada 89117**6 **(702) 475-7964 - Fax (702) 946-1345**7 **sehlers@wrightlegal.net**8 ***Attorneys for Defendant/Counterclaimant, Ocwen Loan Servicing, LLC***

**DISTRICT COURT
CLARK COUNTY, NEVADA**

TRP FUND VI, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

JOHN CLARKSON, an individual; MITZI
CLARKSON, an individual; OCWEN LOAN
SERVICING, LLC, a Delaware limited
liability company; and any and all other
persons unknown claiming any right, title,
estate, lien or interest in the Property adverse
to the Plaintiff's ownership, or any cloud upon
Plaintiff's title thereto (DOES I through 10,
inclusive),

Defendants.

OCWEN LOAN SERVICING, LLC,

Counterclaimant,

vs.

TRP FUND VI, LLC; MAJESTIC HILLS
COMMUNITY ASSOCIATION; ALESSI &
KOENIG, LLC; DOES I through X; and ROE
CORPORATIONS XI through XX,

Counter-Defendants.

Case No.: A-13-689733-C

Dept. No.: I

**ORDER GRANTING OCWEN LOAN
SERVICING'S MOTION FOR
RECONSIDERATION OF ITS MOTION
FOR SUMMARY JUDGMENT**

Hearing Date: August 22, 2019

Hearing Time: Chambers Calendar

Before this Court is Defendant-Counterclaimant Ocwen Loan Servicing, LLC's
now known as PHH Mortgage Servicing, Inc. as successor by merger to Ocwen Loan

1 Servicing, LLC ("Ocwen") Motion for Reconsideration ("Motion") filed on an Order
2 Shortening Time on August 6, 2019 and heard in chambers on August 22, 2019. Ocwen
3 sought reconsideration of the Motion for Summary Judgment which was denied on June
4 12, 2019. Plaintiff TRP Fund VI, LLC opposed the Motion and filed a Countermotion
5 for Fees and Costs. The Court, having reviewed the Motion's related briefing finds as
6 follows.

7
8 **FINDINGS OF FACT**

9 **A. The Subject Property, Note, and Deed of Trust**

10 1. A deed of trust listing Mitzi L. Clarkson and John Clarkson as the
11 borrowers ("Borrowers"), GMAC Mortgage, LLC as the lender ("Lender"), and Mortgage
12 Electronic Registration Systems, Inc. ("MERS"), as beneficiary solely as nominee for
13 Lender and Lender's successors and assigns, was executed on June 26, 2008, and
14 recorded on June 30, 2008 ("Deed of Trust").

15 2. The Deed of Trust granted Lender a security interest in real property
16 known as 1700 Ravanusa Drive in Henderson, Nevada (the "Property") to secure the
17 repayment of a loan in the original amount of \$276,720 to the Borrowers (the promissory
18 note and Deed of Trust together are the "Loan").

19 3. Fannie Mae purchased the Loan in August 2008, thereby becoming
20 successor to the Lender and acquiring ownership of the Deed of Trust. *See* Grant Babin
21 Decl. at ¶5 attached to the Ocwen's Motion for Summary Judgment ("MSJ") as Exhibit
22 1.

23 4. In response to the financial crisis of 2007-08, the Housing and Economic
24 Recovery Act of 2008 ("HERA") was created and established the Federal Housing
25 Finance Agency ("FHFA") as an independent agency of the Federal Government that has
26 supervisory and regulatory authority over Fannie Mae. 12 U.S.C. § 4511 (2008).

27 5. On September 6, 2008, pursuant to its authority under HERA, the FHFA
28 placed Fannie Mae into conservatorship where it remains today. *See* James B. Lockhart,
Director, FHFA, Statement: Announcing Conservatorship of Fannie Mae and Freddie

1 Mac (Sept. 7, 2008) (transcript available at
2 [https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B-](https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B-Lockhart-at-News-Conference-Announcing-Conservatorship-of-Fannie-Mae-and-Freddie-Mac.aspx)
3 [-Lockhart-at-News-Conference-Announcing-Conservatorship-of-Fannie-Mae-and-](https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B-Lockhart-at-News-Conference-Announcing-Conservatorship-of-Fannie-Mae-and-Freddie-Mac.aspx)
4 [Freddie-Mac.aspx](https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B-Lockhart-at-News-Conference-Announcing-Conservatorship-of-Fannie-Mae-and-Freddie-Mac.aspx))¹.

5 6. On December 15, 2011, MERS, as nominee for Lender and Lender's
6 successors and assigns, recorded an assignment of the Deed of Trust to GMAC
7 Mortgage, LLC.

8 7. On July 31, 2013, GMAC Mortgage, LLC, recorded an assignment of the
9 Deed of Trust to Ocwen. No further assignments were recorded.

10 8. At the time of the HOA Sale on September 11, 2013, Ocwen was the
11 servicer of the Loan for the owner of the Loan, Fannie Mae. Ocwen currently services
12 the Loan on Fannie Mae's behalf. See Grant Babin Decl. at ¶11 attached to Exhibit 1 to
13 the Ocwen's MSJ

14 9. Ocwen is the current record beneficiary of the Deed of Trust and servicer
15 of the Loan for Fannie Mae.

16 10. The relationship between Ocwen, as the servicer of the Loan, and Fannie
17 Mae, as owner of the Loan, is governed by Fannie Mae's Single-Family Servicing Guide
18 ("Guide").

19 **B. The HOA Foreclosure Sale**

20 11. On January 19, 2012, a Notice of Delinquent Assessment Lien ("Notice of
21 Lien") was recorded against the Property by Alessi & Koenig, LLC ("Alessi") as agent
22 for the HOA, Majestic Hills Communication Association ("Majestic Hills HOA").

23 12. On November 13, 2012, a Notice of Default and Election to Sell under
24 Homeowners Association Lien ("Notice of Default") was recorded against the Property
25 by Alessi as agent for the HOA.

26

27 ¹ The FHFA's public statements are considered public records, and therefore the District
28 Court takes judicial notice of this public record, pursuant to NRS 52.085.

13. On August 13, 2013 a Notice of Trustee's Sale ("Notice of Sale") was recorded against the Property by Alessi as agent for the HOA.

14. On September 11, 2013, the HOA foreclosed on its lien (the "HOA Sale") and sold the Property to G&P Investment Enterprises LLC ("G&P") which paid \$38,100 according to the Foreclosure Deed recorded on September 30, 2013.

15. FHFA did not consent to the extinguishment of the Deed of Trust.

16. On July 26, 2016, G&P conveyed the Property to the current Plaintiff, TRP Fund VI, LLC ("TRP Fund").

CONCLUSIONS OF LAW

A. Legal Standard

1. A district court has discretion to reconsider an issue previously decided “if substantially different evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry and Tile Contractors Ass’n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 941 P.2d 486, 489 (Nev. 1997); see *Harvey’s Wagon Wheel, Inc. v. MacSween*, 606 P.2d 1095, 1097 (Nev. 1980) (district court did not abuse its discretion by rehearing motions for partial summary judgment). The Court has inherent authority to “amend, correct, resettle, modify, or vacate” an order previously entered where sufficient cause is shown. *Trail v. Faretto*, 536 P.2d. 1026, 1027 (Nev. 1975). Reconsideration of a motion for summary judgment may also be brought under NRCP 60(b) for mistake or “any other reason that justifies relief.” See NRCP 60(b); *La-Tex P’ship v. Deters*, 893 P.2d 361, 364-65 (Nev. 1995) (holding that the district court abused its discretion in denying Rule 60(b) motion for relief from order of partial summary judgment).

2. Summary judgment is appropriate “when the pleadings and other evidence on file demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.’” *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Additionally, “[t]he purpose of summary judgment ‘is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law.’” *McDonald v. D.P.*

1 *Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) *quoting*
2 *Coray v. Home*, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party
3 “must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a
4 genuine issue for trial or have summary judgment entered against [it].” *Wood*, 121 Nev. at 32,
5 121 P.3d at 1031. The non-moving party “is not entitled to build a case on the gossamer
6 threads of whimsy, speculation, and conjecture.” *Id.* Rather, the non-moving party must
7 demonstrate specific facts as opposed to general allegations and conclusions. *LaMantia v.*
8 *Redisi*, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); *Wayment v. Holmes*, 112 Nev. 232,237,912
9 P.2d 816, 819 (1996). Though inferences are to be drawn in favor of the non-moving party, an
10 opponent to summary judgment, must show that it can produce evidence at trial to support its
11 claim or defense. *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 222
12 (1981).

13 **B. The Federal Foreclosure Bar Preempts Contrary State Law**

14 3. “The Supremacy Clause unambiguously provides that if there is any conflict
15 between federal and state law, federal law shall prevail.” *Gonzales v. Raich*, 545 U.S. 1, 29,
16 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005) (emphasis added). Indeed, “any state law, however
17 clearly within a State’s acknowledged power, which interferes with or is contrary to federal
18 law, must yield.” *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108 (1992) (emphases
19 added) (internal quotations and citations omitted).

20 4. As the Nevada Supreme Court and the Ninth Circuit held, the Federal
21 Foreclosure Bar preempts the State Foreclosure Statute that would otherwise permit the HOA’s
22 foreclosure of its superpriority lien to extinguish the Enterprises’ interest in property while the
23 Enterprises are under FHFA’s conservatorship. *See Saticoy Bay LLC Series 9641 Christine*
24 *View v. Fannie Mae*, 417 P.3d 363 (Nev. 2018); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir.
25 2017); *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d 1136 (9th Cir. 2018); *Elmer v. JPMorgan*
26 *Chase & Co.*, 707 F. App’x 426 (9th Cir. 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699
27 F. App’x 658 (9th Cir. 2017).

28

1 5. A federal statute expressly preempts contrary law when it “explicitly manifests
2 Congress’s intent to displace state law.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022
3 (9th Cir. 2013). This is the case here: the text of HERA declares that “[n]o property of the
4 Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale.” 12 U.S.C.
5 § 4617(j)(3). The Federal Foreclosure Bar automatically bars any nonconsensual limitation or
6 extinguishment through foreclosure of any interest in property held by Fannie Mae while in
7 conservatorship. All of these “adverse actions . . . could otherwise be imposed on FHFA’s
8 property under state law. Accordingly, Congress’s creation of these protections clearly
9 manifests its intent to displace state law.” *Skylights*, 112 F. Supp. 3d at 1153.

10 6. The Federal Foreclosure Bar also preempts the State Foreclosure Statute under a
11 theory of conflict preemption because “state law is naturally preempted to the extent of any
12 conflict with a federal statute.” *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat’l*
13 *Foreign Trade Council*, 530 U.S. 363, 372 (2000)). Congress’s clear and manifest purpose in
14 enacting Section 4617(j)(3) was to protect FHFA conservatorships from actions, such as the
15 HOA Sale, that otherwise would deprive them of their property interests. Accordingly, “the
16 Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the State
17 Foreclosure Statute].” *Berezovsky*, 869 F.3d at 930; *see also Elmer*, 2017 WL 3822061, at *1
18 (following *Berezovsky*); *Flagstar*, 2017 WL 4712396, at *1 (same).

19 7. The Federal Foreclosure Bar necessarily protects the Deed of Trust because
20 FHFA has succeeded by law to all of Fannie Mae’s “rights, titles, powers, and privileges,” 12
21 U.S.C. § 4617(b)(2)(A)(i). “Accordingly, the property of [Fannie Mae] effectively becomes
22 the property of FHFA once it assumes the role of conservator, and that property is protected by
23 section 4617(j)’s exemptions.” *Skylights*, 112 F. Supp. 3d at 1155. This interpretation is
24 supported by the text and structure of HERA. *See id.* Section 4617 concerns FHFA’s
25 “[a]uthority over” Fannie Mae and Freddie Mac when they are “critically undercapitalized”
26 and thus must be placed into conservatorship or receivership. Furthermore, the protections of
27 Section 4617(j)(3) apply in “any case in which [FHFA] is acting as a conservator or a
28 receiver.” 12 U.S.C. § 4617(j)(1).

1 C. **The Federal Foreclosure Bar Protected Fannie Mae's Property Interest at**
2 **the Time of the HOA Sale**

3 8. In August 2008, Fannie Mae purchased the Loan, and thereby acquired
4 ownership of both the promissory note and the Deed of Trust. Fannie Mae maintained
5 ownership of the Loan at the time of the HOA Sale. At the time of the HOA Sale, Ocwen was
6 the servicer of the Loan and record beneficiary of the Deed of Trust for Fannie Mae. Pursuant
7 to the Servicing Guide, Ocwen was obligated, upon Fannie Mae's request, to assign all of its
8 interest to Fannie Mae. Under Nevada law, Fannie Mae owned the Deed of Trust and thereby
9 maintained a property interest in the underlying collateral at the time of the HOA Sale on
10 September 11, 2013.

11 9. Fannie Mae's acquisition and continued ownership of the Loan at the time of
12 the HOA Sale are amply supported by the business records data derived from SIR, a database
13 that Fannie Mae uses in its everyday business to track millions of loans that it acquires and
14 owns nationwide. Under the applicable rules of evidence, business records are, by their nature,
15 admissible to prove the truth of their contents when introduced by a qualified witness, as they
16 are here. *See* NRS 51.135; Fed. R. Evid. 803 (advisory committee's note to 1972 proposed
17 rules) (noting that business records, including electronic database records, have "unusual
18 reliability"). The Ninth Circuit's decisions in *Berezovsky* and *Elmer* confirmed that materially
19 identical evidence is sufficient to establish an Enterprise's property interest. *See Berezovsky*,
20 869 F.3d at 932-33; *Elmer*, 2017 WL 3822061, at *1.

21 10. Under Nevada law, when Fannie Mae purchased the Loan in August 2008,
22 Fannie Mae acquired ownership of the Note and Deed of Trust. *See In re Montierth*, 354 P.3d
23 at 650-51 (citing Restatement (Third) of Property: Mortgages § 5.4 cmt. c (Am. Law. Inst.
24 1997). Restatement § 5.4 cmt. c. The *In re: Montierth* decision held that where the record
25 beneficiary of the deed of trust has contractual or agency authority to foreclose on the note
26 owner's behalf, the note owner maintains a property interest in the collateral. *See id.*²

27 ² Accordingly, *Montierth* clarified the earlier Nevada Supreme Court decision in
28 *Edelstein v. Bank of New York Mellon*, 128 Nev. Adv. Op. 48, 286 P.3d 249, 257-58

1 *Montierth* and the Restatement acknowledge that the record beneficiary of a deed of trust being
2 an agent of or contractually authorized by Fannie Mae does not alter the fact that the purchaser
3 of the loan remains the owner of the note and deed of trust.

4 11. The Nevada Supreme Court recently confirmed that *Montierth*'s holding applies
5 in a case involving similar facts and legal issues as here. *Nationstar Mortg., LLC v. Guberland*
6 *LLC-Series 3*, No. 70546, 2018 WL 3025919 (Nev. June 15, 2018) (unpublished disposition).
7 In *Guberland*, the Nevada Supreme Court cited *Montierth* and the Restatement and
8 "conclude[d] that the district court erred in determining that the Federal Foreclosure Bar does
9 not apply" in a situation when "Fannie Mae was not the beneficiary of the deed of trust" at the
10 time of the HOA foreclosure sale. *Id.* at *2. In so doing, the Nevada Supreme Court
11 emphasized that "different parties may hold the note and the deed of trust. Where that is the
12 case, the note remains secured 'if there is *either* a principal-agent relationship between the note
13 holder and the mortgage holder, *or* the mortgage holder 'otherwise has authority to foreclose in
14 the [note holder]'s behalf.'" *Id.* (quoting *Montierth*, 354 P.3d at 650-51) (emphasis and
15 alteration in original).

16 12. Nevada law further adopts the Uniform Commercial Code Article 3, which
17 provides that "[a] person may be a person entitled to enforce [a promissory note] even though
18 the person is not the owner of the [that note]." N.R.S. §104.3301. A "person entitled to
19 enforce" a note may be a "holder" of the note or even a "nonholder in possession of the [note]
20 who has the rights of the holder." *Id.* Accordingly, "the status of holder merely pertains to one
21 who may enforce the debt and is a separate concept from that of ownership." *Thomas v. BAC*
22 *Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, at *1, 3 n.9 (Nev. Dec. 20, 2011).
23 That is because "[o]wnership rights in instruments may be determined by principles of the law
24

25 (2012), which had discussed a general rule about what happens when a note and deed of
26 trust are split without needing to consider the exception when a contractual or agency
27 relationship exists between the entity who owns the loan and the entity who serves as
28 record beneficiary of the deed of trust. *Montierth*, 131 Nev. Adv. Op. 55, 354 P.3d at 651
("Because it was not pertinent to [the Nevada Supreme Court's] analysis in *Edelstein*,
[the court] did not include the exceptions provided in the Restatement.").

1 of property . . . which do not depend upon whether the instrument was transferred.” UCC § 3-
 2 203 cmt. 1. For that reason, a transfer of a note has no bearing on ownership, but instead
 3 “vests in the transferee any right of the transferor to enforce the instrument.” Nev. Rev. Stat.
 4 § 104.3203.³

5 **D. Ocwen Has Standing to Assert the Federal Foreclosure Bar**

6 13. Ocwen has standing to assert the Federal Foreclosure Bar as the current
 7 beneficiary of record for the Loan and has a contractual relationship as servicer to protect
 8 Fannie Mae’s interest in litigation relating to the Loan. *Nationstar Mortgage, LLC v. SFR*
 9 *Investments Pool 1, LLC*, No. 69400, 133 Nev. Adv. Op. 34, 2017 WL 2709806 (Nev. June 22,
 10 2017). *Nationstar* holds that “the servicer of a loan owned by [an Enterprise] may argue that
 11 the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [the Enterprise] nor the
 12 FHFA need be joined as a party.” *Id.* at *2. The Nevada Supreme Court cited *Montierth*,
 13 which recognizes that when a noteholder authorizes the beneficiary of record of a deed of trust
 14 to enforce the deed of trust, the beneficiary of record may do so. *See* 354 P.3d at 651 (citing
 15 Restatement § 5.4 cmt. c). *Nationstar* also confirmed that “private parties,” like Ocwen here,
 16 “may argue federal law preempts state law.” *Nationstar*, 2017 WL 2709806, at *3. In cases
 17 where servicers invoke the Federal Foreclosure Bar as a rule of decision to resolve a claim
 18 properly before the court, in such circumstances “judges are bound by federal law.” *Id.*
 19 (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1384 (2015)) (emphasis
 20 in *Nationstar*). Similarly, the Ninth Circuit found *Nationstar* persuasive and held that servicers
 21 may raise the Federal Foreclosure Bar to defend property interests of Fannie Mae and Freddie
 22 Mac in litigation. *Flagstar*, 2017 WL 4712396, at *1.

23
 24 ³ Similarly, Uniform Commercial Code Article 9 provides that “[t]he attachment of
 25 a security interest in a right to payment or performance secured by a security interest or
 26 other lien on personal or real property is also attachment of a security interest in the
 27 security, mortgage or other lien.” NRS § 104.9203(7). Thus, “a transferee of a mortgage
 28 note” such as Fannie Mae “whose property right in the note has attached also
 automatically *has an attached property right in the mortgage* that secures the note.”
 Report of the Permanent Editorial Board for the UCC, Application of the UCC to
 Selected Issues Relating to Mortgage Notes at 14 (Nov. 14, 2011) (emphasis added).

1 14. Ocwen's role as Fannie Mae's authorized servicer is governed by the Guide,
2 which serves as the central document governing the contractual relationship between Fannie
3 Mae and its loan servicers nationwide, including Ocwen. Pursuant to its contract with Fannie
4 Mae, Ocwen has the authority to represent Fannie Mae's interests in litigation with respect to
5 the loans it services. The provisions of the Guide demonstrate that Fannie Mae and its loan
6 servicers maintain the type of relationship described in the Restatement and *Montierth*. See
7 *Berezovsky*, 869 F.3d at 932-33; *Montierth*, 354 P.3d at 651 (looking to whether a loan owner
8 can "compel an assignment of the deed of trust").

9 **E. Ocwen Was Not Required to Produce the Original Note or Custodial**
10 **Agreement to Prove Fannie Mae's Ownership**

11 15. This Court's (initial) denial of Ocwen's Motion for Summary Judgment was
12 based on the lack of a determination by the Nevada Supreme Court on the type of evidence
13 required to establish that Fannie Mae had a protected property interest at the time of the HOA
14 Sale. Hearing Tr. at 13:12-19. However, since the hearing on the motion for summary
15 judgment and issuance of this Court's order, the Nevada Supreme Court issued an en banc
16 decision resolving those issues and confirming that summary judgment is appropriate here.
17 *Daisy Tr. v. Wells Fargo Bank, N.A.*, -- P.3d --, 2019 WL 3366241, at *1 (July 25, 2019) (en
18 banc) ("*Daisy Trust*").

19 16. In *Daisy Trust*, the Nevada Supreme Court found that production of the actual
20 promissory note or requiring the declarants to attest that they personally inspected the note
21 "would not help establish when Freddie Mac obtained ownership of the loan or that it retained
22 such ownership as of the date of the foreclosure sale," because there is no legal requirement
23 that any endorsement on the note be dated. *Id.* (citing NRS 104.3204). Instead, the business
24 record printouts and declarations were "probative" on the issue of Freddie Mac's ownership
25 and were admissible under NRS 51.135. *Id.* And—as here—because Daisy Trust did not meet
26 its burden of showing that the records were *not* trustworthy, and did not provide any contrary
27 evidence, the business records and declarations "sufficiently demonstrated that Freddie Mac
28 owned the loan on the date of the foreclosure sale." *Id.* at *5.

1 17. As with the promissory note in this case (and in *Daisy Trust*), the custodial
2 agreement only sheds light on who *holds* the note, not who *owns* of the loan. And as the
3 Nevada Supreme Court held in *Daisy Trust*, the holder of the note is not necessarily the owner
4 where state law permits the note to be endorsed in blank. *See* 2019 WL 33662421, at *4.

5 18. Possession of a note with a blank endorsement enables the holder to *enforce* the
6 note, but does not make the holder the *owner* of the note. *See Thomas v. BAC Home Loans*
7 *Servicing, LP*, No. 56587, 2011 WL 6743044, at *3 n.9 (Nev. Dec. 20, 2011) (unpublished
8 disposition). Different entities may be the holder of a note and its owner under Nevada law;
9 “[a] person may be a person entitled to enforce [a promissory note] even though the person is
10 not the owner of the [note].” NRS 104.3301(2). Because the applicability of the Federal
11 Foreclosure Bar turns on *ownership*, discovery relating to *possession* of a note is irrelevant;
12 even if TRP Fund could prove that someone else is the note holder, that fact would not
13 contradict Fannie Mae’s property interest. For example, “[a] thief who steals a check payable
14 to bearer,” or, equivalently, absconds with a check whose payee has endorsed it in blank,
15 “becomes the *holder* of the check and a person entitled to enforce it, but does not become the
16 *owner* of the check.” NRS 104.3203, UCC cmt. 1 (emphases added). The same principle
17 applies where the holder is a contractual representative, such as a servicer or document
18 custodian, acting on the owner’s behalf: The holder can enforce the note, but has no ownership
19 interest in the security.

20 19. Nevada’s adoption of UCC Article 3 confirms that “a person may be a person
21 entitled to enforce [a promissory note] even though the person is not the owner of the [note].”
22 NRS 104.3301(2). “[T]he status of holder merely pertains to one who may enforce the debt and
23 is a separate concept from that of ownership.” *Thomas*, 2011 WL 6743044, at *3 n.9; *see also*
24 NRS 104.3203, UCC cmt. 1 (“Ownership rights in instruments may be determined by
25 principles of the law of property, independent of Article 3, which do not depend upon whether
26 the instrument was transferred under Section [104.3203.]”).

27 20. Accordingly, based upon the evidence produced in this case in the form of a
28 declaration, public records and business records, and in concurrence with *Daisy Trust*, there

1 was no requirement that Ocwen produce either the original promissory note or a custodial
2 agreement to prove Fannie Mae's ownership of the Loan.

3 **F. FHFA Did Not Consent to the Extinguishment of the Deed of Trust**

4 21. Because Fannie Mae had a protected property interest at the time of the HOA
5 Sale, the Federal Foreclosure Bar precluded G&P, and subsequently TRP Fund, from acquiring
6 free-and-clear title unless without FHFA's consent to the extinguishment of Fannie Mae's
7 interest. The FHFA has publicly announced that it "has not consented, and will not consent in
8 the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or
9 other property interest in connection with HOA foreclosures of super-priority liens." Thus, "it
10 is clear that FHFA did not consent to the extinguishment of [the Enterprise's] property interest
11 through the HOA's foreclosure sale." *Alessi & Koenig*, 2017 WL 773872, at *3 (citing and
12 relying on cases in which FHFA's statement was sufficient to show FHFA's lack of consent);
13 see also *Berezovsky*, 869 F.3d at 929 (holding that FHFA's consent can only be manifested
14 affirmatively).

15 22. Furthermore, TRP Fund bears the burden of proof to establish that FHFA
16 expressly consented to extinguish Fannie Mae's ownership interest in the Deed of Trust.
17 Nevada has a policy against requiring a party to prove a negative, such as proving a lack of
18 consent. See *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97
19 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it is
20 unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not
21 altered."); see also *State v. Haskell*, 14 Nev. 209, 209-210 (1879) (in a forfeiture case, once the
22 defendant establishes good title to the property the burden shifts to the state – "not upon the
23 defendants to prove a negative", i.e. that the property was not abandoned or forfeited). Here,
24 TRP Fund failed to provide any evidence or law to meet its burden.

25
26 **JUDGMENT**

27 Based on the above findings of fact and conclusions of law, and good cause
28 appearing therefor;

1
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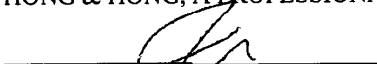
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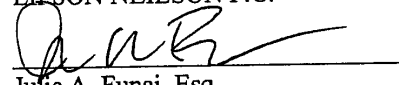
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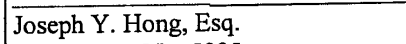
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Exhibit 14

Exhibit 14

Exhibit 14

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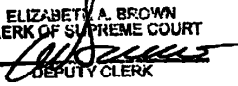
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRP FUND VI, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
OCWEN LOAN SERVICING, LLC,
Respondent.

No. 79910-COA

FILED

JAN 29 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

TRP Fund VI, LLC (TRP), appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

The original owners of the subject property failed to make periodic payments to their homeowners' association (HOA). The HOA recorded a notice of delinquent assessment lien and later a notice of default and election to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. TRP's predecessor purchased the property at the resulting foreclosure sale and filed the underlying action seeking to quiet title against respondent Ocwen Loan Servicing (Ocwen), the beneficiary of the first deed of trust on the property. TRP later substituted into the action in its predecessor's place, and Ocwen ultimately moved for summary judgment. The district court granted Ocwen's motion, concluding that the Federal National Mortgage Association (Fannie Mae) owned the underlying loan such that 12 U.S.C. § 4617(j)(3) (the Federal Foreclosure Bar) prevented the foreclosure sale from extinguishing Ocwen's deed of trust. This appeal followed.

COURT OF APPEALS
OF
NEVADA

(O) 19478 

21-02764

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

TRP presents two arguments on appeal. First, it contends that Fannie Mae did not own the underlying loan at the time of the foreclosure sale—or that there was at least conflicting evidence on this point—because the assignment of the deed of trust to one of Ocwen's predecessors purported to convey not only the deed of trust, but also the promissory note. But our supreme court recognized in *Daisy Trust v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 234 n.3, 445 P.3d 846, 849 n.3 (2019), that Freddie Mac (or in this case Fannie Mae) obtains its interest in a loan by virtue of the promissory note being negotiated to it. Section A2-1-04 of the Fannie Mae Servicing Guide, of which we take judicial notice, NRS 47.130; NRS 47.170, stands for the same proposition. Consequently, because the promissory note had already been negotiated to Fannie Mae at the time of the relevant assignment of the deed of trust, Ocwen's predecessor lacked authority to transfer the note, and the language in the assignment purporting to do so

had no effect.¹ See 6A C.J.S. *Assignments* § 111 (2020) (“An assignee stands in the shoes of the assignor and ordinarily obtains only the rights possessed by the assignor at the time of the assignment, and no more.”).

TRP next argues that Ocwen failed to prove that Fannie Mae had an interest in the property that was subject to the Federal Foreclosure Bar. Specifically, TRP contends that Fannie Mae was required to record its interest when it acquired the underlying loan in 2008 because it was not yet under the conservatorship of the Federal Housing Finance Agency (FHFA). From there, TRP reasons that the Federal Foreclosure Bar was not yet in effect and could not have preempted Nevada’s recording statutes. But TRP misreads our supreme court’s holding in *Daisy Trust*, which was not that the Federal Foreclosure Bar preempts Nevada’s recording statutes, but rather that the recording statutes simply do not apply to the situation at issue here where a regulated entity owns the loan and its agent is the beneficiary of the recorded deed of trust. 135 Nev. at 234, 445 P.3d at 849 (specifically noting that, in light of its disposition, the court “need not address Freddie Mac’s argument that the Federal Foreclosure Bar preempts Nevada’s recording statutes”). Accordingly, we reject TRP’s argument on this point.


Because the testimony and business records produced below were sufficient to prove Fannie Mae’s ownership of the note and the agency


¹TRP argues that the language in the deed amounted to a false representation concerning title under NRS 205.395, a category C felony. Even assuming TRP is correct, it fails to provide any explanation as to how that would entitle it to relief in this civil matter. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument or relevant authority).

relationship between it and Ocwen in the absence of contrary evidence, *see id.* at 234-36, 445 P.3d at 849-51, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Ocwen's deed of trust and that TRP took the property subject to it. *See Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n*, 134 Nev. 270, 273-74, 417 P.3d 363, 367-68 (2018) (holding that the Federal Foreclosure Bar preempts NRS 116.3116 such that it prevents extinguishment of the property interests of regulated entities under FHFA conservatorship without affirmative FHFA consent). Consequently, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²We decline to impose sanctions against TRP or its counsel under NRAP 38 as requested by Ocwen. Nevertheless, we remind TRP and its counsel of their obligation to provide this court with an adequate appellate record. *See NRAP 30(b)(3); Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). We further remind TRP's counsel of his obligations under RPC 3.1 to only advance arguments if there is a basis in law and fact for doing so and, when existing precedent does not align with his clients' interests, to present good-faith arguments for its modification or reversal.

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 1
Hong & Hong
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

COURT OF APPEALS
OF
NEVADA


(O) 19478 

Exhibit 15

Exhibit 15

Exhibit 15

Exhibit 16

Exhibit 16

Exhibit 16



News Release

FHFA Extends COVID-19 Foreclosure and REO Eviction Moratoriums

FOR IMMEDIATE RELEASE

6/24/2021

Washington, D.C. – Today, the Federal Housing Finance Agency (FHFA) announced that Fannie Mae and Freddie Mac (the Enterprises) are extending the moratoriums on single-family foreclosures and real estate owned (REO) evictions until July 31, 2021. The foreclosure moratorium applies to Enterprise-backed, single-family mortgages only. The REO eviction moratorium applies to properties that have been acquired by an Enterprise through foreclosure or deed-in-lieu of foreclosure transactions. The current moratoriums were set to expire on June 30, 2021.

This action is just the latest step FHFA has taken to benefit homeowners and the mortgage market during the pandemic. FHFA continues to monitor the effect of the COVID-19 servicing policies on borrowers, the Enterprises and their counterparties, and the mortgage market. FHFA may extend or sunset its policies based on updated data and health risks. Homeowners and renters can visit consumerfinance.gov/housing for up-to-date information on their relief options, protections, and key deadlines.

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The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 11 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$7.2 trillion in funding for the U.S. mortgage markets and financial institutions. Additional information is available at www.FHFA.gov, on Twitter, [@FHFA](https://twitter.com/FHFA), [YouTube](https://www.youtube.com/FHFA), [Facebook](https://www.facebook.com/FHFA), and [LinkedIn](https://www.linkedin.com/company/fhfa).

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