

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

ALBERT ELLIS LINCICOME, JR. and
VICENTA LINCICOME,

Appellants,

v.

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

Respondents.

No. 86324

Electronically Filed
APPELLANTS
DOCKETING STATEMENT
CIVIL APPEALS
2023 05:17 PM
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Third **Department:** II

County Lyon Judge Honorable Leon Aberasturi

District Ct. Case No. 18-CV-01332

2. Attorney filing this docketing statement:

Attorney Michael G. Millward Telephone (775) 600-2776

Firm Millward Law, Ltd.

Address: 1590 Mono Avenue
Minden, Nevada 89423

Client(s) Albert Ellis Lincicome, Jr. and Vicenta Lincicome

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Robert E. Werbicky, Esq. Telephone (702) 385-2500

Firm Hutchison & Steffen, PLLC

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Client(s) Breckenridge Property Fund 2016, LLC

Attorney Casey J. Nelson Telephone (310) 640-3070 x 2641

Firm Wedgewood, LLC

Address: Office of General Counsel 2320 Potosi Street, Suite 130
Las Vegas, NV 89146

Client(s) Breckenridge Property Fund 2016, LLC

Attorney Ramir M. Hernandez Telephone (702) 983-5142

Firm Wright Finlay & Zak, LLP

Address: 7785 W. Sahara Ave, Suite 200
Las Vegas, NV 89117

Client(s): Fay Servicing, US Bank as Trustee for Prof-2013-M4, 1900 Capital Trust;
Newrez, LLC, d.b.a., Shellpoint Mortgage Servicing, LLC

Attorney: Shadd A. Wade Telephone (702) 948-8565

Firm: Zieve, Brodnax & Steel

Address: 9435 W. Russell Road, Suite 120
Las Vegas, Nevada 89148

Client(s): Sables, LLC

Attorney: Scott R. Lachman Telephone (702) 634-5000

Firm: Akerman, LLP

Address: 1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

Client(s): Bank of America, N.A.

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> |
| | Other disposition (specify): |

- a) Judgment upon Motion for Attorney's Fees
- b) Order granting Permanent Writ of Restitution
- c) Award of damages

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

NA

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

- A. Original Writ Proceeding before the Court of Appeals. Petition for Writ of Mandamus filed on August 1, 2019, as Case No. 79152-COA, and captioned as: ALBERT ELLIS LINCICOME, JR. AND VICENTA LINCICOME, PETITIONERS, V. THIRD JUDICIAL DISTRICT COURT OF NEVADA, IN AND FOR THE COUNTY OF LYON; HONORABLE LEON ABERASTURI, DISTRICT COURT JUDGE, RESPONDENT AND SABLES, LLC, FAY SERVICING, LLC, PROF-2012 –M4 LEGAL TITLE TRUST BY U.S. BANK, N.A., AND BANK OF AMERICA, N.A., REAL PARTIES IN INTEREST.
- B. Petition for Review was filed before the Nevada Supreme Court on February 10, 2020, under Case No. 79152-COA, with the same caption as caption pertaining to the Petition for Writ of Mandamus.

- C. Appeal filed before the Nevada Supreme Court on July 23, 2021, as Case no. 83261, captioned as: ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME, Appellants, v. SABLES, LLC, A NEVADA LIMITED LIABILITY COMPANY, AS TRUSTEE OF THE DEED OF TRUST GIVEN BY VICENTA LINCICOME AND DATED 5/23/2007; FAY SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND SUBSIDIARY OF FAY FINANCIAL, LLC; PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A., AS LEGAL TITLE TRUSTEE; BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, A UTAH LIMITED LIABILITY COMPANY; NEWREZ, LLC, D/B/A SHELLPOINT MORTGAGE SERVICING, LLC.; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; AND MCM-2018-NPL2, Respondents.
- D. Appeal filed before the Nevada Supreme Court on February 15, 2022, as Case no. 84238, captioned as: ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME, Appellants, v. SABLES, LLC, A NEVADA LIMITED LIABILITY COMPANY, AS TRUSTEE OF THE DEED OF TRUST GIVEN BY VICENTA LINCICOME AND DATED 5/23/2007; FAY SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND SUBSIDIARY OF FAY FINANCIAL, LLC; PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A., AS LEGAL TITLE TRUSTEE; BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, A UTAH LIMITED LIABILITY COMPANY; NEWREZ, LLC, D/B/A SHELLPOINT MORTGAGE SERVICING, LLC.; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; AND MCM-2018-NPL2, Respondents.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

- A. The Appellants previously filed for Chapter 13 Bankruptcy in the United States Bankruptcy Court, District of Nevada, in Case no. 10-51219-gwz, captioned as: In re: A. Ellis Lincicome, Jr. and Vicenta J. Lincicome. An Order of Discharge was entered 6/15/2015.
- B. The Appellants initiated a proceeding On December 1, 2017, before the Third Judicial District Court of Nevada, Case Number 17-CV-01346 to file their Petition for Foreclosure Mediation Assistance. The matter was resolved by issuance of a Mediation Program Certificate on or about July 6, 2018.

8. Nature of the action. Briefly describe the nature of the action and the result below:

In July of 2009, Vicenta Lincicome executed a Loan Modification Agreement (2009 LMA) modifying Appellants' 2007 Deed of Trust concerning the mortgage loan on Appellants' home. The 2009 LMA was offered by Bank of America (BANA) and timely returned following Appellants' acceptance.

On September 1, 2009, Appellants made their first payment under the terms of the 2009 LMA. However, on September 1, 2009, BANA reported to Appellants that the 2009 LMA could not be found in its system. BANA accepted the payment, and, thereafter, on October 1, 2009, Appellants second payment was rejected in breach of the 2009 LMA. Because of deflection, and fraudulent misrepresentation, the Lincicome's were believed no formation had occurred. The Lincicomes' did not know that BANA rejection constituted a breach of contract.

In the fall of 2018, after years of Appellants questioning what had happened to the 2009 LMA learned from US Bank's recorded Notice of Default ("NOD") and the Notice of Sale ("NOS") that the 2009 LMA was not lost, a Vice-President of BANA executed the 2009 Loan Modification Agreement in 2011 and recorded it with the Lyon County Recorder. Both the NOS and NOD reported that the 2009 LMA effectively modified Appellants' 2007 Deed of Trust.

Even though US Bank's e NOD and NOS recognize that 2009 LMA modified their mortgage, the terms noted in the NOD and NOS were falsely reported.

In order to prevent the wrongful foreclosure of Appellants' home, they initiated an action before the Third Judicial District Court in Lyon County on November 7, 2018, by way of a complaint and application for issuance of a temporary restraining order.

On December 31, 2018, after a hearing upon the Appellants' TRO application, the District Court entered an Order concluding that Appellants were likely to prevail concerning their claim that the Homeowners' Bill of Rights had been violated. Even though no bond is required for injunctions upon violations of the homeowners' bill of rights, the District Court enjoined the foreclosure sale of the Appellants' residence through December 21, 2018, contingent upon Appellants' posting of a bond in the sum of \$172,610.67.

Appellants were unable to post the requisite bond, and even though they were found to likely prevail upon their claims of violation of the Homeowners Bill of Rights, and even though the Trustee, Sables, LLC (Sables) had been informed that the NOD and NOS were defective, and that Appellants had not breached the 2009 LMA, Sables sold Appellants' residence at foreclosure sale on January 4, 2019.

On June 23, 2021, the District Court entered two separate orders upon Appellants' and the other respective Respondents' motions for summary judgment. The

District Court's June 23, 2021 *Order Denying Plaintiffs Motion for Partial Summary Judgment / Granting Motions for Summary Judgment Filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing LLC* is currently on appeal under Case no. 83261.

The District Court's June 23, 2021 *Order on Breckenridge Motion for Summary Judgment* was on appeal under Case no. 83261. However, on January 19, 2022, in that case the Nevada Supreme Court determined upon *Respondent Breckenridge Property Fund 2016, LLC's Motion to Dismiss Appeal*, that because the District Court's summary judgment order does not resolve all of Breckenridge's claims, dismissal of the appeal of the District Court's *Order on Breckenridge Motion for Summary Judgment* is appropriate.

Breckenridge filed its *Motion for Attorney's Fees and Costs* on July 19, 2021, therein asserting that as the prevailing party in this matter, it is entitled to costs, and that Appellants' claims were groundless and not supported by credible evidence.

The District Court entered its *Order on Attorney's Fees and Costs*, on January 19, 2021, therein entering "Judgment in Favor of Breckenridge" in the sum of \$44,648 for attorney's fees and \$3,788.01 in costs.

Breckenridge filed its *Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents* on or about September 9, 2021. The District Court entered its *Permanent Writ of Restitution* on November 22, 2021.

Since entry of the summary judgment order, Breckenridge has evicted Appellants from their home and recovered a judgment for fees and costs incurred during the action.

Appellants now seek to appeal the Court's June 23, 2021 granting summary judgment in favor of Breckenridge, the District Court's *Order on Attorney's Fees and Costs*, its order granting *Permanent Writ of Restitution*, and its *Order Granting in part Breckenridge Property Fund 2016's Motion for Judgment on it Remaining Claims*.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the District Court erred in granting summary judgment in favor Breckenridge upon its claim for quiet title.

Whether the District Court erred in granting summary judgment in favor Breckenridge upon its claim for Writ of Restitution / Possession of Appellants Property.

Whether the District Court erred in entering judgment in favor of Breckenridge for Attorney's Fees.

Whether the District Court erred in entering judgment in favor of Breckenridge for Costs.

Whether the District Court erred in entering its Permanent Writ of Restitution in favor of Breckenridge.

Whether the District Court erred in denying the Appellants' motion for partial summary judgment.

Whether the original terms of the mortgage remained enforceable even though they were modified by the 2009 LMA.

Whether the foreclosure mediation agreement was a comprehensive settlement that resolved all issues including post agreement violations of the Homeowners Bill of Rights and NRS 107.080.

Whether the District Court erred in determining that the Lincicomes' residence was not wrongfully foreclosed upon even though the District Court also conversely determined that the Lincicomes' claims against BANA for Breach of Contract were time barred because the Lincicomes "were told that BANA would not accept the modified payment in 2009."

Whether the District Court erred in determining that title of the premises should be quieted in Breckenridge's favor.

Whether the District Court erred in determining that the Lincicomes were unjustly enriched, and that Breckenridge was entitled to equitable relief.

Whether the District Court erred in determining that Breckenridge was entitled to rents during the time Breckenridge was restrained from evicting the Lincicomes from the property.

Whether the District Court erred in determining that awarding damages to Breckenridge in the amount of Eighty-Three Thousand Seven Hundred Fifty dollars (\$83,750.00).

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Appellants have an appeal captioned ALBERT ELLIS LINCICOME, JR.; AND VICENTA LINCICOME, Appellants, vs. SABLES, LLC, A NEVADA LIMITED LIABILITY COMPANY, et al, docketed as Case No. 83261, before the Supreme

Court which raised similar issues that were raised in this appeal.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- ☒ N/A
- ☐ Yes
- ☐ No

12. Other issues. Does this appeal involve any of the following issues?

- ☒ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☒ A substantial issue of first impression
- ☒ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

This appeal presents issues pertaining to well settled contract law as it pertains to interpretation of contracts. In particular, this case presents the issue where a contract was modified, breached, and then the breaching party was allowed to enforce the original terms of the contract even though those terms were modified by the breached agreement.

This appeal also presents an issues as to settlement agreements and waiver of claims. Specifically, whether an agreement resolving a mediation, is a comprehensive settlement of all issues between the parties, including a waiver of the rights as to all of the provisions of NRS 107, when the agreement is silent as to any release of claims or waiver of rights.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is presumptively retained by the Supreme Court and should not be assigned to the Nevada Court of Appeals pursuant to NRAP 17. Even though the history of the matter involves the Foreclosure Mediation Program, this case does not arise from a case concerning the Foreclosure Mediation Program under NRAP 17(b)(15). Additionally, the matter concerns a contract dispute in the form of mortgage where the value of the property in dispute exceeds \$75,000. NRAP 17(b)(6).

14. **Trial.** If this action proceeded to trial, how many days did the trial last? NA

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Appellants have no intention and at present know of no basis to seek to disqualify any Justice of the Nevada Supreme Court concerning this appeal.

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from** February 10, 2023 (as to the *Order Granting in Part Breckenridge Property Fund 2016's Motion for Judgment on its Remaining Claims*).

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

NA

17. **Date written notice of entry of judgment or order was served** February 22, 2023

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCF 50(b), 52(b), or 59)**

NA

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev.____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed March 24, 2023

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Appellants are the only party to have filed an appeal in the matter.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other: NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) NRS 703.376

☐ Other (specify) ☐

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Summary Judgment: NRAP 3A(b)(1) provides for jurisdiction over appeal of a judgment. This appeal is from the District Court's June 23, 2021 Order upon Breckenridge's Motion for Summary Judgment and also upon the District Court's February 10, 2023 *Order Granting in Part Breckenridge Property Fund 2016's Motion for Judgment on its Remaining Claims* awards to Breckenridge in the amount of eighty-three thousand seven hundred fifty dollars (\$83,750.00).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Albert Ellis Lincicome and Vicenta Lincicome
Sables, LLC
Fay Servicing, LLC
PROF-2013-M4 Legal Title Trust by U.S. Bank, N.A.
Breckenridge Property Fund 2016, LLC
Newrez, LLC dba Shellpoint Mortgage Servicing, LLC
1900 Capital Trust, II; and
MCM-2018-NPL2

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Lincicom's claims: Wrongful Foreclosure, Declaratory Relief, Quiet Title, Violation of Homeowners Bill of Rights, Breach of Contract, Breach of Duty to Act in Good Faith and Fair Dealing, Slander of Title, Attorney's Fees as Special Damages. Appellants' claims were decided in Respondents' favor in the District Court's June 23, 2021 summary judgment orders.

Breckenridge's counter/third party claims: Quiet Title, Slander of Title, Writ of Restitution, Unjust Enrichment, Rents or Monies for Possession of the Subject Property. Breckenridge's claims were disposed of by the District Court's June 23, 2021 summary judgment order, its November 5, 2021 order, and its November 22, 2021 Permanent Writ of Restitution.

Breckenridge's crossclaims: Contingent claim for rescission and restitution.

Breckenridge's crossclaim became moot by the District Court's June 23, 2021 summary judgment orders determining in favor of Respondents that the foreclosure sale was not wrongful, null, void or of no effect. See Ex. D, p.5.

The following documents are attached:

Exhibit A	Intervenor's Counterclaim	Filed: 10-03-2019
Exhibit B	Answer to Counterclaim and Counterclaim Against Intervenor	Filed: 10-23-2019
Exhibit C	Second Amended Complaint	Filed: 12-20-2019
Exhibit D	Breckenridge Property Fund 2016, LLC's Crossclaim Against Prof-2013 M4 Legal Title Trust, by U.S. Bank	Filed: 10-02-2020

Exhibit E	Answer to Breckenridge Property Fund 2016, LLC's Crossclaim Against Prof-2013-M4 Legal Tittle Trust, By U.S. Bank National Association, as Legal Title Trustee	Filed: 11-02-2020
Exhibit F	Notice of Entry of Order on Ordering Denying Plaintiffs Motion for Partial Summary Judgment/Granting Motions for Summary Judgment Filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC	Filed: 07-06-2021
Exhibit G	Notice of Entry of Order on Order on Breckenridge Motion for Summary Judgment	Filed: 07-06-2021
Exhibit H	Breckenridge Property Fund 2016's Motion for Attorney Fees and Costs	Filed: 07-20-2021
Exhibit I	Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents	Filed: 09-09-2021
Exhibit J	Notice of Entry of Order on Order Concerning: Breckenridge Property Fund 2016, LLC's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents and Plaintiffs' Motion for Stay Pending Appeal	Filed: 11-17-2021
Exhibit K	Notice of Entry of Order on Permanent Writ of Restitution	Filed: On or about 11-24-2021
Exhibit L	Notice of Entry of Order on Order on Attorney's Fees and Costs	Filed: 01-26-2022
Exhibit M	Notice of Entry of Order on Order Granting in Part Breckenridge Property Fund 2016's Motion for Judgment on its Remaining Claims	Filed: On or about 02-22-2023

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate

review (*e.g.*, order is independently appealable under NRAP 3A(b)):

The orders subject to this appeal are appealable pursuant to NRAP 3A(b)(1). Summary judgment was granted in favor of Breckenridge on June 23, 2021. However, Breckenridge did not seek summary judgment upon all of its claims asserted in its March 18, 2021 motion. However, since filing the motion Breckenridge has not pursued its remaining claims. Rather, on or about July 19, 2021, following entry of the District Court's summary judgment order appealed in this matter, Breckenridge filed its *Motion for Attorney's Fees and Costs* seeking judgment for attorney's fees and costs as the prevailing party in the matter.

Accordingly, the District Court's January 19, 2022 *Order on Attorney's Fees and Costs* is a final order in favor of Breckenridge. NRS 18.020 provides for attorney's fees and costs only to a prevailing party. The attorney's fees and costs applied for pertain to the fees and costs of the entire action and not just the fees and costs that pertained to the motion. Accordingly, judgment thereon was a final order pursuant to NRAP 3A(b)(1).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

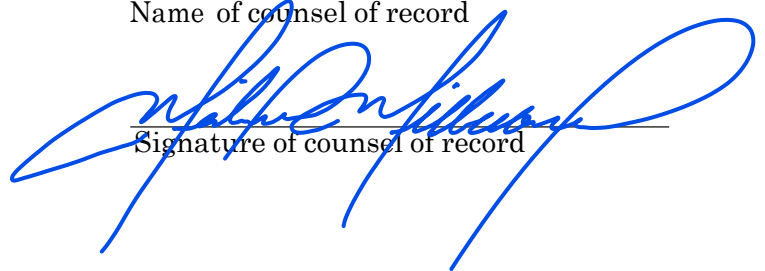
DECLARATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Ellis and Vicenta Lincicome
Name of appellant

Michael G. Millward
Name of counsel of record

4/18/2023
Date


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 17th day of April, 2023, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

See Attachment

Dated this 18th day of April, 2023

Signature



Service List

Shadd A. Wade, Esq.
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Attorney for Bank of America

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2016, LLC*

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Las Vegas, NV 89117
*Attorney for Fay Servicing, LLC and US
Bank Prof-2013-M4 Legal Title Trust.*

Intervenor's Counterclaim

Exhibit A

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mschriever@hutchlegal.com

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10 *Attorney for Defendant in Intervention / Counterclaimant*

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

13 ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

14 Plaintiff,

15 v.

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

21 Defendants.

22 BRECKENRIDGE PROPERTY FUND
23 2016, LLC,

24 Defendant in Intervention.

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

INTERVENOR'S COUNTERCLAIM

Caption continued on next page.

1 BRECKENRIDGE PROPERTY FUND
2016, LLC,

2 Counterclaimant,

3 vs.

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

7 Counterdefendants.

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

13 **JURISDICTION AND VENUE**

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

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

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

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

20 **PARTIES**

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

///

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION
(Quiet Title)

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

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

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

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

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

///

///

1 **SECOND CAUSE OF ACTION**

2 **(Slander of Title)**

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **(Writ of Restitution)**

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

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

23 ///

24 ///

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

FOURTH CAUSE OF ACTION (Unjust Enrichment)

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

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

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

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

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

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

///

///

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Counterclaimant prays for judgment against Counterdefendants as follows:

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

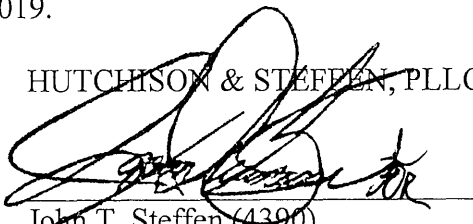
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- 6. For an award of attorney's fees and litigation costs incurred; and
- 7. Such other and further relief as may be deemed just and proper under the circumstances.

DATED this 30 day of October, 2019.

HUTCHISON & STEFFEN, PLLC



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

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

*Attorney for Defendant in Intervention /
Counterclaimant*

CERTIFICATE OF SERVICE

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

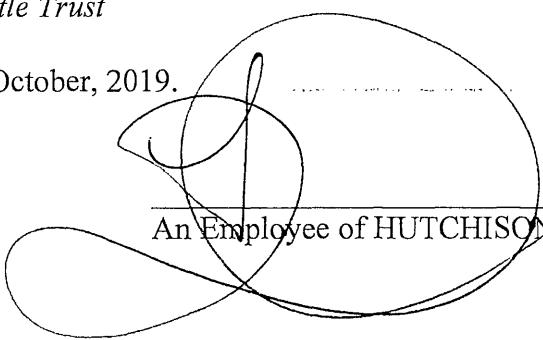
Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
Minden, NV 89423
Attorney for Plaintiffs

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

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

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

DATED this 3 day of October, 2019.


An Employee of HUTCHISON & STEFFEN

LIST OF EXHIBITS

INTERVENOR'S COUNTERCLAIM

18-CV-01332

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

EXHIBIT 1

EXHIBIT 1

FILED

Case No: 18-CV-01332

2018 DEC 31 AM 10:48

Dept.: II

TANYA S. RINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen

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

ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

Plaintiffs,

v.

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

Defendants.

ORDER

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

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

ORDER

PAGE 1 OF 8

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 //

ORDER

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

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

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

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

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

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

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

20 The Court hereby enters the following Conclusions of Law:

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

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

27 //

28 //

ORDER

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

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

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

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

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

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

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

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

28 //

ORDER

1 Reviewed, approved and submitted this 18th day of December, 2018.
2

3 
4

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

EXHIBIT 2

70 RIVERSIDE DR

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

RECORDING REQUESTED BY:

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

Forward Tax Statements to
the address given above

Recorded As An Accommodation
Only Without Liability

Doc #: 591393

01/25/2018 08:21 AM Page: 1 of 2

OFFICIAL RECORD

Requested By: FIRST AMERICAN TITLE INSURANCE C

Lyon County, NV
Margie Kassebaum, Recorder

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

Recorded By: Inhumildad

T.S. # 16-42397

Order #: 160069595-NV-VOO

SPACE ABOVE LINE FOR RECORDER'S USE

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55

The Grantee Herein WAS NOT the Foreclosing Beneficiary.

The Amount of the Unpaid Debt was \$671,249.37

The Amount Paid by the Grantee was \$294,000.01

Said Property is in the City of DAYTON, County of Lyon

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

Breckenridge Property Fund, 2016, LLC

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

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

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

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

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

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

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

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

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:

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

Recorded As An Accommodation

Forward Tax Statements to
the address given above

Only Without Liability

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55

The Grantee Herein **WAS NOT** the Foreclosing Beneficiary.

The Amount of the Unpaid Debt was \$671,249.37

The Amount Paid by the Grantee was \$294,000.01

Said Property is in the City of DAYTON, County of Lyon

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

Breckenridge Property Fund, 2016, LLC

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

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

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

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

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

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

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

TRUSTEE'S DEED UPON SALE

T.S. #: 16-42397

Order #: 160069595-NV-VOO

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

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

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

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey
Neal

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

State of CALIFORNIA

County of ORANGE

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

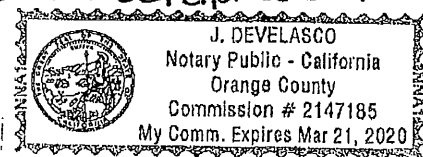
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

J. Develasco

J. Develasco



STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

- a) 029-401-17
b) _____
c) _____
d) _____

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. a. Total Value/Sales Price of Property \$ \$294,000.01
b. Deed in Lieu of Foreclosure Only (value of property) (_____)
c. Transfer Tax Value: \$ \$294,000.01
d. Real Property Transfer Tax Due \$ 1148.55

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature  Capacity AGENT

Signature _____ Capacity AGENT

SELLER (GRANTOR) INFORMATION
(REQUIRED)

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

BUYER (GRANTEE) INFORMATION
(REQUIRED)

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

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

Print Name: First American Escrow #: ACCU
Address: 1000 W Charleston
City: Las Vegas State: NV Zip: 89135

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 3

EXHIBIT 3

THREE-DAY NOTICE TO QUIT

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

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

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


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

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

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

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC


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

*Attorney for Plaintiff
Breckenridge Property Fund 2016, LLC*

EXHIBIT A

EXHIBIT A

NOTICE TO TENANT

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC



CASEY J. NELSON, ESQ.

Nevada Bar # 12259

Office of the General Counsel

2320 Potosi Street, Suite 130

Las Vegas, Nevada 89146

Attorney for Plaintiff

Breckenridge Property Fund 2016, LLC

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

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

Pursuant to NRS 53.045

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

01/29/2019

(Date)

Toni L Ruckman

(Signature)



AFFIDAVIT OF
SERVICE

3012509
(55105770)

7520 5007 2000 DEPT 9701 2018 1A30 0002 1005 0251

U.S. Postal Service TM	
CERTIFIED MAIL [®] RECEIPT	
Domestic Mail Only	
For delivery information, visit our website at www.usps.com .	
DAYTON, NV 89403-9055	
OFFICIAL USE	
Certified Mail Fee	\$3.50
Extra Services & Fees (check box, add fee as appropriate)	\$2.80
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$0.55
Total Postage and Fees	\$6.85
Sent To VICENTA LINCICOME	
Street or PO Box TENANT/SUBTENANT/ALL OCCUPANTS	
City, State, ZIP+4 [®] 70 RIVERSIDE DR.	
PS Form 3800, April 2010 DAYTON, NV 89403-9055	
Instructions	



01/28/2019
55105770

Answer to Counterclaim and Counterclaim Against
Intervenor

Exhibit B

FILED

2019 OCT 23 AM 11:20

TANYA SCERINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
TANYA SCERINE

Case No: 18-CV-01332

Dept.: II

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

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

* * * * *

ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

Plaintiffs,

v.

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

Defendants,

**ANSWER TO COUNTERCLAIM AND
COUNTERCLAIM AGAINST
INTERVENOR**

BRECKENRIDGE PROPERTY FUND 2016, LLC

Counterclaimant,

vs.

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

Counterdefendants.



COME NOW, Counterdefendants ELLIS LINCICOME and VICENTA LINCICOME (hereinafter together as "Counterdefendants" or "LINCICOMES"), by and through their attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and hereby submits their Answer and Compulsory Counterclaim in response to Intervenor and Counterclaimant BRECKENRIDGE PROPERTY FUND 2016, LLC's (hereinafter "BRECKENRIDGE") Counterclaim as follows:

I. ANSWER
JURISDICTION AND VENUE

1. The LINCICOMES admit the allegations contained in paragraphs 1, 2, 3, and 4 of the Counterclaim.

PARTIES

2. The LINCICOMES neither admit or deny the allegations of paragraph 5 of the Counterclaim.

3. The LINCICOMES admit the allegations in paragraph 6 of the Counterclaim.

4. The LINCICOMES neither admit or deny the allegations in paragraph 7, because no admission or denial is required. To the extent the allegations in paragraph 7 requires an admission or denial, it is denied.

FACTUAL ALLEGATIONS

5. The LINCICOMES specifically deny the allegations in paragraph 8 of the Counterclaim. The LINCICOMES assert that they were not in default of loan obligations. The LINCICOMES assert that they have never been in default of their loan obligations under the May 23, 2007 Deed of Trust recorded with the Lyon County Recorder as Document No. 407150, as modified by the July 11, 2009 Loan Modification Agreement, recorded with the Lyon County Recorder as Document No. 475808 (hereinafter "Loan Obligation"). The LINCICOMES assert that the beneficiary of payment of the Loan Obligation refused payment on October 1, 2009, and have never applied the terms of the July 11, 2009 Loan Modification Agreement to the loan.

1 6. The LINCICOMES admit the allegations of paragraph 9 of the Counterclaim
2 under the context described in paragraph 5 hereinabove.

3 7. The LINCICOMES admit in part and deny in part the allegations contained in
4 paragraph 10 of the Counterclaim. Plaintiffs admit that the Order to the Counterclaim was
5 entered by the Court in the above captioned matter, and that the terms of that Order speak
6 for themselves. To the extent that paragraph 10 of the Counterclaim alleges that the Court
7 Order provided that continuance of the temporary injunction was solely conditioned upon
8 nonpayment of the bond, the allegation is denied.

9 8. The Linicicomes admit in part and deny in part the allegations contained in
10 paragraph 11 of the Counterclaim. The LINCICOMES admit that they failed to post the bond
11 as provided in the December 31, 2018 Order. The LINCICOMES deny that the failure to post
12 bond resulted in the foreclosure sale on January 4, 2019. The LINCICOMES allege that the
13 Trustee, Sables, LLC, violated NRS 107.080 in exercising the "power of sale" without legal
14 authority, and that abuse by the Trustee resulted in the illegitimate voidable issuance of the
15 *Trustee's Deed Upon Sale* recorded with the Lyon County Recorder on January 26, 2019 as
16 Document No. 591393.

17 9. The LINCICOMES specifically deny the allegations contained in paragraph 12 of
18 the Counterclaim. The LINCICOMES deny that the Trustee had authority pursuant to NRS
19 107.080 to cause the sale of the property when the LINCICOMES were not in default of the
20 loan. The LINCICOMES further deny that BRECKENRIDGE acquired title to the Premises
21 located at 70 Riverside Drive, Dayton, Nevada 89403 (hereinafter "Premises"). The
22 LINCICOMES further deny that the *Trustee's Deed Upon Sale* establishes that
23 BRECKENRIDGE has title to the Premises.

24 10. The LINCICOMES specifically deny the allegations contained in paragraph 13 of
25 the Counterclaim. The LINCICOMES deny that BRECKENRIDGE is the sole owner.
26 BRECKENRIDGE's ownership interest in the Premises is voidable at best and does not entitle
27 them to exclusive use or control of the premises pursuant to NRS 107.080. Furthermore, the
28 Lis Pendens recorded against the Premises cannot negatively impact a voidable interest in

1 the Premises where BRECKENRIDGE was on notice of the litigation currently affecting the
2 Premises prior to it obtaining invalid title through Sables, LLC's improper and illegitimate
3 foreclosure sale thereon.

4 11. The LINCICOMES admit in part and deny in part the allegations contained in
5 paragraph 14 of the Counterclaim. The LINCICOMES admit that they have remained in
6 possession of the Premises since January 4, 2019. However, the LINCICOMES deny that any
7 purchase of the Premises on January 4, 2019, by way of Sables, LLC's foreclosure sale of the
8 premises has any validity.

9 12. The LINCICOMES admit the allegations contained in paragraph 15 of the
10 Counterclaim.

11 13. The LINCICOMES admit the allegations contained in paragraph 16 of the
12 Counterclaim. The LINCICOMES respond to the allegations in paragraph 16 and allege that
13 counsel for BRECKENRIDGE contacted counsel for the LINCICOMES by telephone in or about
14 February of 2019, and after a discussion of the validity of the foreclosure, counsel for
15 BRECKENRIDGE indicated that it may seek to unwind the purchase of the Premises.

16 14. The LINCICOMES specifically deny the allegations contained in paragraphs 17
17 of the Counterclaim. Counterclaimants have not made repeated demands that the
18 LINCICOMES vacate the Premises. Furthermore, LINCICOMES have set forth in this matter
19 good cause as to why the foreclosure sale, which occurred on January 4, 2019, was
20 illegitimate and should be declared void.

21 15. The LINCICOMES admit and deny the allegations contained in paragraph 18 to
22 the Counterclaim. The LINCICOMES admit that they remain in possession of the Premises,
23 however, the LINCICOMES deny that the "Three-Day Notice" is valid in light of the
24 allegations, claims, and disputes in this matter as applied to NRS 107.080(5)¹.

25
26
27 ¹ NRS 107.080(5): Every sale made under the provisions of this section and other sections of this chapter
28 vests in the purchaser the title of the grantor and any successors in interest without equity or right of
redemption. Except as otherwise provided in subsection 7, a sale made pursuant to this section must be
declared void by any court of competent jurisdiction in the county where the sale took place if:

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

1 16. The LINCICOMES deny the allegations contained in paragraph 19 of the
2 Counterclaim. The LINCICOMES assert that their continued possession of the Premises is
3 lawful in light of NRS 107.080(5).

4 17. The LINCICOMES deny the allegations contained in paragraph 20 of the
5 Counterclaim. The LINCICOMES deny that they are in violation of NRS 40.360, and further
6 allege that they will be damaged if BRECKENRIDGE obtains the relief it seeks. Furthermore,
7 the LINCICOMES allege that BRECKENRIDGE's actions are premature pursuant to NRS
8 107.080(5), where the Court has not determined the validity of the January 4, 2019
9 foreclosure sale in light of the allegation that the LINCICOMES were not in default, and that
10 Sables, LLC's exercise of the power of sale was illegitimate and without authority.

11 18. The LINCICOMES deny the allegations contained in paragraph 21 of the
12 Counterclaim. The LINCICOMES assert that any damages asserted by BRECKENRIDGE are
13 as a result of its own negligence in purchasing the Premises at the foreclosure sale, where it
14 had notice of the Lis Pendens recorded against the Premises, and therefore, notice of all
15 allegations and evidence established in the filed pleadings and papers which were filed prior
16 to January 4, 2019.

17 19. The LINCICOMES deny the allegations contained in paragraph 22 of the
18 Counterclaim.

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

21 20. The LINCICOMES re-allege and incorporate herein by reference, as if fully set
22 forth herein, the answers to paragraphs 1 through 22 of the Counterclaim.
23
24
25

26
27 (b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale
28 took place within 30 days after the date on which the trustee's deed upon sale is recorded pursuant to
subsection 10 in the office of the county recorder of the county in which the property is located; and

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

21. The LINCICOMES deny the allegations in paragraphs 24, 25, 26, and 27 of the Counterclaim upon the denials, defenses, assertions, and allegations presented in paragraphs 1 through 19 of their Answer.

\\

\\

SECOND CAUSE OF ACTION

(Slander of Title)

22. The LINCICOMES re-allege and incorporate herein by reference, as if fully set forth herein, the answers to paragraphs 1 through 27 of the Counterclaim.

23. The LINCICOMES deny the allegations in paragraphs 29, 30, and 31 of the Counterclaim upon the denials, defenses, assertions, and allegations presented in paragraphs 1 through 21 of their Answer.

THIRD CAUSE OF ACTION

(Writ of Restitution)

24. The LINCICOMES realledge and incorporate herein by reference, as if fully set forth herein, the answers to paragraphs 1 through 31 of the Counterclaim.

25. The LINCICOMES deny the allegations in paragraphs 33 and 34 the Counterclaim upon the denials, defenses, assertions, and allegations presented in paragraphs 1 through 23 of their Answer.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

26. The LINCICOMES reallege and incorporate herein by reference, as if fully set forth herein, the answers to paragraphs 1 through 34 of the Counterclaim.

27. The LINCICOMES deny the allegations in paragraphs 36 through 42 of the Counterclaim upon the denials, defenses, assertions, and allegations presented in paragraphs 1 through 23 of their Answer.

FIFTH CAUSE OF ACTION

(Rents or Monies for Possession of the Subject Property)

28. The LINCICOMES re-allege and incorporate herein by reference, as if fully set forth herein, the answers to paragraphs 1 through 42 of the Counterclaim.

29. The LINCICOMES deny the allegations in paragraphs 36 through 42 of the Counterclaim upon the denials, defenses, assertions, and allegations presented in paragraphs 1 through 27 of their Answer.

II. AFFIRMATIVE DEFENSES

1. BRECKENRIDGE'S Counterclaim fails to state a claim upon which relief can be granted in favor of BRECKENRIDGE or against the LINCICOMES.

2. The LINCICOMES are informed and believe that BRECKENRIDGE, by its own actions, conducts, and statements, waived any right to recovery with regard to the matters asserted in the Counterclaim.

3. The LINCICOMES are informed and believe and thereupon aver that BRECKENRIDGE is estopped from asserting claims, if any, arising from matters asserted in the Counterclaim.

4. The LINCICOMES are informed and believe and thereupon aver that BRECKENRIDGE is barred from recovery under the Counterclaim because the transaction or occurrence upon which BRECKENRIDGE's claims arise was conducted and administered, without right or authority.

5. The LINCICOMES are informed and believe and thereupon aver that BRECKENRIDGE is barred from recovery under the Counterclaim because BRECKENRIDGE failed to mitigate its damages, if any.

6. The LINCICOMES are informed and believe and thereupon aver that BRECKENRIDGE is barred from recovery under the Counterclaim under the doctrine of unjust enrichment.

7. The LINCICOMES are informed and believe and thereupon aver that it has become necessary for the LINCICOMES to hire an attorney to defend this action due to BRECKENRIDGE'S conduct, and all reasonable costs of suit, including a reasonable attorney's fee, should be awarded to the LINCICOMES.

1 8. The LINCICOMES are informed and believe and thereupon aver that
2 BRECKENRIDGE is barred from recovery under the Counterclaim under the doctrine of
3 unclean hands.

4 9. The LINCICOMES are informed and believe and thereupon aver that
5 BRECKENRIDGE is barred from recovery under the Counterclaim because the damages, if
6 any, alleged to have occurred were not proximately caused by the LINCICOMES.

7 10. The LINCICOMES are informed and believe and thereupon aver that
8 BRECKENRIDGE is barred from recovery under the Counterclaim because BRECKENRIDGE'S
9 alleged damages, if any, were not caused by any wrongful conduct of the LINCICOMES, but
10 to the extent they exist, in whole or in part, by conduct of BRECKENRIDGE itself.

11 11. The LINCICOMES are informed and believe and thereupon aver that
12 BRECKENRIDGE is barred from recovery under the Counterclaim because the damages, if
13 any, complained of in the Counterclaim, were caused by and/or contributed to by another
14 party or parties other than THE LINCICOMES for whose acts the LINCICOMES are not liable.

15 12. The LINCICOMES are informed and believe and thereupon aver that
16 BRECKENRIDGE is barred from recovery because BRECKENRIDGE has failed to name a party
17 necessary for full and adequate relief essential to this action.

18 13. The LINCICOMES are informed and believe and thereupon aver that
19 BRECKENRIDGE is barred from recovery under the Counterclaim because the LINCICOMES,
20 at all times and in all manner, adhered to all proper standards of performance under the
21 circumstances, reasonably apparent to BRECKENRIDGE.

22 14. At all times and places relevant hereto, the LINCICOMES acted in good faith,
23 with justification and probable cause and without malice towards BRECKENRIDGE.

24 15. The LINCICOMES are informed and believe and thereon aver that any damages
25 suffered by BRECKENRIDGE's are the result of THIRD PARTY negligence, misrepresentation,
26 or fraud and not as the result of conduct of the LINCICOMES.

27 16. The LINCICOMES are informed and believe and thereon aver that
28 BRECKENRIDGE's claims are barred pursuant to NRS 107.080(5).

17. The LINCICOMES are informed and believe and thereupon aver that pursuant to the provisions of NRCP 12, at the time of the filing of the LINCICOMES's Answer all possible affirmative defenses may not have been alleged inasmuch as insufficient facts and other relevant information may not have been available after reasonable inquiry and, therefore, the LINCICOMES reserve the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants the same.

III. COUNTERCLAIM

COME NOW, ELLIS LINCICOME and VICENTA LINCICOME, by and through their attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and pursuant to NRCP 13, they hereby allege and aver their compulsory counterclaim as follows:

PARTIES

1. At all times relevant herein, Plaintiff ELLIS LINCICOME and Plaintiff VICENTA LINCICOME (hereinafter together "LINCISOMES") were residents of the State of Nevada, residing at 70 Riverside Drive, Dayton, Nevada 89403.

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

JURISDICTION

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

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

VENUE

5. The Third Judicial District Court in and for the County of Lyon is the proper venue for this action pursuant to NRS 13.010.

GENERAL ALLEGATIONS

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

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

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

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

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

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

12. On April 27, 2009, Bank of America, N.A., and Countrywide Bank, N.A., merged.

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

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



1 15. On July 31, 2009, Vicenta executed a Loan Modification Agreement (hereinafter
2 "LMA" or "2009 LMA") with BAC Home Loans Servicing, LP, which provided that the first
3 payment of \$2,272.62 was to be made September 1, 2009.

4 16. The LMA extended the maturity date to August 1, 2049, and, as of August 1,
5 2009, the interest rate applicable to their loan would be reduced from the current rate of
6 6.875% to 4.875%. The LMA provided that on September 1, 2014, the interest rate would
7 increase to 5.375%. Under the LMA, all arrears were to be capitalized as of September 1,
8 2009, and the new principal balance owed would be \$417,196.58.

9 17. On July 31, 2009, the LMA, which was fully executed by Vicenta, was sent by
10 Federal Express in the reusable Fed-Ex envelope provided with the loan modification package
11 to BAC Home Loans Servicing, LP Modification, 100 Beecham Drive, Suite 104, Pittsburgh, PA
12 15205.

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

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

26 20. On or about October 1, 2009, Vicenta travelled to the Carson City Bank of
27 America branch to make the second payment on the LMA. This time the banker, a middle-
28

1 aged woman, refused the payment and indicated that there was no record of the existence
2 of the LMA in Bank of America's computer system.

3 21. Bank of America provided a Home Loan Statement dated October 29, 2009,
4 which establishes that Bank of America had not applied the terms of the LMA to the
5 LINCICOMES' mortgage loan.

6 22. From October 1, 2009, to December of 2011, the LINCICOMES continued to
7 contact Bank of America by phone to inquire as to the status of the LMA and make payment.
8 On each phone call, the Bank of America customer service representative would inform the
9 LINCICOMES that the matter was being investigated.

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

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

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

22 26. Neither Bank of America nor BAC Home Loan Servicing filed a claim in the
23 LINCICOMES' Bankruptcy case.

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

27 28. Upon information and belief, in early 2011, Bank of America found the LMA.
28

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

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

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

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

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

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

35. On June 15, 2015, the Bankruptcy Court Clerk granted the LINCICOMES discharge of all of their scheduled debts.

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

37. On or about April 24, 2015, Bank of America accepted the loan modification application and required the LINCICOMES to complete three trial modification payments before they could move forward with modifying their mortgage loan.

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

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

3 40. Then on August 1, 2015, while attempting to make the third trial payment,
4 Bank of America informed the LINCICOMES that their loan had been transferred to Fay
5 Servicing, LLC.

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

9 42. On August 10, 2015, Fay Servicing generated a Mortgage Statement indicating
10 the amount due on the LINCICOMES' account on September 1, 2015, was \$207,599.70, and
11 reflecting an interest rate of 6.875 percent, and indicating there were 85 payments that
12 remain due on the account.

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

16 44. The LINCICOMES were devastated when neither Bank of America nor Fay
17 Servicing would accept their payment and that Fay Servicing would not honor the April 24,
18 2015 loan modification offer.

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

22 46. The November 10, 2015, Assignment to US Bank was recorded with the Lyon
23 County Recorder as Document No. 544042.

24 47. In 2016, the LINCICOMES applied for the Home Affordable Modification
25 Program (HAMP) modification through Fay Servicing. Fay Servicing informed the
26 LINCICOMES that they only qualified for a Home Affordable Foreclose Alternatives (HAFA)
27 Short Sale. The LINCICOMES appealed Fay Servicing's denial of their qualification for HAMP.
28

1 48. On September 7, 2016, Fay Servicing sent the LINCICOMES a response to their
2 appeal of their denial therein indicating that the LINCICOMES did not have sufficient income
3 to qualify for a modification, and also that they were not qualified for the HAMP
4 Unemployment Program (HAMP UP) "because the property is not your primary residence."

5 49. The LINCICOMES have continuously used and claimed their home located at 70
6 Riverside Dr., Dayton, Nevada, as their residence.

7 50. After being denied, the LINCICOMES reached out to Senator Harry Reid's office
8 for help. Shortly thereafter, Fay Servicing offered the LINCICOMES a trial modification at
9 \$2,528.86 per month.

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

16 52. On December 20, 2016, the LINCICOMES then elected to enter the State of
17 Nevada Foreclosure Mediation Program.

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

22 54. On November 3, 2017, Sables, LLC, as Trustee under the Deed of Trust,
23 recorded its *Notice of Breach and Default and Election to Sell the Real Property under Deed*
24 *of Trust* (hereinafter "NOD").

25 55. The NOD incorrectly asserts that the LINCICOMES are in default.

26 56. The NOD incorrectly provides that as of October 31, 2017, \$265,572.39 is
27 owed in arrears. Even though the NOD acknowledges that the "subject Deed of Trust was
28 modified by Loan Modification Agreement recorded as Instrument 475808 . . . recorded on

1 5/4/2011 . . . in the office of the County recorder of Lyon County," it also provides that all
2 monthly installments from "9/1/2008" forward are due.

3 57. The NOD is also incorrect because the 2009 LMA was effective July 11, 2009,
4 with the first installment to be made on 9/1/2009 instead of 8/1/2008.

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

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

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

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

19 62. The LINCICOMES attended a second mediation on April 3, 2018, and a
20 Certificate of Mediation was issued on October 4, 2018.

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

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

26 65. On November 7, 2018, the LINCICOMES filed a *Complaint* for Declaratory Relief
27 and an *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent*
28

1 *Injunction* in the Third Judicial District Court of the State of Nevada, as Case No. 18-CV-
2 01332.

3 66. On November 7, 2018, a *Notice of Lis Pendens* was filed in the Third Judicial
4 District Court Case No. 18-CV-01332 against the Premises and was recorded on November
5 8, 2018, with the Lyon County Recorder as Document No. 588549.

6 67. On November 8, 2018, the Third Judicial District Court entered an *Order*
7 restraining and enjoining Defendants from foreclosing on the Property.

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

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

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

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

16 72. On December 21, the Third Judicial District Court took Sable's default.

17 73. On December 28, 2018, the LINCICOMES received a notice from Shellpoint
18 Mortgage Servicing, LLC, indicating that MCM 2018-NPL2 is the new beneficiary of the Deed
19 of Trust.

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

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

24 76. On January 4, 2019, without legal authority provided under NRS 107.080,
25 Sables, LLC, as Turstee of the Deed of Trust, sold the Premises by foreclosure sale, to
26 BRECKENRIDGE.

1 77. On January 17, 2019, the LINCICOMES received a notice from Shellpoint that
2 1900 Capital Trust II, by U.S. Bank Trust National Association, is the new beneficiary of the
3 Deed of Trust.

4 78. On January 25, 2019, a *Trustee's Deed Upon Sale* was recorded in the office of
5 the Lyon County Recorder as Document No. 591393.

6 79. Sables, LLC executed a Turestee Deed in favor of Brickenbride in violation of
7 NRS 107.080 and NRS 107.0805.

8 **FIRST CAUSE OF ACTION**

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

10 80. The LINCICOMES re-allege and incorporate by this reference each and every
11 allegation contained in paragraphs 1 through 82, hereinabove, as though fully set forth
12 herein.

13 81. An actual controversy has arisen and now exists between the LINCICOMES and
14 BRECKENRIDGE which requires a determination of rights, responsibilities, interests, and
15 liabilities of the parties including those declarations sought below.

16 82. The LINCICOMES seek a declaration as to the effect of Bank of America's
17 refusal to accept payment from the LINCICOMES on October 1, 2009.

18 83. The LINCICOMES seek a declaration as to any duty the LINCICOMES had to
19 perform following Bank of America's rejection of the LINCICOMES' payment on October 1,
20 2009.

21 84. The LINCICOMES seek a declaration of Sables, LLC's duties, as Trustee of the
22 Deed of Trust, to investigate whether the LINCICOMES were in default.

23 85. The LINCICOMES seek a declaration of Sables, LLC's duties, as Trustee of the
24 Deed of Trust, to investigate whether the LINCICOMES were in default.

25 86. The LINCICOMES seek a declaration of Sables, LLC's right, as Trustee of the
26 Deed of Trust, to exercise the power of sale pursuant to NRS 107.080.

27 87. The LINCICOMES seek a declaration of the validity of the Trustee's Deed
28 recorded on January 25, 2019.

1 88. The LINCICOMES seek a declaration of BRECKENRIDGE's interest in the
2 Premises.

3 89. Judicial declarations sought herein are necessary and appropriate in order for
4 the LINCICOMES to ascertain their rights and duties under the Deed of Trust, as modified by
5 the 2009 LMA, as well as their interest in the Premises to maintain the quiet enjoyment of
6 their property free from any disturbance by Breckenridge.

7 90. The LINCICOMES have had to retain the services of an attorney to prosecute
8 this action and are entitled to reasonable attorney's fees and costs of suit incurred herein.

9 **SECOND CAUSE OF ACTION**

10 **(Quiet Title)**

11 91. The LINCICOMES re-allege and incorporate by this reference each and every
12 allegation contained in paragraphs 1 through 93, hereinabove, as though fully set forth
13 herein.

14 92. Upon information and belief, Defendants US Bank and Fay servicing requested
15 Sables, LLC, as Trustee of the Deed of Trust, as modified by the 2009 LMA, to exercise the
16 power of sale to cause the foreclosure sale of the Premises.

17 93. Pursuant to NRS 107.080(1), the power of sale "conferred upon a trustee [is]
18 to be exercised after a breach of the obligation for which transfer is security." NRS
19 107.080(1).

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

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

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

27 (b) Except as otherwise provided in subsection 6, an action is
28 commenced in the county where the sale took place within 30
days after the date on which the trustee's deed upon sale is

1 recorded pursuant to subsection 10 in the office of the county
2 recorder of the county in which the property is located; and

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

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

8 96. Bank of America breached the Deed of Trust, as modified by the 2009 LMA,
9 when it rejected the LINCICOMES' payment on October 1, 2009.

10 97. Bank of America and US Bank have not cured the October 1, 2009 breach.

11 98. The LINCICOMES were not in breach of the 2009 LMA at the time of the
12 recording of the NOD on November 3, 2017.

13 99. The LINCICOMES were not in breach of the 2009 LMA at the time of the
14 recording of the Notice of Trustee's Sale on October 12, 2018.

15 100. On November 8, 2018, Sables, LLC, as Trustee of the Deed of Trust, was
16 served with the LINCICOMES' *Complaint* and the LINCICOMES' *Application for Ex Parte*
17 *Restraining Order, Preliminary Injunction and Permanent Injunction* putting it on notice of
18 the facts constituting Bank of America's breach of the Deed of Trust by rejection of the
19 LINCICOMES' payment on October 1, 2009.

20 101. The LINCICOMES were not in breach of the Deed of Trust as modified by the
21 2009 LMA at the time of sale on January 4, 2019.

22 102. Sables, LLC, as Trustee in this matter, had no legal right pursuant to NRS
23 107.080 to foreclose on the LINCICOMES when they were not in breach of the Deed of Trust
24 as modified by the 2009 LMA.

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

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

THIRD CAUSE OF ACTION
(Special Damages –Attorney’s Fees)

105. The LINCICOMES re-allege and incorporate by this reference each and every allegation contained in paragraphs 1 through 107, hereinabove, as though fully set forth herein.

106. The LINCICOMES have brought this action in part pursuant to NRS 107.080 and NRS 107.560, which permit recovery of reasonable attorney’s fees and costs to a prevailing borrower.

107. Additionally, as natural and proximate consequence of BRECKENRIDGE’s conduct alleged herein, the LINCICOMES have suffered damages, including special damages in the form of attorney’s fees.

108. As a proximate result of BRECKENRIDGE’s conduct, the LINCICOMES have suffered attorney’s fees in excess of Fifteen Thousand Dollars (\$15,000) to be proved at trial.

109. The LINCICOMES are entitled to the recovery of reasonable attorney’s fees and costs from BRECKENRIDGE in an amount and sum to be proven at trial.

WHEREFORE, the LINCICOMES pray for judgment as follows:

1. That BRECKENRIDGE take nothing by reason of its Counterclaim on file herein;
2. That the Court enter judgment against BRECKENRIDGE for the LINCICOMES reasonable attorney’s fees and costs in defending the Counterclaim;
3. That the Court make an award of damages in favor of the LINCICOMES and against BRECKENRIDGE in excess of \$15,000;
4. The Court void and set aside the Trustee’s Deed Upon Sale, recorded on January 25, 2019, and quiet title in the Premises in favor of the LINCICOMES.
5. That the Court declare the rights and interests of the parties.
6. That the Court provide such other relief as the Court deems proper in the premises.

AFFIRMATION

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

4 Dated this 22nd day of October, 2019

MILLWARD LAW, LTD.

By: 

Michael G. Millward, Esq.

NSB# 11212

1591 Mono Ave

Minden, NV 89423

(775) 600-2776

Attorney for Plaintiffs/Counterdefendants



Second Amended Complaint

Exhibit C

FILED

2019 DEC 20 PM 1:38

TANYA SCIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
TANYA SCIRINE
— CLERK —

Case No: 18-CV-01332

Dept.: II

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

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

* * * * *

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

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

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

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

4 **PARTIES**

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

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

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

12 4. At all times relevant herein, Defendant FAY SERVICING, LLC (hereinafter
13 referred to as "Fay Servicing"), is and was a Delaware limited liability company. Fay
14 Servicing provides loan servicing for financial institutions and was the servicer for PROF-
15 2013-M4 LEGAL TITLE TRUST by U.S. BANK NATIONAL ASSOCIATION, the current or former
16 beneficiary of a Deed of Trust encumbering Plaintiffs' residence.

17 5. Upon information and belief, at all times relevant herein, Defendant PROF-
18 2013-M4 LEGAL TITLE TRUST by U.S. BANK NATIONAL ASSOCIATION (hereinafter referred
19 to as "US Bank"), as legal title trustee, was a mortgage investment trust. At all times
20 relevant herein, US Bank, was a non-title 7 business entity, registered to do business in the
21 State of Nevada, conducting business in the State of Nevada as a national bank, and
22 providing commercial banking services for individuals, businesses, and institutions in the
23 State of Nevada.

24 6. At all times relevant herein, Defendant BANK OF AMERICA, N.A., successor by
25 merger to BAC Home Loans Servicing, LP, formerly Countrywide Home Loans Servicing, LP,
26 (hereinafter referred to as "Bank of America") was a non-title seven business entity,
27 registered to do business in the State of Nevada, conducting business in the State of Nevada
28

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

3 7. At all times relevant herein, Defendant and Intervener BRECKENRIDGE
4 PROPERTY FUND 2016, LLC, a Utah limited liability company (hereinafter "Breckenridge"), is
5 and was the grantee of a Trustee's Deed recorded with the Lyon County Recorder on January
6 25, 2019, as Document No. 591393.

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

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

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

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

4 **JURISDICTION**

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

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

10 **VENUE**

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

15 **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

14 23. On July 31, 2009, Vicenta executed a Loan Modification Agreement (hereinafter
15 "2009 LMA") with BAC Home Loans Servicing, LP, which provided that the first payment of
16 \$2,272.62 was to be made September 1st, 2009. A copy of the 2009 Loan Modification
17 Agreement is attached hereto as **Exhibit 3.**

18 24. The LMA extended the maturity date to August 1, 2049, and, as of August 1,
19 2009, the interest rate applicable to their loan would be reduced from the current rate of
20 6.875% to 4.875%. The LMA provided that on September 1, 2014, the interest rate would
21 increase to 5.375%. Under the LMA all arrears were to be capitalized as of September 1,
22 2009, and the new principal balance owed would be \$417,196.58. A copy of the "Important
23 Message About Your Loan" notice is attached as **Exhibit 4.**

24 25. On July 31, 2009, the LMA, which was fully executed by Vicenta, was sent by
25 Federal Express in the reusable Fed-Ex envelope provided with the loan modification package
26 to BAC Home Loans Servicing, LP Modification, 100 Beecham Drive, Suite 104, Pittsburgh, PA
27 15205.
28

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

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

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

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

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

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

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

10 33. The Lincicomes filed a petition for Chapter 13 Bankruptcy protection before the
11 United States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case No. 10-
12 51219, and therein listed Bank of America as a secured creditor.

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

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

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

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

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

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

26 40. Bank of America did not give the Lincicomes notice that the LMA had been
27 signed and recorded.
28

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

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

6 43. In the *Motion for Relief of Stay*, Bank of America did not inform the Bankruptcy
7 Court of the 2009 LMA, nor did it provide the Court with a copy of the LMA recorded on May
8 4, 2011.

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

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

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

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

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

26 49. Then on August 1, 2015, while attempting to make the third trial payment,
27 Bank of America informed the Lincicomes that their loan had been transferred to Fay
28

1 Servicing, LLC. A copy of the check which the Lincicomes attempted to tender on August 1,
2 2015, payable to Bank of America, is attached hereto as **Exhibit 10**.

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

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

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

14 53. The Lincicomes were devastated when neither Bank of America nor Fay
15 Servicing would accept their payment and that Fay Servicing would not honor the April 24,
16 2015 loan modification offer.

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

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

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

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

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

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

5 59. After being denied, the Lincicomes reached out to Senator Harry Reid's office
6 for help. Shortly thereafter Fay Servicing offered the Lincicomes a trial modification at
7 \$2,528.86 per month.

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

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

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

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

23 64. The NOD provides that as of October 31, 2017, \$265,572.39 is owed in
24 arrears. Even though the NOD acknowledges that the "subject Deed of Trust was modified
25 by Loan Modification Agreement recorded as Instrument 475808 . . . recorded on 5/4/2011
26 . . . in the office of the County recorder of Lyon County," it also provides that all monthly
27 installments from "9/1/2008" forward are due.
28

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

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

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

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

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

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

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

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

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

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

1 75. On November 7, 2018, the Lincicomes filed a *Complaint* for Declaratory Relief
2 and an *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent*
3 *Injunction* in the Third Judicial District Court of the State of Nevada, as Case No. 18-CV-
4 01332.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 101. In addition to actual damages, Plaintiffs seek treble damages pursuant to NRS
18 107.028, NRS 107.080, NRS 107.560.

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

22 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

18 111. Plaintiffs seek a declaration as to any event or occurrence that constitutes a
19 cure for Bank of America’s rejection of Plaintiffs October 2009 payment.

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

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

25 114. Plaintiffs seek a declaration as to any warranty given by Bank of America to US
26 Bank when Bank of America assigned its beneficial interest under the Deed of Trust, as
27 modified by the 2009 LMA, to US Bank on November 10, 2015.
28

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

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

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

(Quiet Title)

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

126. This cause of action is asserted against Breckenridge.

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

4 128. Pursuant to NRS 107.080(1), the power of sale "conferred upon a trustee [is]
5 to be exercised after a breach of the obligation for which transfer is security." NRS
6 107.080(1).

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

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

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

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

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

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

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

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

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

26 134. Plaintiffs were not in breach of the 2009 LMA at the time of the recording of the
27 Notice of Trustee's Sale on October 12, 2018.
28

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

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

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

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

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

FORTH CAUSE OF ACTION

(Violation of Homeowner's Bill of Rights)

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

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

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

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

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

(I) The amount of payment required to make good the deficiency in performance or payment . . . ;

(II) The amount in default;

. . .

(IV) The amount of accrued interest and late charges;

(V) A good faith estimate of all fees imposed in connection with the exercise of the power of sale

NRS 107.0805(1)(b)(3).

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

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

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

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

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

FIFTH CAUSE OF ACTION

(Breach of Contract – Bank of America)

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

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

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

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

4 154. Upon information and belief, Defendant Bank of America failed to process the
5 2009 LMA in its system.

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

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

10 157. At no time, other than being provided a copy of the recorded 2009 LMA in
11 2017, did the Lincicomes receive notice, written or otherwise, that Bank of America had
12 located and signed the 2009 LMA.

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

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

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

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

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

26 163. But for Defendant Bank of America's material breach of the 2009 LMA, the
27 Lincicomes' property would not have been subject to foreclosure sale.
28

1 164. As a proximate cause of Defendant Bank of America's material breach of the
2 2009 LMA, Plaintiffs have suffered economic losses and general damages in excess of Fifteen
3 Thousand Dollars (\$15,000) to be proved at trial.

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

6 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

22 **SEVENTH CAUSE OF ACTION**

23 **(Breach of Contract – US BANK)**

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

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

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

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

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

9 176. As a proximate cause of Defendant US Bank's continued material breach of the
10 2009 LMA, Plaintiffs have suffered economic losses and general damages in excess of Fifteen
11 Thousand Dollars (\$15,000) to be proved at trial.

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

14 **EIGHT CAUSE OF ACTION**

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

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

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

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

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

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

27 \ \

28 \ \

NINTH CAUSE OF ACTION

(Slander of Title)

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

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

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

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

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

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

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

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

TENTH CAUSE OF ACTION

(Special Damages –Attorney's Fees)

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

1 192. Plaintiffs have brought this action in part pursuant to NRS 107.080 and NRS
2 107.560, which permit recovery of reasonable attorney's fees and costs to a prevailing
3 borrower.

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

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

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

12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiffs pray for the following relief:

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

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

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

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

21 5. The the Court set aside the Trustee's Deed Upon Sale, recorded on January 25,
22 2019, and quiet title to the Lincicomes' Residence in favor of the Lincicomes;

23 6. That the Court determine Plaintiffs and Defendants' duties and rights under the
24 2007 Deed of Trust as modified by the 2009 Loan Modification Agreement;

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

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

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

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AFFIRMATION

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

Dated this 20th day of December, 2019.

MILLWARD LAW, LTD

By: 

Michael G. Millward, Esq.

NSB# 11212

1591 Mono Ave

Minden, NV 89423

(775) 600-2776

Attorney for Plaintiffs

INDEX TO EXHIBITS

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

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VERIFICATION OF VICENTA LINCICOME

STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

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

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

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

Dated this 19th day of December, 2019

Vicenta Lincicome
VICENTA LINCICOME

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

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

Ashley Voss
Notary Public



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CERTIFICATE OF MAILING

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

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

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

Matthew K. Schriever, Esq.
Hutchison & Steffen, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorney for Breckenridge Property Fund 2016, LLC

Casey J. Nelson, Esq.
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, NV 89146
Attorney for Breckenridge Property Fund 2016, LLC

Christopher A. J. Swift, Esq.
Ramir M. Hernandez, Esq.
Wright, Finlay & Zak, LLP
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Attorney for Fay Servicing, LLC and US Bank Prof-2013-M4 Legal Title Trust.

MCM-2018-NPL2
7101 Wisconsin Avenue, Suite 1012
Bethesda MD 20814

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

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



Herrin Fosmore, Law Clerk

Exhibit 1

Assessor's Parcel Number:
29-401-17

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

S/ LYNDA KLEIN
FUNDER

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

We certify that this is a true copy
of the original as recorded in
Lyon Co., Nevada on 5-25-07 4:34 pm
Document No. 407150

Stewart Title Of Carson City
By: Carol Cozart

Loan No: 0000479436

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN: 1000703-0000479436-5

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated MAY 23, 2007
together with all Riders to this document.

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

Borrower is the trustor under this Security Instrument.

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

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

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

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

(F) "Note" means the promissory note signed by Borrower and dated MAY 23, 2007
The Note states that Borrower owes Lender

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY

of

LYON

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

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

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

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

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

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is

Loan No: 0000479436

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

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

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

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

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

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

Loan No: 0000479426

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts

Loan No: 0000479436

disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

____ (Seal)
____ Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ Borrower

Loan No: 0000479436

STATE OF NEVADA.

Carson City

County ss.

This instrument was acknowledged before me on

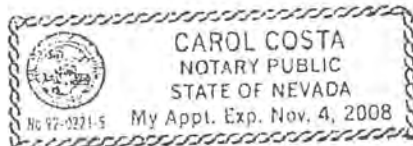
May 23 2007

by

Vicenta Lincicome

Carol Costa

My Commission Expires: *11-01-08*



NEVADA Single Family--Fannie Mac/Freddie Mac UNIFORM INSTRUMENT with MERS
DRAW MERS.NV.CVL.DT.13.WPF (0101DOCS\DEEDS\CVL\NV_MERS.CVL)

Form 302a (4/01)
(page 13 of 14 pages)

WHEN RECORDED MAIL TO:

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

ADJUSTABLE RATE RIDER

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

THIS ADJUSTABLE RATE RIDER is made this 23rd day of MAY, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure the Borrower's Adjustable Rate Note (the "Note") to

SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

70 RIVERSIDE DRIVE
DAYTON, NV 89402

[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.875%. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of JUNE 2017, and may change on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U.S.

Loan No: 0000-170434

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

DRAW:0304.SIX (VI)-ARM RIDER-5130.1.WPF (P:\OPSSHARE\0101\DOCS\RIDERS\CVL\MX\F05131.ARM)

Form 5130 5/04
(Page 2 of 2)

dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.675 %, or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO percentage points (2.000 %) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.675 %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

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

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

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

Loan No: 0000479436

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

DRAW:0304.MX, CVL.ARM.RIDER.5131.2.WPF(P:\OPSS\SHARE\0101DOC\SRIDERS\CVLSMXF\5131.ARM)

Form 3131 5/04
Page 2 of 3

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

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

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

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

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

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

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

Loan No: 0000479430

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

Form 831 1/04

DRAW:030\MS_CVL_ARM RIDER.5131.3.VPF(P:\OPS\SHARE\0101\DOCS\RIDERS\CVL\MNFB\11 ARM)

Page 1 of 4

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

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

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____ -Borrower

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____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

[Sign Original Only]

Loan No: 0000473436

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

Form 5131 2/04

PRAW-00050X-CVI-ADJLRIDR.5131.LWPFP\OPSSHAKE\0001DOCS\RIDRSM\VLMAXFH5131.ARM

(Page 4 of 4)

INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

Property Address: 70 RIVERSIDE DRIVE
DAYTON, NV 89403

THIS ADDENDUM is made this 23rd day of MAY, 2007, and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date as this Addendum executed by the undersigned and payable to

SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender")

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

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.75%) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

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

Loan No: 0007479456

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE RIDER 5/1 LIBOR ARM -- MULTISTATE
DRAW.MX.CVL.ARM.TO.ADDNDM.RIDER.LAWPF (0101DOCS\RIDERS\CVL\MXIO-ADN.RID)

01:01
B000P

(page 1 of 2 pages)

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

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

(Sign Original Only)

Loan No: 0000479430

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE RIDER 5/1 LIBOR ARM – MULTISTATE
DRAW.MX.CVI.ARM.10.ADN.DM.RIDER.2.WPF (0101DOC5\RIDERS\CV1\MXIO_ADN.RID)

01/01

003F

(page 2 of 2 pages)

EXHIBIT "A"
ADJUSTABLE RATE NOTE
(1 Year LIBOR Index - Rate Caps)
(Assumable after Initial Period)

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

MAY 23, 2007
[Date]

FOLSOM, CALIFORNIA
[City] [State]

70 RIVERSIDE DRIVE
DAYTON, NV 89403
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 381,150.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION. I will make all payments under this Note in the form of cash, check or money order. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.875 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the first day of each month beginning on JULY 1, 2007.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JUNE 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 193 BLUE RAVINE ROAD, SUITE 240
FOLSOM, CA 95630

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 2,183.67. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of JUNE, 2017, and may change on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding

TWO AND ONE QUARTER percentage points (**2.250** %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.875** % or less than **2.250** %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than **TWO** percentage points (**2.000** %) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **11.875** %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payment unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this 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 me which exceed permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of **15** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.000** % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

(A) UNTIL MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT IS DESCRIBED AS FOLLOWS:

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

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

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.

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

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

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

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

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

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


VICENTA LINCICOME (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

PAY TO THE ORDER OF
Countrywide Bank, FSB

WITHOUT RECOURSE
SIERRA PACIFIC FINANCE CO.
A CALIFORNIA CORPORATION

[Signature]

PAY TO THE ORDER OF
COUNTRYWIDE HOME LOANS, INC
WITHOUT RECOURSE
COUNTRYWIDE BANK, FSB

BY *Laurie Mederi*
LAURIE MEDERI
SENIOR VICE PRESIDENT

PAY TO THE ORDER OF
WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC

BY *Nichelle Sjoland*
NICHELLE SJOLANDER
EXECUTIVE VICE PRESIDENT

INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE PROMISSORY NOTE

Loan Number:

Property Address: 10 RIVERSIDE DRIVE
DAYTON, NV 89403

THIS ADDENDUM is made this 23rd day of MAY, 2007, and is incorporated into and intended to form a part of the Adjustable Rate Note (the "Note") dated the same date as this Addendum executed by the undersigned and payable to

SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender").

THIS ADDENDUM supersedes Sections 3(A), 3(B), 4(C) and 7(A) of the Note. None of the other provisions of the Note are changed by this Addendum.

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest by making payments every month for the first 120 payments (the "Interest-Only Period") in the amount sufficient to pay interest as it accrues. I will pay principal and interest by making payments every month thereafter for the next 240 payments in an amount sufficient to fully amortize the outstanding principal balance of the Note at the end of the Interest-Only Period over the remaining term of the Note in equal monthly payments.

I will make my monthly payments on the first day of each month beginning on JULY 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JUNE 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 193 BLUE RAVINE ROAD, SUITE 240
FOLSOM, CA 95630

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 2,183.67. This payment amount is based on the original principal balance of the Note. This payment amount may change.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

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

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest during the Interest-Only Period, 5.000 % of my overdue payment of principal and interest thereafter. I will pay this late charge promptly, but only once on each late payment.

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


VICENTA LINCICOME

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

Exhibit 2

A. Ellis Lincicome, Jr. and Vicenta J. Lincicome
Debtor(s)

10-51219-gwz
Case No:

Motion #:

Bank of America, N.A.
MOVANT

Chapter: 13

Certification of Attempt to Resolve the Matter without Court Action:

Moving counsel hereby certifies that pursuant to the requirements of LR 4001(a)(2), an attempt has been made to resolve the matter without court action, but movant has been unable to do so.

Date: November 24, 2014

Signature: [Signature]

Attorney for Movant

PROPERTY INVOLVED IN THIS MOTION: 70 Riverside Drive, Dayton, NV 89403

NOTICE SERVED ON: Debtor(s) ☒ ; Debtor(s) Counsel ☒ ; Trustee ☒

DATE OF SERVICE: 11/10/14

MOVING PARTY'S CONTENTIONS:

The EXTENT and PRIORITY of LIENS: *

1st Bank of America, N.A. \$567,234.69 †

2nd _____

Other: _____

Total Encumbrances: \$567,234.69

APPRAISAL or OPINION as to VALUE:

Per attached Schedule "A" - \$476,000.00

DEBTOR'S CONTENTIONS:

The EXTENT and PRIORITY of LIENS:

1st _____

2nd _____

3rd _____

4th _____

Other: _____

Total Encumbrances: \$ _____

APPRAISAL or OPINION as to VALUE:

TERMS OF MOVANT'S CONTRACT
WITH THE DEBTOR:*

Amount of Note: \$381,150.00

Interest Rate: 6.875%

Duration: 30 Year

Payment Per Month: \$2,425.24

Date of Default: May 1, 2013

Amount of Arrearages: \$130,788.87 †‡

Date of Notice of Default: N/A

SPECIAL CIRCUMSTANCES: The undersigned hereby certifies that an attempt has been made to confer with debtor(s) counsel, or with debtor(s) and that more than three (3) business days have expired, and that after sincere effort to do so, counsel has been unable to resolve this matter without court action.

SUBMITTED BY: Greg Wilde

SIGNATURE: [Signature] #10235

DEBTOR'S OFFER OF "ADEQUATE
PROTECTION" FOR MOVANT:

SPECIAL CIRCUMSTANCES:

SUBMITTED BY: _____

SIGNATURE: _____

* All amounts due to Movant as of November 10, 2014

† The amount of Movant's liens and arrears above do not include \$1,026.00 for fees and costs that have also been incurred by Movant as of the date hereof in connection with seeking the relief requested in the Motion.

‡ Amounts listed are due for post-petition only.

1 **TIFFANY & BOSCO, P.A.**

2 Gregory L. Wilde, Esq.

3 Nevada Bar No. 004417

4 212 South Jones Boulevard

5 Las Vegas, Nevada 89107

6 Telephone: 702 258-8200

7 Fax: 702 258-8787

8 Attorney for Movant Bank of America, N.A.

9 14-70888

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

12 In Re:

Bk Case No.: 10-51219-gwz

13 **A. Ellis Lincicome, Jr. and Vicenta J. Lincicome**

Date: December 30, 2014

Time: 10:00am

Chapter 13

14 Debtors.

15 **MOTION FOR RELIEF FROM AUTOMATIC STAY**

16 **(REAL PROPERTY)**

17 Bank of America, N.A., ("Movant") hereby moves this Court, pursuant to 11 U.S.C. § 362, for
18 relief from the automatic stay with respect to certain real property of the Debtor(s) having an address of
19 70 Riverside Drive, Dayton, NV 89403 (the "Property"). In further support of this Motion, Movant
20 respectfully states:

21 1. A petition under Chapter 13 of the United States Bankruptcy Code was filed with
22 respect to the Debtor(s) on April 6, 2010.

23 2. A foreclosure notice of default has not been recorded.

24 3. A Chapter 13 Plan was confirmed on October 13, 2010.

25 4. The Debtor(s) have executed and delivered that certain promissory note in the
26 original principal amount of \$381,150.00 (the "Note"). A true and correct copy of the Note is attached
hereto as Exhibit "A". Movant, directly, or through an agent, has possession of the Note. Movant is an
entity entitled to enforce the Note.

1 5. Pursuant to that certain Deed of Trust (the "Deed of Trust"), all obligations (collectively,
2 the "Obligations") of the Debtor(s) under the Note and the Deed of Trust with respect to the Loan are
3 secured by the Property. A true and correct copy of the Deed of Trust is attached hereto as Exhibit "B".

4 6. All rights and remedies under the Deed of Trust have been assigned to the Movant
5 pursuant to that certain assignment of deed of trust. Additionally, all rights and remedies under the Deed
6 of Trust have been assigned to the Movant pursuant to that certain Certificate of Merger. Bank of
7 America, N.A., is successor by Merger to BAC Home Loans Servicing, LP effective July 1, 2011. Prior
8 to that date, Countrywide Home Loans Servicing LP merged with BAC Home Loans Servicing, LP
9 effective April 27, 2009. Attached hereto as Exhibit "C" are the merger documents.

10 7. Bank of America, N.A. services the loan on the Property referenced in this Motion. In
11 the event the automatic stay in this case is modified, this case dismisses, and/or the Debtor(s) obtain(s) a
12 discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be
13 conducted in the name of Movant. Movant, directly or through an agent, has possession of the Note.
14 The Note is either made payable to Movant or has been duly endorsed.

15 8. As of November 10, 2014, the outstanding Obligations are:

Unpaid Principal Balance	\$381,150.00
Unpaid, Accrued Interest	\$170,972.39
Costs	\$17,384.92
<u>Less</u> : Partial Payments	(\$2,272.62)
Minimum Outstanding Obligations	\$567,234.69

21 9. In addition to the other amounts due to Movant reflected in this Motion, as of the date
22 hereof, in connection with seeking the relief requested in this Motion, Movant has also incurred
23 \$850.00 in legal fees and \$176.00 in costs. Movant reserves all rights to seek an award or allowance of
24 such fees and costs in accordance with applicable loan documents and related agreements, the
25 Bankruptcy Code and otherwise applicable law.

26 ///

10. The following chart sets forth the number and amount of post-petition payments due pursuant to the terms of the Note that have been missed by the Debtor(s):

Number of Missed Payments	From	To	Monthly Payment Amount	Total Missed Payments
39	5/1/10	7/1/13	\$2,408.52	\$93,932.28
9	8/1/13	4/1/14	\$2,427.92	\$21,851.28
7	5/1/14	11/1/14	\$2,402.03	\$16,814.21
Less post-petition partial payments:				(\$1,808.90)

Total: \$130,788.87

11. As of November 10, 2014, the total post-petition arrearage/delinquency is \$130,788.87. This is the amount necessary to cure any post-petition default on or about the date hereof.¹

12. The fair market value of the Property is \$476,000.00. The basis for such valuation is the Schedules of the Debtor(s). A true and correct copy of the Schedule "A" is attached hereto as Exhibit "D".

13. Upon information and belief, the aggregate amount of encumbrances on the Property listed in the Schedules or otherwise known, including but not limited to the encumbrances granted to Movant, is \$567,234.69.

14. Cause exists for relief from the automatic stay for the following reasons:

- (a) Movant's interest in the Property is not adequately protected and the fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline.
- (b) Post confirmation payments required by the confirmed plan have not been made to Movant.

¹ The total of missed post-petition payments for this impounded loan include any missed escrow payments. Such missed escrow payments include amounts assessed for taxes and insurance and any previously assessed escrow shortage amount (if applicable). To avoid duplication, post-petition advances (if any) made for insurance, real estate taxes, or similar charges are not listed separately to the extent such advances would have been paid from the missed escrow payments. As part of the next annual RESPA analysis, the Bank will determine whether the escrow payments assessed to the debtor (including the missed escrow payments) result in a projected escrow shortage or overage. All rights are hereby reserved to assert or request any escrow amounts in accordance with RESPA and the total post-petition arrearage/delinquency is qualified accordingly. In addition, the amounts set forth herein do not include any legal fees or expenses of counsel incurred by Movant in connection with seeking the relief requested in the Motion.


- (c) Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor(s) have no equity in the Property; and pursuant to § 362(d)(2)(B), the Property is not necessary for an effective reorganization.

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following:

1. Relief from the stay allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.
2. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
3. That the 14-day stay described by Bankruptcy Rule 4001(a) (3) be waived.
4. For such other relief as the Court deems proper.
5. That the Movant shall give Debtors at least seven business days' notice of the time, place and date of sale.
6. Movant further requests that upon entry of an order granting relief from stay, it be exempted from further compliance with Fed. Rule Bankr. P. 3002.1 in the instant bankruptcy case.

DATED this 26th day of November, 2014.

TIFFANY & BOSCO, P.A.

By:  #102315
GREGORY L. WILDE, ESQ.
Attorney for Movant
212 South Jones Boulevard
Las Vegas, Nevada 89107

TIFFANY & BOSCO, P.A

Gregory L. Wilde, Esq.

Nevada Bar No. 004417

212 South Jones Boulevard

Las Vegas, Nevada 89107

Telephone: 702 258-8200

Fax: 702 258-8787

nvbk@tblaw.com

Bank of America, N.A.

14-70888

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In Re:	Bk Case No.: 10-51219-gwz
A. Ellis Lincicome, Jr. and Vicenta J. Lincicome	Date: December 30, 2014 Time: 10:00am
	Chapter 13
Debtors	

[PROPOSED] ORDER TERMINATING AUTOMATIC STAY

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Automatic Stay in the above-entitled bankruptcy proceedings is terminated as to the Debtor and the Trustee in favor of Secured Creditor Bank of America, N.A., its assignees and/or successors in interest, of the subject property, generally described as 70 Riverside Drive, Dayton, NV 89403.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Movant shall give Debtors at least seven business days' notice of the time, place and date of sale.

1
2 IT IS FURTHER ORDERED, ADJUDGED and DECREED that Movant is exempt from
3 further compliance with Fed. Bankr. Rule P. 3002.1.

4 IT IS FURTHER ORDERED, ADJUDGED and DECREED That the Order be binding and
5 effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of
6 the United States Code.

7
8 Submitted by:

9 **TIFFANY & BOSCO, P.A**

10 By: /s/Gregory L. Wilde, Esq

11 **Gregory L. Wilde, Esq.**
12 Attorney for Movant

13 **APPROVED / DISAPPROVED**

14 By: _____
15 Robert G. Johnston
16 Attorney for Debtor(s)

17 **APPROVED / DISAPPROVED**

18 By: _____
19 William A. Van Meter
20 Chapter 13 Trustee
21
22
23
24
25
26

EXHIBIT "A"
ADJUSTABLE RATE NOTE
(1 Year LIBOR Index - Rate Caps)
(Assumable after Initial Period)

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

MAY 23, 2007
(Date)

FOLSOM, CALIFORNIA
(City) (State)

70 RIVERSIDE DRIVE
DAYTON, NV 89403
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 381,150.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION. I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.875 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the first day of each month beginning on JULY 1, 2007.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JUNE 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 193 BLUE RAVINE ROAD, SUITE 240
FOLSOM, CA 95630

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 2,183.67. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of JUNE, 2017, and may change on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent index figure available as of the date 45 days before each Change Date is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding

TWO AND ONE QUARTER percentage points (**2.250** %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.875** % or less than **2.250** %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than **TWO** percentage points (**2.000** %) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **11.875** %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payment unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this 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 me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of **15** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.000** % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

(A) UNTIL MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT IS DESCRIBED AS FOLLOWS:

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

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

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.

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

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

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

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

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

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


VICENTA LINCICOME (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

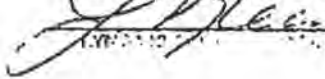
(Seal)
-Borrower

(Seal)
-Borrower

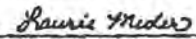
[Sign Original Only]

PAY TO THE ORDER OF
Countrywide Bank, FSB

WITHOUT RECOURSE
SIERRA PROMISSORY NOTE CO.
A CALIFORNIA CORPORATION


LAURIE MEDER

PAY TO THE ORDER OF
COUNTRYWIDE HOME LOANS, INC.
WITHOUT RECOURSE
COUNTRYWIDE BANK, FSB

BY 
LAURIE MEDER
SIERRA VICE PRESIDENT

PAY TO THE ORDER OF
WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC.

BY 
MICHELE SJOLANDER
EXECUTIVE VICE PRESIDENT

**INTEREST-ONLY ADDENDUM
TO ADJUSTABLE RATE PROMISSORY NOTE**

Loan Number:

Property Address: 10 RIVERSIDE DRIVE
DAYTON, NV 89403

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

THIS ADDENDUM supersedes Sections 3(A), 3(B), 4(C) and 7(A) of the Note. None of the other provisions of the Note are changed by this Addendum.

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest by making payments every month for the first 120 payments (the "Interest-Only Period") in the amount sufficient to pay interest as it accrues. I will pay principal and interest by making payments every month thereafter for the next 240 payments in an amount sufficient to fully amortize the outstanding principal balance of the Note at the end of the Interest-Only Period over the remaining term of the Note in equal monthly payments.

I will make my monthly payments on the first day of each month beginning on JULY 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JUNE 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 193 BLUE RAVINE ROAD, SUITE 240
FOLSOM, CA 95630

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 2,183.67. This payment amount is based on the original principal balance of the Note. This payment amount may change.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

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

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest during the Interest-Only Period, 5.000 % of my overdue payment of principal and interest thereafter. I will pay this late charge promptly, but only once on each late payment.

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


VICENTA LINCICOME

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

EXHIBIT "C"

ASSISTANT SECRETARY CERTIFICATE

OF

BANK OF AMERICA, NATIONAL ASSOCIATION

The undersigned, Devra Lindgren, an Assistant Secretary of Bank of America, National Association (the "Association"), a national banking association organized and existing under the laws of the United States of America and having its principal place of business in the City of Charlotte, County of Mecklenburg, State of North Carolina, does hereby certify that:

1. **Countrywide Document Custody Services** was a division of **Treasury Bank, National Association**.

Effective September 6, 2005, **Treasury Bank, National Association** changed its name to **Countrywide Bank, National Association**.

Effective March 12, 2007, **Countrywide Bank, National Association** converted to a federal savings bank under the title of **Countrywide Bank, FSB**.


Effective April 27, 2009, **Countrywide Bank, FSB** converted back to a national banking association under the title of **Countrywide Bank, National Association**, and immediately thereafter, merged with and into **Bank of America, National Association**.

2. Effective April 27, 2009, **Countrywide Home Loans Servicing LP** changed its name to **BAC Home Loans Servicing, LP**.

Effective July 1, 2011, **BAC Home Loans Servicing, LP** merged with and into **Bank of America, National Association**.

IN WITNESS WHEREOF, I have hereupon set my hand and affixed the seal of said Association this 23rd day of May, 2012.

[SEAL]


Devra Lindgren
Assistant Secretary

DOC # 467719

11/10/2010 12:41 PM

Official Record

Requested By
ORION FINANCIAL GROUP

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 2 Fee \$15.00

Recorded By: NFK RPTT



467719



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

PREPARED BY & RETURN TO:

M. E. Wileman
Orion Financial Group, Inc.
2860 Exchange Blvd. # 100
Southlake, TX 76092

Assignment of Mortgage

Send Any Notices To Assignee.

For Valuable Consideration, the undersigned, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") SOLELY AS NOMINEE FOR SIERRA PACIFIC MORTGAGE COMPANY, INC. G4318** Miller Road, Flint, MI 48507 (Assignor) by these presents does assign and set over, without recourse, to **BAC HOME LOANS SERVICING LP FKA COUNTRYWIDE HOME LOANS SERVICING LP 1757 TAPO CANYON ROAD, SIMI VALLEY, CA 93063** (Assignee) the described mortgage, together with certain note(s) described with all interest, all liens, any rights due or to become due thereon, executed by **VICENTA LINCIOCOME, A MARRIED WOMAN** to **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") SOLELY AS NOMINEE FOR SIERRA PACIFIC MORTGAGE COMPANY, INC.** Said mortgage Dated: 5/23/2007 is recorded in the State of NV, County of Lyon on 5/25/2007, Record # 407150 AMOUNT: \$ 381,150.00 Property Address: 70 RIVERSIDE DRIVE, DAYTON, NV 89403

IN WITNESS WHEREOF, the undersigned corporation has caused this instrument to be executed by its proper officer. Executed on: 10-22-2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") SOLELY AS NOMINEE FOR SIERRA PACIFIC MORTGAGE COMPANY, INC.

By:

Nichole Glavatscher
Certifying Officer

State of California, County of Ventura
On 10-22-2010, before me, the undersigned, Nichole Clavadescher, who acknowledged that he/she
is Certifying Officer of for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
("MERS") SOLELY AS NOMINEE FOR SIERRA PACIFIC MORTGAGE COMPANY, INC. and that he/she
executed the foregoing instrument and that such execution was done as the free act and deed of MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") SOLELY AS NOMINEE FOR SIERRA PACIFIC
MORTGAGE COMPANY, INC. SIERRA PACIFIC MORTGAGE COMPANY, INC..



Jon Secrist
Notary public, Jon Secrist
My commission expires: 7-24-2014

MAIL TAX BILL TO:

VICENTA LINCIOCOME, A MARRIED WOMAN Property Address: 70 RIVERSIDE DRIVE, DAYTON, NV
89403

EXHIBIT "B"

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

/s/ LYNDA KLEIN

FUNDER

Recording Requested By:
SIERRA PACIFIC MORTGAGE COMPANY, INC.
280 BRINKBY STREET, SUITE 100
RENO, NV 89509

DOC # 407150

06/25/2007 04:34 PM

Official Record

Requested By
STEWART TITLE OF NEVADA

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 20 Fee: \$58.00

Recorded By: DLH RPTT:



0407150

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN:

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated MAY 23, 2007 together with all Riders to this document.

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

Borrower is the trustor under this Security Instrument.

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

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

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

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

(F) "Note" means the promissory note signed by Borrower and dated **MAY 23, 2007**. The Note states that Borrower owes Lender

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY of LYON
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

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

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

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

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

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is

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

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

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

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

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

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts

disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)

STATE OF NEVADA,

Carson City

County ss.

This instrument was acknowledged before me on

May 23 2007

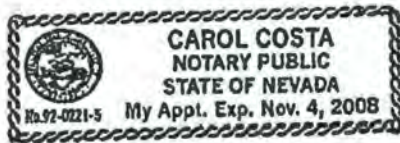
, by

Vicenta Lincicome

Carol Costa

My Commission Expires:

11-4-08



NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS
DRAW.MERS.NV.CVL.DT.13.WPF (0101DOCS\DEEDS\CVL\NV_MERS.CVL)

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

WHEN RECORDED MAIL TO:

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

ADJUSTABLE RATE RIDER

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

THIS ADJUSTABLE RATE RIDER is made this 23rd day of MAY 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure the Borrower's Adjustable Rate Note (the "Note") to

SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

70 RIVERSIDE DRIVE
DAYTON, NV 89403

[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.875 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of JUNE 2017, and may change on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U.S.

dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding

TWO AND ONE QUARTER percentage points (**2.250 %**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.875 %** or less than **2.250 %**. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than **TWO** percentage points (**2.000 %**) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **11.875 %**.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

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

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

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

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

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

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

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

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

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

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

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


VICENTA LINCICOME (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

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

DRAW.0304.MX.CVL.ARM.RIDER.5131.4.WPF (P:\OPSS\SHARE\0101\DOCS\RIDERS\CVL\MXFH5131.ARM)

Form 5131 3/04
(Page 4 of 4)

INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

Property Address: 70 RIVERSIDE DRIVE
DAYTON, NV 89403

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

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

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

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

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


VICENTA LINCICOME (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE RIDER 5/1 LIBOR ARM - MULTISTATE
DRAW.MX.CVL.ARM.IO.ADNDM.RIDER.2.WPF (0101DOCS\RIDERS\CVL\MXIO_ADN.RID)

01/01
603F
(page 2 of 2 pages)

EXHIBIT "A"
LEGAL DESCRIPTION

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

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

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

EXHIBIT "D"re A. ELLIS LINCICOME, JR. and VICENTA J. LINCICOME

Debtor(s)

Case No. _____
(if known)**SCHEDULE A-REAL PROPERTY**

cept as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a tenant community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "none" under "Description and Location of Property."

not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G-Executory Contracts and Unexpired Leases.

an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband--H Wife--W Joint--J Community--C	Current Value of Debtor's Interest, In Property Without Deducting any Secured Claim or Exemption	Amount of Secured Claim
Residence at 70 Riverside Drive, Dayton, OH		J	\$ 476,000.00	\$ 381,000.00
Condominium House at 2763 Carriage Crest Drive, Carson City, NV 89706		J	\$ 280,000.00	\$ 280,000.00
Truck at 4315 Drake Way, Washoe Valley, NV		J	\$ 100,000.00	\$ 100,000.00
TOTAL \$			856,000.00	

continuation sheets attached

(Report also on Summary of Schedules.)

Exhibit 3

APN# 029-401-17

Recording Requested by:

Name Michael Camarata

Address 100 Beecham Dr

City/State/Zip Pittsburg PA 15205

Mail Tax Statements to:

Name _____

Address _____

City/State/Zip _____

Loan Modification Agreement

Title of Document
(Required Field)

FILL IN ALL THAT APPLY

The Undersigned Hereby Affirms That This Document Submitted For Recording Contains Personal Information As Required By Law*

Specify Law* _____

Signature _____

Specify Law* _____

Print Name _____ Title _____

*If there is no applicable State or Federal Law, Personal Information must be removed prior to recording

If this document is a re-record or correction, fill out below

Correcting Document# _____ Amending _____

Reason for re-record _____

(For Re-records, all pages from original document must be included, \$25 Non-conforming Fee Applies)

If legal description is in metes & bounds, indicate where it was obtained:

_____ (Document Title), Book _____ Page _____ or

Document # _____ recorded _____ (date) in the

Lyon County Recorder's Office

-OR-

If prepared by a surveyor, provide name and address

Personal Information means a natural person's first name or first initial and last name in combination with any one or more of the following data elements

- 1 Social security number
- 2 Driver's license number or identification card number
- 3 Account number, credit card number or debit card number, in combination with any required security code, access code or password

This page added to provide additional information required by NRS 111.312 Sections 1-4
(\$1.00 Additional Recording Fee Applies)

DOC # 475808

05/04/2011 01:19 PM

Official Record

Requested By
BAC HOME LOANS SERVICING

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 6 Fee \$44.00

Recorded By MFK RPTT



0475808



475808

05/04/2011
003 of 6

STEP RATE LOAN MODIFICATION
ADDENDUM TO LOAN MODIFICATION AGREEMENT

The Step Rate Loan Modification Agreement Addendum (the "Addendum") is made this July 11, 2009, and is incorporated into and shall be deemed a part of that certain Loan Modification Agreement of even date herewith (the "Agreement") between VICENTA LINCICOME (the "Borrowers") and BAC Home Loans Servicing, LP ("the Lender"), which agreement amends and supplements that certain Mortgage, Deed of Trust or Deed to Secure Debt (the "Security Instrument") executed by Borrower in favor of Lender

THIS ADDENDUM CONTAINS PROVISIONS PROVIDING FOR
SCHEDULED INTEREST RATE CHANGES

In consideration of the mutual promises and agreements exchanged and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Agreement, Security Instrument or the promissory note (the "Note"), except as specifically provided for herein)

1 Scheduled Interest Rate Changes

The Agreement provides for an initial interest rate of 4.875% which will be charged from the 1st day of August, 2009

The Interest Rate shall then change on the 1st day of August, 2014 at which time it shall be 5.375%

Thereafter, the interest rate and monthly principal and interest payment shall adjust in accordance with the Note, Adjustable Rate Rider and/or any other loan document that is affixed to or incorporated into the Note and Rider and provides for, implements or relates to any change or adjustment in the interest rate and monthly payment amount under the Note until such time as the principal and interest due under the Note are paid in full. If on August 1, 2049 (the "Maturity Date"), the Borrower still owes amounts under the Note and Security Instrument, as amended by the Agreement and this Addendum, the Borrower shall pay these amounts in full on the Maturity Date

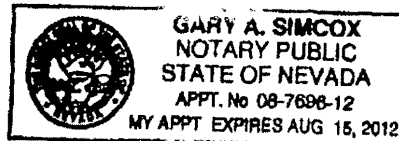
BORROWER

Vicenta Lincicome Dated *July 31, 2009*
VICENTA LINCICOME

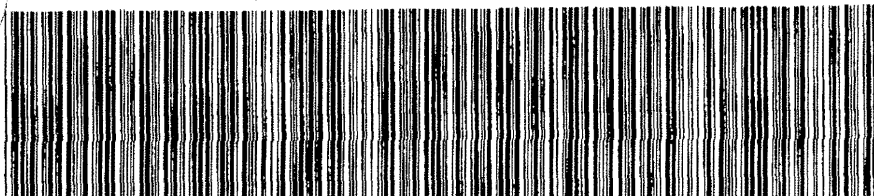
Lender

BAC Home Loans Servicing, LP

Dated *July 31, 2009*



BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.



The HOPE Team
CHL Loan # 162304785

July 11, 2009



475808

05/04/2011
004 of 6

As evidenced by their signatures below, the Borrower and the Lender agree to the foregoing

Vicenta Lincicome Dated July 31, 2009
VICENTA LINCICOME

STATE OF Nevada
COUNTY OF Clark

On July 31, 2009 before me, Gary Simcox Notary Public, personally appeared

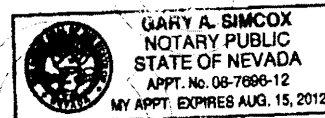
Vicenta Lincicome

personally known to me (or 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 signatures (s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument

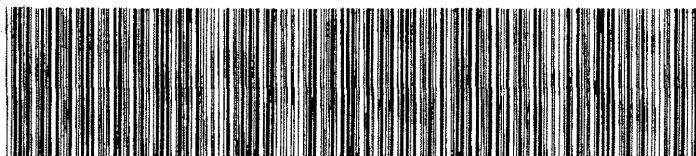
WITNESS my hand and official seal

Signature

08-15-2012
Lisa



BAC Home Loans Servicing, LP is a subsidiary of Bank of America, NA



The HOPE Team
CHL Loan # 162304785

WDGFIXNR 6124 July 11, 2009



475808

05/04/2011
005 of 6

DO NOT WRITE BELOW THIS LINE

THIS SECTION IS FOR INTERNAL BANK OF AMERICA HOME LOANS SERVICING, LP USE ONLY

BAC Home Loans Servicing, LP
7105 Corporate Drive
(PTX-B-36)
Plano, TX 75024

By

Dated

James I ShuhMAR 22 2011

STATE OF

CO
MAR 22 2011

COUNTY OF

BroomfieldOn before me,Amy L Bogan

Notary Public, personally appeared

James I Shuh

personally known to me (or 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 signatures (s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

Amy L Bogan

Signature

AMY L BOGAN

NOTARY PUBLIC, STATE OF COLORADO

My Comm. Expires September 8, 2014



475808

05/04/2011
006 of 6

LEGAL DESCRIPTION

ALL THAT CERTAIN LOT OR PARCEL OF LAND BEING SITUATE IN GOLD CANYON EST SUBDIVISION, PH 2
LOT 42 BEING 482 ACRES

PARCEL # 029-401-17

Unofficial Copy

Exhibit 4



Home Loans

Attn: Home Retention Division
BAC Home Loans Servicing, LP
100 Beecham Drive Suite 104
Pittsburgh, PA 15205

Notice Date: July 11, 2009

Account No.: 162304785

VICENTA LINCICOME
70 Riverside Dr
Dayton, NV 89403

Property Address:
70 RIVERSIDE DRIVE
DAYTON, NV 89403

IMPORTANT MESSAGE ABOUT YOUR LOAN

We are pleased to advise you that your loan modification has been approved. In order for the modification to be valid, the enclosed documents need to be signed and returned.

The following amounts will be added to your current principal balance, resulting in a modified principal balance of \$417,196.58 prior to your first payment date. The amount added to your loan is:

Interest :	\$32,755.05
Fees:	\$55.00
Escrow:	\$3,236.53
Total:	\$36,046.58

Your new modified monthly payment will be \$2,272.62, effective with your September 1, 2009 payment. This payment is subject to change if your escrow account is reanalyzed due to new annual premiums. Your current interest rate is 6.875%. Your new reduced rate of 4.875% will be effective as of the September 1, 2009 payment. As of September 1, 2014 your interest rate will be 5.375% for the remaining term of your loan. Your new maturity date is August 1, 2049, which may have changed from your current maturity date as a result of the modification terms. This agreement will bring the loan current; however, you are still required to pay back the entire unpaid principal by the maturity date for your loan.

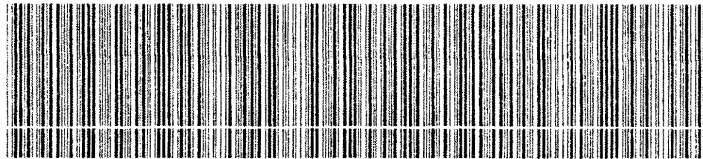
A breakdown of the scheduled interest rate changes is as follows:

Statement Due Date	Interest Rate	Principal & Interest
September 1, 2009	4.875%	\$1,977.29
September 1, 2014	5.375%	\$2,105.10

A breakdown of your payment is as follows:

P&I Payment:	\$1,977.29
Escrow:	\$295.33
Total Payment:	\$2,272.62

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.



The HOPE Team
CHL Loan #: 162304785

WDGCSCOV LMS 8120 July 11, 2009

Exhibit 5

Bank of America**Home Loans**Customer Service
PO Box 5170
Sima Valley, CA 93062-5170

Statement date 10/29/2009

Account Number 162304785Property address
70 Riverside Drive0149104 01 AT 0357 **AUTO T5 02288 89403 9055
PD A1 AG 0401-----6--2-7 C0000068 IN 1 P49254VICENTA LINCICOME
70 Riverside Dr
Dayton NV 89403-9055**INTEREST-ONLY LOAN**
MONTHLY STATEMENT
(During the Interest-Only
Period)**IMPORTANT NOTICE**

If you and BAC Home Loans Servicing, LP have entered into an agreement to address your monthly payments, please make payments in accordance with this agreement.

If you have qualified for an interest rate reduction based upon current active military service, subsequent statements may not reflect the reduced payment amount. Please refer to the notice previously sent to you for the reduced payment amount.

Your Payment Choices This Month

The amounts listed below are total payments, including amounts collected for escrow items such as taxes and insurance premiums. You can also pay additional Principal any month in any amount, by specifying "Additional Principal" in the payment coupon.

Payment Information	Total Payment Amount**	Principal/and or Interest Payment	Outstanding Late Charges	Optional Products*
Interest Only Payment ***	\$2,435.43	\$2,183.67	\$218.36	\$0.00

15-Year Amortized Payment Choice This Payment Choice is not available this month.

Amortized Payment Choice This Payment Choice is not available this month.

Please note: Amounts above may change based on payments made, received or returned before or after this statement was created.

**Outstanding late charges up to \$400.00 are reflected in the payment choice amount.

*** The Amortized & 15-year Amortized Payment Choice (Amortized Payment Choices) amounts are based on the assumption that these payments will always be received on the scheduled due date. You are not required to pay these amounts. The extra amount of Principal included with each of these alternative Amortized Payment Choices will be applied as a partial Prepayment of Principal on the date the payment is received. The interest portion of your payment will be applied as of the scheduled due date. The Amortized Payment is similar to, but not identical to the interest and Principal payment that you will be required to make after the Interest-Only Period ends. When that happens, your Interest and Principal payments will be applied to your loan as of the scheduled due date. The Amortized Payment Choices will reduce your principal balance and the amount of interest you will pay over the life of this loan. These Amortized Payment Choices are provided to you as an additional service, but by no means are you limited to these choices when it comes to the amount of partial prepayments of principal that you may select on your own. **IMPORTANT NOTE:** Be sure you review any prepayment penalty provision you may have in your loan. Depending on the amount of any partial Prepayments and when you make them, you may owe a prepayment charge at the time you payoff your loan.

Your Home Loan Snapshot as of October 29, 2009

Loan type	30 Yr Conv Jumbo ARM
Principal balance	\$381,150.00
Escrow balance	-\$2,961.30
Interest rate	6.875%

Payment Due Date:	11/01/2009
Past Due Payment Amount	\$42,143.00
Fees Due	\$1,746.40
Partial Payment Balance	\$2,272.62
Late Charge if payment is received after 11/16/2009 (see next page for account activity details)	\$109.18

We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.

Exhibit 6

Bank of America



Home Loans
Customer Service Department, CAG-919-01-41
PO Box 5170
Simi Valley, CA 93062-5170

Notice Date: December 15, 2009

Account No.: 162304785

Vicenta Lincicome
70 Riverside Dr
Dayton, NV 89403

Property Address:
70 Riverside Drive
Dayton, NV 89403

IMPORTANT MESSAGE ABOUT YOUR LOAN

Bank of America Home Loans Servicing, L.P. recently received an authorization request from The Law Offices of Charles T. Marshall for access to your loan information.

WHAT THIS MEANS

Our system has been documented to allow our Customer Service Representatives to discuss your loan with **The Law Offices of Charles T. Marshall at any time, unless otherwise notified.**

Although we can discuss your loan information with The Law Offices of Charles T. Marshall, only the parties named in the Note are authorized to make any changes to the loan information.

THANK YOU FOR YOUR BUSINESS

You are a valued customer here at BAC Home Loans Servicing, LP. It is our continued goal to provide our customers with the highest level of customer satisfaction.

If you have any questions, please contact our Customer Service Department directly at (800) 669-6007.

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

Please write your account number on all correspondence.

3rd Pty Auth App A 5704/9926 03/24/2006

Notice Date: February 23, 2010

Account No.: 162304785

Vicenta Lincicome
70 Riverside Dr
Dayton NV 89403

Property Address:
70 Riverside Drive
Dayton, NV 89403

YOUR REQUEST HAS BEEN RECEIVED

Thank you for your recent correspondence addressed to BAC Home Loans Servicing, LP.

WHAT YOU CAN EXPECT

We are in the process of obtaining the documentation and information necessary to address your questions and concerns. We will provide a more complete response within twenty (20) business days.

THANK YOU FOR YOUR BUSINESS

Please accept our sincere apology for the delay
Thank you for the opportunity to be of assistance.

This communication is from BAC Home Loans Servicing, LP, a subsidiary of Bank of America, N.A.

Please write your account number on all correspondence. CSDEAY 2887/9927 11/26/2004

Bank of America 

Home Loans

Po Box: 5170

Simi Valley, CA 93065



0005314-0005314 15125 001 ----- 766560

Notice Date: March 12, 2010

Account No.: 162304785

Vicenta Lincicome
70 Riverside Dr
Dayton NV 89403

Property Address:
70 Riverside Drive
Dayton, NV 89403

YOUR REQUEST HAS BEEN RECEIVED

Thank you for your recent correspondence addressed to BAC Home Loans Servicing, LP.

WHAT YOU CAN EXPECT

We are in the process of obtaining the documentation and information necessary to address your questions and concerns. We will provide a more complete response within twenty (20) business days.

THANK YOU FOR YOUR BUSINESS

Please accept our sincere apology for the delay.

Thank you for the opportunity to be of assistance.

This communication is from BAC Home Loans Servicing, LP, a subsidiary of Bank of America, N.A.

Please write your account number on all correspondence. GSDEAY 2887/9927 11/26/2004

Bank of America



Home Loans

4500- Aron Carter Blvd
Fort Worth, TX 76155



AT1 3-772-24035-0001338-001-1-000-000-000-000
VICENTA LINCICOME
70 RIVERSIDE DR
DAYTON NV 89403

Notice Date: October 19, 2011

Account No.: 162304785

Property Address:
70 Riverside Drive
Dayton, NV 89403

YOUR REQUEST HAS BEEN RECEIVED

Thank you for your recent inquiry about your home loan. This letter confirms Bank of America, N.A. has received your correspondence.

WHAT YOU CAN EXPECT

We are in the process of obtaining the documentation and information necessary to address your questions. We appreciate your patience as we research your request. You can expect a complete response within twenty (20) business days.

THANK YOU FOR YOUR BUSINESS

If you have any additional questions while we research your request, please call us at 1-800-669-6607, Monday-Friday 7a.m. - 7p.m. Local Time. We appreciate the opportunity to serve your home loan needs.

This communication is from Bank of America, N.A., the servicer of your home loan.

Please write your account number on all correspondence.

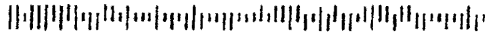
CSDEAY 12606 12/16/2010

Bank of America



Home Loans

400 National Way
Sunny Valley, CA 93065



AT1 4-772-30001-0003973-004-1-000-000-000-000

VICENTA LINCICOME
70 RIVERSIDE DR
DAYTON NV 89403

CSDEAY 12606 12/16/2010

Notice Date: December 23, 2011

Account No.: 162304785

Property Address:
70 Riverside Drive
Dayton NV 89403

YOUR REQUEST HAS BEEN RECEIVED

Thank you for your recent inquiry about your home loan. This letter confirms Bank of America, N.A. has received your correspondence.

WHAT YOU CAN EXPECT

We are in the process of obtaining the documentation and information necessary to address your questions. We appreciate your patience as we research your request. You can expect a complete response within twenty (20) business days.

THANK YOU FOR YOUR BUSINESS

If you have any additional questions while we research your request, please call us at 1-800-669-6607, Monday-Friday 7a.m. - 7p.m. Local Time. We appreciate the opportunity to serve your home loan needs.

This communication is from Bank of America, N.A., the servicer of your home loan.

Please write your account number on all correspondence.

Exhibit 7

B91 (Official Form 91) (Chapter 13 Case) (12/07)

Case Number 10-51219-gwz

UNITED STATES BANKRUPTCY COURT District of Nevada**Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines**

The debtor(s) listed below filed a chapter 13 bankruptcy case on 4/6/10. You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. **NOTE:** The staff of the bankruptcy clerk's office cannot give legal advice. **RENO CASES ONLY:** See www.reno13.com for specific meeting times. **Important Notice of Individual Debtors:** Debtors who are individuals must provide government-issued photo identification and proof of social security number at the meeting of creditors. Failure to do so may result in dismissal of their case.

See Reverse Side For Important Explanations

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

A. ELLIS LINCICOME JR.
70 RIVERSIDE DRIVE
DAYTON, NV 89403

VICENTA J. LINCICOME
70 RIVERSIDE DRIVE
DAYTON, NV 89403

Case Number:
10-51219-gwz
Judge: GREGG W ZIVE

Social Security/Individual Taxpayer ID/Employer Tax ID/Other nos:
xxx-xx-2173
xxx-xx-9330

Attorney for Debtor(s) (name and address):
ROBERT G JOHNSTON
412 N DIVISION
CARSON CITY, NV 89703
Telephone number: (775) 882-6112

Bankruptcy Trustee (name and address):
WILLIAM A. VAN METER
POB 6630
RENO, NV 89513
Telephone number: (775) 324-2500

Meeting of CreditorsDate: **May 14, 2010**Time: **12:00 PM**Location: **300 Booth Street, Room 2110, Reno, NV 89509****Deadlines:**Papers must be *received* by the bankruptcy clerk's office by the following deadlines:**Deadline to File a Proof of Claim:**For all creditors (except a governmental unit): **8/12/10**For a governmental unit (except as otherwise provided in Fed. R. Bankr. P. 3002 (c)(1)): **180 days after order for relief entered****Creditor with a Foreign Address:**

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts: 7/13/10**Deadline to Object to Exemptions:**Thirty (30) days after the *conclusion* of the meeting of creditors.**Pre-Confirmation Meeting**

Not Applicable

Hearing on Confirmation of Plan

Date: **6/4/10** Time: **02:00 PM**
Location: **300 Booth Street, Reno, NV 89509**
A written objection must be filed prior to the hearing.

Chapter 13 PlanThe Chapter 13 plan, when filed, will be mailed under separate cover and may also be viewed on the U.S. Bankruptcy Court's Pacer system at: www.nvb.uscourts.gov.**Creditors May Not Take Certain Actions:**

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office:
300 Booth Street
Reno, NV 89509
Telephone number: (775) 784-5559

For the Court:

Clerk of the Bankruptcy Court:



Mary A. Schott

Hours Open: Monday – Friday 9:00 AM – 4:00 PM

Date: 4/7/10

EXPLANATIONS**B91 (Official Form 91) (12/07)**

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan, if not enclosed, will be sent to you later, and if the confirmation hearing is not indicated on the front of this notice, you will be sent notice of the confirmation hearing. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. Filing Deadline for a Creditor with a Foreign Address: The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a)(2) or (4), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office or at www.nv.uscourts.gov .
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer to Page 1 for Important Deadlines and Notices	

**United States Bankruptcy Court
District of Nevada**

Case No. 10-51219-gwz

Chapter 13

In re: (Name of Debtor)

A. ELLIS LINCICOME JR.

VICENTA J. LINCICOME

Hearing Date: 6/4/10

Hearing Time: 02:00 PM

NOTICE OF HEARING ON CONFIRMATION OF CHAPTER 13 PLAN

NOTICE IS HEREBY GIVEN that the debtor has filed a chapter 13 plan. A hearing on confirmation of the plan will be held before a United States Bankruptcy Judge at The C. Clifton Young Federal Building and U.S. Courthouse, 300 Booth Street, Reno, NV 89509 on 6/4/10 at the hour of 02:00 PM. A copy of said plan will be sent by separate notice.

Any objections to the plan shall be made in accordance with Fed. R. Bankr. P. 3015(f) and 9014, and Local Rule 9014. Any objection to confirmation of the plan must be filed and served prior to the confirmation hearing and if no timely objections are filed, the plan may be deemed to be filed in good faith.

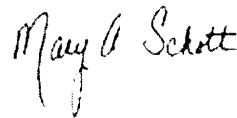
If you object to the plan, you *must* file a **WRITTEN** response with the court. You *must* also serve your written response on the debtor, debtor's attorney, the trustee and U.S. trustee.

If you do not file a written response with the court, or if you do not serve your written response on the persons named above, then:

- * The court may *refuse to allow you to speak* at the scheduled hearing; and
- * The court may *rule against you* without formally calling the matter at the hearing.

Dated: 4/7/10

BY THE COURT



Mary A. Schott
Clerk of the Bankruptcy Court

Exhibit 8

**United States Bankruptcy Court
District of Nevada**

Case No. 10-51219-gwz

Chapter 13

In re: (Name of Debtor)

A. ELLIS LINCICOME JR.
70 RIVERSIDE DRIVE
DAYTON, NV 89403

VICENTA J. LINCICOME
70 RIVERSIDE DRIVE
DAYTON, NV 89403

Social Security No.:

xxx-xx-2173

xxx-xx-9330

DISCHARGE OF DEBTOR AFTER COMPLETION OF CHAPTER 13 PLAN

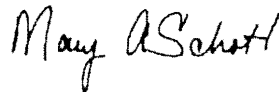
The Court finds that the debtor filed a petition under Title 11, United States Code, on 4/6/10, that the debtor's plan has been confirmed, and that the debtor has fulfilled all requirements under the plan.

IT IS HEREBY ORDERED THAT:

1. Pursuant to 11 U.S.C. Section 1328(a), the debtor is discharged from all debts provided for by the Plan or disallowed under 11 U.S.C. Section 502, except any debt:
 - a. provided for under 11 U.S.C. Section 1322(b)(5), and on which the last payment is due after the date on which the final payment under the Plan was due;
 - b. in the nature of a domestic support obligation, as specified in 11 U.S.C. Section 523(a)(5);
 - c. for a student loan or educational benefit overpayment as specified in 11 U.S.C. Section 523(a)(8);
 - d. for a death or personal injury caused by the debtor's unlawful operation of a motor vehicle, vessel, or aircraft while intoxicated from using alcohol, a drug, or another substance, as specified in 11 U.S.C. Section 532(a)(9);
 - e. for restitution included in a sentence on the debtor's conviction of a crime, in a case commenced on or after November 15, 1990;
 - f. for a fine included in a sentence on the debtor's conviction of a crime, in a case commenced on or after October 22, 1994;
 - g. for restitution, or damages, awarded in a civil action against the debtor as a result of malicious or willful injury by the debtor that caused personal injury to an individual or the death of an individual, in a case commenced on or after October 17, 2005; or
 - h. for certain taxes to the extent not paid in full under the plan, in a case commenced on or after October 17, 2005.
2. Pursuant to 11 U.S.C. Section 1328(d), the debtor is not discharged from any debt based on an allowed claim filed under 11 U.S.C. Section 1305(a)(2) if prior approval by the Trustee of the debtor's incurring such debt was practicable and was not obtained.
3. Notwithstanding the provisions of Title 11, United States Code, the debtor is not discharged from any debt made nondischargeable by 18 U.S.C. Section 3613(f), by certain provisions of Titles 10, 37, 38, 42, and 50 of the United States Code, or by any other applicable provision of law.
4. All creditors are prohibited from attempting to collect any debt that has been discharged in this case.

Dated: 6/15/15

BY THE COURT



Mary A. Schott
Clerk of the Bankruptcy Court

Exhibit 9

April 24, 2015

Vicenta Lindcome
70 Riverside Drive
Dayton, NV 89403

Loan Number: 162304785

**You're on your way toward an
affordable mortgage payment.**

**To accept our offer, make your first
trial period payment or contact us by
05/08/2015.**

Dear Vicenta Lindcome

Based on a careful review of your loan, we are offering you an opportunity to enter into a Trial Period Plan for a loan modification. This is the first step toward qualifying for more affordable mortgage payments or more manageable terms. It is important that you read this letter in its entirety so that you fully understand the actions you need to take to successfully complete the Trial Period Plan.

The proposed modification terms

If you successfully complete the Trial Period Plan by making the required payments, you will receive a modification with an interest rate of 4.125%, which will be fixed from the date the modification is effective. If we determine that the unpaid balance of your mortgage is more than 115% of the current value of your home, you will be eligible to have up to 30% of your principal balance deferred, and the deferred amount will not be subject to any interest rate charges. The deferred principal amount will be due and payable at the earlier of 1) the end of the term of the modified mortgage, 2) any sale or transfer of your interest in the property or 3) a refinance of your mortgage loan.

To stop the foreclosure process (suspension of foreclosure)

To prevent your loan from starting the foreclosure process or to suspend foreclosure if that process has already begun, you must notify us by 05/08/2015 of your intent to accept this trial offer through one of the following options:

- Contact us at 1 800 669.6650
- Sign and return the enclosed *Intent to Accept Trial Offer* form using the prepaid envelope provided
- Make your first trial payment by 05/08/2015, which is earlier than the scheduled due date described below

However, if you do not respond by 05/08/2015, we will continue with the foreclosure process, and a foreclosure sale may occur.

Please Note: If we do not receive your acceptance to this trial offer by one of the options above by 05/08/2015, we can only accept the first trial payment in certified funds to prevent foreclosure. This payment must still be made by the first payment due date and your remaining trial payments can be paid by check/money order or deducted directly from your checking account, if applicable.

Additionally, if you have a scheduled foreclosure sale date and take the required steps to accept this offer, Bank of America will make every effort to postpone the sale. However, in some cases, the court with jurisdiction over the foreclosure proceeding (if any) or public official charged with carrying out the sale or the investor on your loan may not halt the scheduled sale. **Do not ignore any foreclosure notices.**

This offer will be revoked if a foreclosure sale occurs, even if the sale occurs prior to the first trial period payment due date set forth below:

Exhibit 10

Press ENTER to Continue




Amount entered is less than the minimum allowable payment.
Payments cannot be more than \$50 below the Normal Payment
Amount. Please re-enter amount and/or Payment Type(s)

С К

Bank of America

Aug 01 2015

CO/CC 0336 0008259
TLR 029 FRB3210
ABA052001633



VICENTA J LINCICOME
A ELLIS LINCICOME JR.
70 RIVERSIDE DR
DAYTON, NV 89403

1088

50-78/1211

PAY TO THE
ORDER OF

Bank of America

\$ 4,013.78

Case

Carson City Office
2976 NORTH CARSON ST.
CARSON CITY, NV 89706
1-800-488-2265

BANK OF WEST

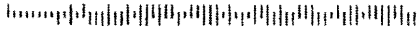
FGF

NK 98 WEST CARSON CITY, NV 89706
1-800-488-2265
Loan # 16224785 Fidelity Investments

1: 1 21 10078 21: 02827628711 01088

Exhibit 11

If you have questions or concerns about your statement, please contact us at 1-800-495-7166 between the hours of 9 a.m. - 9 p.m. CT Monday through Thursday, 9 a.m. - 5 p.m. CT Friday, and 10 a.m. - 4 p.m. CT Saturday.



3-775-02655-0025084-005 1-020-100-550-000

VICENTA LINCOCME
70 RIVERSIDE DR
DAYTON NV 89403-9055

Account Number	114477
Payment Due Date	09/01/2015
Amount Due	\$207,599.70

If payment is received after 09/10/2015, \$109.18 late fee will be charged

Property Address
70 RIVERSIDE DR
DAYTON NV 89403

Account Information		Explanation of Amount Due	
Outstanding Principal	\$381,150.00	Principal	\$0.00
Deferred Balance	\$0.00	Interest	\$0.180.87
Current Interest Rate	6.875%	Escrow (for Taxes & Insurance)	\$200.28
Next Interest Rate Change	06/01/2017	Regular Monthly Payment	\$2,413.95
Prepayment Penalty	No	Overdue Payments	\$205,185.75
Escrow Balance	(\$20,204.11)	Total Fees Charged	\$0.00
Partial Payments are not applied to your mortgage, but instead are held in a separate unapplied account. If you pay the balance of a partial payment, the unapplied funds will then be added to your mortgage. Adverse credit reporting, late charges, and property inspections may occur as a result of the delinquency.		Total Amount Due	\$207,599.70
Past Payments Breakdown			
		Paid Year to Date	
Principal	\$0.00	\$0.00	
Interest	\$0.00	\$0.00	
Escrow (for Taxes & Insurance)	\$0.00	\$0.00	
Suspense (Unapplied Funds)	\$446.28	\$0.00	
Fees	\$0.00	\$0.00	
Total	\$446.28	\$0.00	

Delinquency Notice

You are late on your monthly payments. Failure to bring the account current may result in additional fees or expenses, and in certain instances, you may risk foreclosure. The amount needed to cure the delinquency is \$207,599.70. If you are unable to pay this amount, please call your account manager to explore your options.

As of August 10, 2015, you are 2585 days delinquent on your mortgage loan.

- Payment Due: 06/01/2015, unpaid balance of \$2,413.95
- Payment Due: 04/01/2015, unpaid balance of \$2,413.95
- Payment Due: 03/01/2015, unpaid balance of \$2,413.95
- Payment Due: 02/01/2015, unpaid balance of \$2,413.95
- Payment Due: 01/01/2015, unpaid balance of \$2,413.95
- Payment Due: 08/01/2015, unpaid balance of \$2,413.95

Total: \$207,599.70 - You must pay this amount to bring your loan current.

If you are experiencing financial difficulty, see back for information about home ownership counseling.

DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT

FAY
SERVICING

VICENTA LINCOCME

Account Number	Due Date	Regular Payment	Past Due	Payments Due	Other Amounts
114477	09/01/2015	\$2,413.95	\$205,185.75	85	\$0.00

FAY
SERVICING

P.O. Box 3187
Carol Stream, IL 60132-3187

Amount Due	
Due By 09/01/2015:	\$207,599.70
<i>If payment is received after 09/10/2015, \$109.18 late fee will be charged.</i>	
Additional Principal	\$
Additional Escrow	\$
Total Amount Enclosed	\$

Payments Online www.fayservicing.com	
Payments via Overnight or Express Mail Fay Servicing Attn: Payment Processing 440 S. LaSalle, Suite 2000 Chicago, IL 60605 <small>Payments cannot be made in person at this location.</small>	Correspondence Fay Servicing P.O. Box 809441 Chicago, IL 60680-9441
<small>Remember to include your name and account number on all payment remittances and written correspondence.</small>	

Payments by Phone

Fay Servicing's Pay-by-phone option makes it possible to make your loan payment by using your touchtone telephone. This service is available to you 24 hours a day, 7 days a week. Simply call the toll-free number below to perform real-time, confidential mortgage payment transactions. And you can call as often as you like, there's no charge for the call or transaction.

Payments Online

Fay Servicing Online Mortgage Payment, free with your online account, can save you time and money with the click of a mouse. Pay your mortgage online and skip paper checks and stamps. Set up your payment in minutes. (Return each month to make your payments, or set up automated recurring payments for convenience.)

MoneyGram Express Payment

MoneyGram ExpressPayment ensures same-day delivery of your payment to Fay Servicing. Visit your local MoneyGram Agent. Call 1-800-926-9400 to locate the one nearest you. Complete the ExpressPayment form, providing your name and Fay Servicing loan number. The Fay Servicing Receive Code is 15055. All ExpressPayment transactions require cash. The agent will charge a fee for this service. Fay Servicing does not charge a fee for this service.

Activity Since Your Last Statement (07/10/2015 - 08/10/2015)

Date	Description	Charges	Payments
08/06/15	CDRP ADVANCE ADJUST	1995.03	
08/06/15	FUNDS APPLIED		\$448.06

Qualified Written Requests must be submitted to Fay Servicing, LLC, 901 S. 2nd St., Suite 201, Springfield, Illinois 62704.

HUD-approved housing counselors are available at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or by calling 1-800-569-4287.

Notice of Error or Information Request:

If you believe there has been an error with the account or you require additional information, you may send a written Notice of Error or Information Request. All Notices of Error or Information Requests must be sent in writing to the address listed below, as this is our exclusive address under Federal Law for these matters. If you send your correspondence to any other address, it may not be processed in accordance with Federal law. Please submit to Fay Servicing, LLC, 901 S. 2nd St., Suite 201, Springfield, Illinois 62704-7909.

Fay Servicing is a debt collector, and information you provide to us will be used for that purpose. To the extent your original obligation was discharged, or is subject to an automatic stay under the United States Bankruptcy Code, this is being provided for informational purposes only and does not constitute an attempt to collect a debt or impose personal liability. Our office hours are Monday-Thursday 9 a.m. - 9 p.m. Friday 9 a.m. - 5 p.m., and Saturday 10 a.m. - 4 p.m. CST. Call today: 1-800-495-7166. NMLS ID#88244. NC residents: Fay Servicing, LLC, NC Permit Number 112302, 440 S. LaSalle St., Suite 2000, Chicago, IL 60605-6011.

Be sure to check box on reverse. Please print.

Account Number _____

Borrower _____

Co-borrower _____

Street _____

City/State/Zip Code _____

Home Phone _____

Cell Phone _____

Borrower e-mail _____

Co-borrower e-mail _____

Borrower signature _____

Co-borrower signature _____

Exhibit 12

DOC# 544042

11/25/2015

08:47AM

Official Record

Requested By
DEFAULT SERVICES - AVENUE 365

Lyon County - NV

Dawna L. Warr - Recorder

Page: 1 of 2

Fee: \$15.00

Recorded By MFK

RPTT: \$0.00



0544042

Prepared By:

PROF-2013-M4 Legal Title Trust, by U.S. Bank
National Association, as Legal Title Trustee
60 Livingston Avenue, EP-MN-WS3D, St. Paul, MN
55107, Attention: Structured Finance Services

WHEN RECORDED RETURN TO:

Avenue 365 Lender Services
401 Plymouth Rd, Ste. 550
Plymouth Meeting, PA 19462

Parcel # 29-401-17

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned, **BANK OF AMERICA, N.A., S/B/M BAC HOME LOANS SERVICING, L.P. F/K/A COUNTRYWIDE HOME LOANS SERVICING, L.P.**, located at 1800 Tapo Canyon Road, Simi Valley, California 93063 ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to: **PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee**, located at 60 Livingston Avenue, EP-MN-WS3D, St. Paul, MN 55107, Attention: Structured Finance Services ("ASSIGNEE/GRANTEE") all beneficial interest under that certain **DEED OF TRUST**, dated 5/23/2007 and executed by **VICENTA LINCICOME, A MARRIED WOMAN**, borrower(s) to: **Mortgage Electronic Registration Systems, Inc., as nominee for SIERRA PACIFIC MORTGAGE COMPANY, INC.**, its successors and assigns, as original lender, and certain instrument recorded 5/25/2007, in **INSTRUMENT NO. 407150**, in the Official Records of **LYON County, the State of Nevada**, given to secure a certain Promissory Note in the amount of \$381,150.00 covering property located at: **70 RIVERSIDE DRIVE, DAYTON, NEVADA 89403**.

TOGETHER with the note or notes therein described and secured thereby, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Mortgage including the right to have reconveyed, in whole or in part, the real property described therein.



544042

11/25/2015
2 of 2Dated: November 10th, 2015

ASSIGNOR: BANK OF AMERICA, N.A., S/B/M BAC HOME
LOANS SERVICING, L.P. F/K/A COUNTRYWIDE HOME
LOANS SERVICING, L.P. By: Avenue 365 Lender Services,
LLC, its attorney-in-fact*

By: 

Name: Steven Travascio

Title: Authorized Signatory

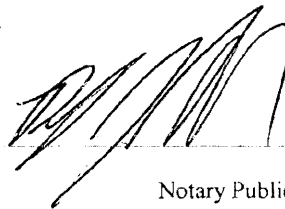
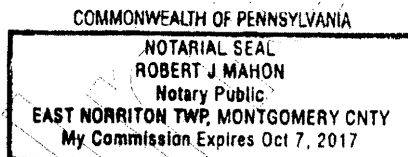
*Power of Attorney recorded in Maricopa County, Arizona as

Instrument: 20150617207

State of: Pennsylvania

County of: Montgomery

Before me, **Robert J. Mahon**, duly commissioned Notary Public, on this day personally appeared **Steven Travascio, Authorized Signatory for Avenue 365 Lender Services, LLC, attorney-in-fact BANK OF AMERICA, N.A., S/B/M BAC HOME LOANS SERVICING, L.P. F/K/A COUNTRYWIDE HOME LOANS SERVICING, L.P.** known to me (or proved to me on the oath of _____ or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 10th day of November, 2015.

Notary Public's Signature

Printed Name: Robert J. Mahon

My Commission Expires: 10.07.2017

Property Address: 70 RIVERSIDE DRIVE, DAYTON, NEVADA 89403

Original Loan Amount:
\$381,150.00

Exhibit 13

DOC# 572258

11/03/2017

10:29AM

Official Record

Requested By
SERVICELINK TITLE AGENCY INC.

Lyon County - NV

Dawna L. Warr - Recorder

Page: 1 of 6

Fee: \$288.00

Recorded By BKC

RPTT: \$0.00

APN: 029-401-17

WHEN RECORDED MAIL TO:

Sables, LLC

c/o Zieve Brodnax & Steele

3753 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169



0572258

TS No. : 16-42397

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

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

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

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

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

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

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



T.S. No.: 16-42397

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

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

NOTICE

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

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

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

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

Lauren Jowers
800-495-7166

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

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

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

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



572258

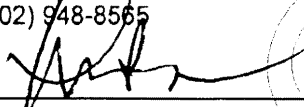
11/03/2017
3 of 6

T.S. No.: 16-42397

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

Dated: 11/1/2017

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



Michael Busby, Trustee Sale Officer

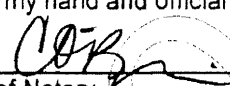
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

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

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

WITNESS my hand and official seal.



Signature of Notary



572258

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

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

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

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

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

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

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

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

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

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

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

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

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

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



572258

11/03/2017
5 of 6

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

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

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

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

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

Verónica Talley

(Print Name)

Veronica Talley

(Signature)

Foreclosure Specialist IV

(Title)

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

State of Texas

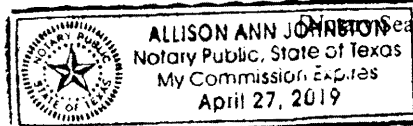
County of Denton

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

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

WITNESS my hand and official seal.

Signature





572258

11/03/2017
6 of 6

Declaration of Mortgage Servicer Pursuant to NR 107.510

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

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

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

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

Dated: 4-5-2016


By: 

Exhibit 14

FILED

2018 NOV -8 PM 1:51

TANYA SCOTT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Tovar

Case No: 18-CV-01332

Dept.: II

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

* * * * *

ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

Plaintiffs,

v.

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

Defendants.

ORDER

THIS MATTER comes before the Court upon the Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome.

THE COURT having reviewed the Application, the supporting evidence submitted therewith, and the representations of counsel, hereby makes the following FINDINGS OF FACT:

1. That a Notice of Trustee's Sale was recorded by Sables, LLC, the current trustee under that certain Deed of Trust recorded in Lyon County, Nevada, on May 25, 2007, as Document No. 407150, noticing sale of the Plaintiff's real property there in described;

ORDER

PAGE 1 OF 3

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

3. That Plaintiffs have established to the Court's satisfaction that Plaintiffs are likely to succeed on the merits of their claim for injunctive relief under NRS 107.560 for material violations of the Homeowner's Bill of Rights.

THEREFORE, GOOD CAUSE APPEARING, the Court hereby enters the following Orders:

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

2. That the Notice of Trustee's Sale recorded on October 12, 2019, is hereby cancelled and that the public auction of the property described in the Notice of Trustee's Sale is hereby vacated.

3. That a hearing to determine whether a preliminary injunction should issue shall be held on 20TH November, 2018 at 2:30 PM, at the courthouse located at 911 Harvey Way, Yerington, Nevada. Defendants, or any one of them, may appear at that time to be heard why the injunction should not issue;

4. That Plaintiffs are ordered to provide proper service of this Order, pursuant to NRCP 5.

5. That Plaintiffs are not required to post bond.

6. That Plaintiffs are hereby ordered to appear at the above stated time set for the hearing in order to address their request for issuance of a preliminary injunction.

IT IS SO ORDERED.

Dated this 20TH day of November, 2018


DISTRICT JUDGE

AFFIRMATION

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

Submitted this 7th day of November, 2018


Michael G. Millward, Esq.

Exhibit 15

70 RIVERSIDE DR

Doc #: 591393

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

OFFICIAL RECORD

Requested By: FIRST AMERICAN TITLE INSURANCE C

Lyon County, NV
Margie Kassebaum, Recorder

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

Recorded By: Inhumildad

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

RECORDING REQUESTED BY:

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

Recorded As An Accommodation

Forward Tax Statements to
the address given above

Only Without Liability

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$1148.55

The Grantee Herein WAS NOT the Foreclosing Beneficiary.

The Amount of the Unpaid Debt was \$671,249.37

The Amount Paid by the Grantee was \$294,000.01

Said Property is in the City of DAYTON, County of Lyon

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

Breckenridge Property Fund, 2016, LLC

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

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

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

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

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

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

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

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

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:

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

Recorded As An Accommodation

Forward Tax Statements to Only Without Liability
the address given above

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55

The Grantee Herein **WAS NOT** the Foreclosing Beneficiary.

The Amount of the Unpaid Debt was \$671,249.37

The Amount Paid by the Grantee was \$294,000.01

Said Property is in the City of DAYTON, County of Lyon

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

Breckenridge Property Fund, 2016, LLC

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

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

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

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

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

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

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

TRUSTEE'S DEED UPON SALE

T.S. #: 16-42397

Order #: 160069595-NV-VOO

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

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

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

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey
Neal

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

State of CALIFORNIA
County of ORANGE

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

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

WITNESS my hand and official seal.

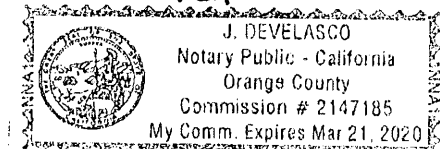
Signature

J. Develasco

(Seal)

J. Develasco

J. Develasco
2147185 Expires 3/21/20



STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a) 029-401-17

b) _____

c) _____

d) _____

2. Type of Property:

a) ☐ Vacant Land

c) ☐ Condo/Twnhse

e) ☐ Apt. Bldg

g) ☐ Agricultural

Other _____

b) ☒ Single Fam. Res.

d) ☐ 2-4 Plex

f) ☐ Comm'l/Ind'l

h) ☐ Mobile Home

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property

\$ \$294,000.01

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

(_____)

c. Transfer Tax Value:

\$ \$294,000.01

d. Real Property Transfer Tax Due

\$ 1148.55

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____



Capacity AGENT

Signature _____

Capacity AGENT

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Sables, LLC, a Nevada limited liability company

Address: 3753 Howard Hughes Parkway, Suite 200, Las Vegas, NV 89169

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Breckenridge Property Fund, 2016, LLC

Address: 2320 Potosi St. Ste 130 Las Vegas, NV 89146

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

Print Name: First American Escrow #: acw

Address: 1000 W Charleston

City: Las Vegas

State: NV

Zip: 89135

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Breckenridge Property Fund 2016, LLC's Crossclaim Against
Prof-2013 M4 Legal Title Trust, by U.S. Bank

Exhibit D

1 John T. Steffen (4390)
Matthew K. Schriever (10745)
2 Alex R. Velto (14961)
HUTCHISON & STEFFEN, PLLC
3 10080 W. Alta Dr., Suite 200
4 Las Vegas, NV 89145
Telephone: (702) 385-2500
5 Facsimile: (702) 385-2086
mschriever@hutchlegal.com
6

7 Casey J. Nelson (12259)
WEDGEWOOD, LLC
8 Office of the General Counsel
2320 Potosi Street, Suite 130
9 Las Vegas, Nevada 89146
Telephone: (702) 305-9157
10 Facsimile: (310) 730-5967
caseynelson@wedgewood-inc.com
11 *Attorney for Defendant, Counterclaimant, and Cross-Plaintiff*
12 *Breckenridge Property Fund 2016, LLC*

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

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

17 Plaintiff,

18 v.

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

28 Defendants.

Case No.: 18-CV-01332

Dept No.: II

**BRECKENRIDGE PROPERTY
FUND 2016, LLC'S CROSSCLAIM
AGAINST PROF-2013-M4 LEGAL
TITLE TRUST, BY U.S. BANK
NATIONAL ASSOCIATION, AS
LEGAL TITLE TRUSTEE**

1 BRECKENRIDGE PROPERTY FUND 2016,
2 LLC,

3 Counterclaimant,

4 vs.

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

8 Counterdefendants.

9 BRECKENRIDGE PROPERTY FUND 2016,
10 LLC,

11 Cross-Plaintiff,

12 vs.

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

16 Cross-Defendant.

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

22 **JURISDICTION AND VENUE**

23 1. This court has subject matter jurisdiction over this action under § 6, Article
24 6 of the Nevada Constitution.

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

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

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

///

1 **PARTIES**

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

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

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

9 **FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

13 19. Cross-Plaintiff filed a Counterclaim against the Lincicome's on October 3,
14 2019 through which it claims ownership to the Subject Property, seeks to quiet title in its
15 favor, seeks possession of the Subject Property, and seeks other monetary damages

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

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

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

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 (Wrongful Foreclosure/Rescission and Restitution)

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

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

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

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

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

18 WHEREFORE, Cross-Plaintiff prays for the following:

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

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

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

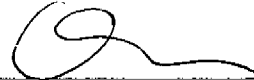
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4. For such other and further relief as the Court may deem proper.

Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person

DATED this 7 day of October, 2020.

HUTCHISON & STEFFEN, PLLC



John T. Steffen (4390)
Matthew K. Schriever (10745)
Alex R. Velto (14961)
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145

Casey J. Nelson (12259)
WEDGEWOOD, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

*Attorney for Defendant, Counterclaimant,
and Cross-Plaintiff,
Breckenridge Property Fund 2016, LLC*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **BRECKENRIDGE PROPERTY FUND 2016, LLC'S CROSSCLAIM AGAINST PROF-2013-M4 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE** via U.S. Mail to the parties designated below.

Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
Minden, NV 89423

Justin M. Clouser, Esq.
1512 US Highway 395 N, Ste. 1
Gardnerville, NV 89410

Attorney for Plaintiffs

Attorney for Plaintiffs

R. Samuel Ehlers, Esq.
Ramir M. Hernandez, Esq.
WRIGHT FINLAY & ZAK, LLP
7785 W. Sahara Avenue, #200
Las Vegas, NV 89117

Shadd A. Wade, Esq.
ZIEVE BRODNAX & STEEL
9435 W. Russell Road, #120
Las Vegas, NV 89148

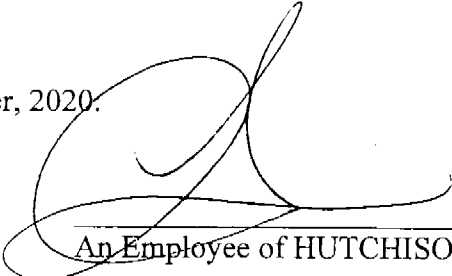
Attorney for Sables, LLC

Attorney for Prof-2013-M4 Legal Title Trust by US. Bank, National Association as Legal Title Trustee; Fay Servicing, LLC, and Shellpoint Mortgage Servicing, LLC

Darren T. Brenner, Esq.
Scott R. Lachman, Esq.
ACKERMAN, LLP
1635 Village Center Circle, #200
Las Vegas, NV 89134

Attorney for Bank of America

DATED this 2nd day of October, 2020.


An Employee of HUTCHISON & STEFFEN

Answer to Breckenridge Property Fund 2016, LLC's
Crossclaim Against Prof-2013-M4 Legal Title Trust, By U.S.
Bank National Association, as Legal Title Trustee

Exhibit E

1 WRIGHT, FINLAY & ZAK, LLP

2 Darren T. Brenner, Esq.

3 Nevada Bar No. 8386

4 Ramir M. Hernandez, Esq.

5 Nevada Bar No. 13146

6 7785 W. Sahara Ave, Suite 200

7 Las Vegas, NV 89117

8 (702) 475-7964; Fax: (702) 946-1345

9 rhernandez@wrightlegal.net

10 *Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association,*
11 *as Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC*

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and
15 VICENTA LINCICOME,

16 Plaintiffs,

17 vs.

18 SABLES, LLC, a Nevada limited liability
19 company, as Trustee of the Deed of Trust, given
20 by Vicenta Lincicome and dated 5/23/2007;
21 FAY SERVICING, LLC, a Delaware limited
22 liability company and , subsidiary of Fay
23 Financial, LLC; PROF-2013-M4 LEGAL
24 TITLE TRUST by U.S. BANK, N.A., as Legal
25 Title Trustee; for BANK OF AMERICA, N.A.;
26 BRECKENRIDGE PROPERTY FUND 2016, a
27 Utah limited liability company; NEWREZ,
28 LLC, d/b/a SHELLPOINT MORTGAGE
SERVICING , LLC, substituted in for DOE 1;
1900 CAPITAL TRUST II, BY U.S. BANK
TRUST NATIONAL ASSOCIATION,
substituted in for DOE 2; MCM-2018-NPL2,
substituted in for DOE3; and DOES 4-10.

Defendants.

Case No.: 18-cv-01332

Dept. No.: II

**ANSWER TO BRECKENRIDGE
PROPERTY FUND 2016, LLC'S
CROSSCLAIM AGAINST PROF-2013-M4
LEGAL TITLE TRUST, BY U.S. BANK
NATIONAL ASSOCIATION, AS LEGAL
TITLE TRUSTEE**

1
2 BRECKENRIDGE PROPERTY FUND 2016,
3 LLC,

4 Counterclaimant,

5 vs.

6 ALBERT ELLIS LINCICOME, JR., an
7 individual; VICENTA LINCICOME, an
8 individual; and DOE OCCUPANTS 1-5.

9 Counterdefendants.

10 BRECKENRIDGE PROPERTY FUND 2016,
11 LLC,

12 Cross-Plaintiff,

13 vs.

14 PROF-2013-M4 LEGAL TITLE TRUST, BY
15 U.S. BANK NATIONAL ASSOCIATION, AS
16 LEGAL TITLE TRUSTEE,

17 Cross-Defendant.
18

19
20 Cross-Defendant, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association,
21 as Legal Title Trustee ("U.S. Bank Trust"), by and through its attorneys of record, the law firm
22 of Wright, Finlay & Zak, LLP, hereby files this Answer to Cross-Plaintiff's Cross-Complaint:

23 1. Answering Paragraph 1 of the Cross-Complaint, Cross-Defendant does not
24 possess enough information to admit or deny the allegations; therefore, Cross-Defendant denies
25 said allegations.

26 2. Answering Paragraph 2 of the Cross-Complaint, Cross-Defendant does not
27 possess enough information to admit or deny the allegations; therefore, Cross-Defendant denies
28 said allegations.

1 3. Answering Paragraph 3 of the Cross-Complaint Cross-Defendant does not
2 possess enough information to admit or deny the allegations; therefore, Cross-Defendant denies
3 said allegations.

4 4. Answering Paragraph 4 of the Cross-Complaint, Cross-Defendant does not
5 possess enough information to admit or deny the allegations; therefore, Cross-Defendant denies
6 said allegations.

7 5. Answering Paragraph 5 of the Cross-Complaint, Cross-Defendant does not
8 possess enough information to admit or deny the allegations; therefore, Cross-Defendant denies
9 said allegations.

10 6. Answering Paragraph 6 of the Cross-Complaint, Cross-Defendant admits that it
11 is licensed to do business in Nevada. As to the remaining allegations, Cross-Defendant does not
12 possess enough information to admit or deny the allegations; therefore, Cross-Defendant denies
13 said allegations.

14 7. Answering Paragraph 7 of the Cross-Complaint, Cross-Defendant does not
15 possess enough information to admit or deny the allegations; therefore, Cross-Defendant denies
16 said allegations.

17 8. Answering Paragraph 8 of the Cross-Complaint, Cross-Defendant does not
18 possess enough information to admit or deny the allegations; therefore, Cross-Defendant denies
19 said allegations.

20 9. Answering Paragraph 9 of the Cross-Complaint, Cross-Defendant admits that the
21 referenced Deed of Trust speaks for itself.

22 10. Answering Paragraph 10 of the Cross-Complaint, Cross-Defendant admits that
23 the referenced Assignment of Deed of Trust speaks for itself.

24 11. Answering Paragraph 11 of the Cross-Complaint, Cross-Defendant admits that
25 the Lincicome's became delinquent on the Sierra Loan during the Lincicome's ownership of the
26 Subject Property.

27 12. Answering Paragraph 12 of the Cross-Complaint, Cross-Defendant admits that
28 the referenced Notice of Default and Election speaks for itself.

1 13. Answering Paragraph 13 of the Cross-Complaint, Cross-Defendant admits that
2 the referenced Notice of Trustee's Sale speaks for itself.

3 14. Cross-Defendant does not possess enough information to admit or deny the
4 allegations in paragraph 14 of the Cross-Complaint; therefore, Cross-Defendant denies said
5 allegations.

6 15. Answering Paragraph 15 of the Cross-Complaint, Cross-Defendant admits that
7 the referenced Court Order speaks for itself.

8 16. Answering Paragraph 16 of the Cross-Complaint, Cross-Defendant admits the
9 allegations therein.

10 17. Cross-Defendant does not possess enough information to admit or deny the
11 allegations in paragraph 17 of the Cross-Complaint; therefore, Cross-Defendant denies said
12 allegations.

13 18. Cross-Defendant does not possess enough information to admit or deny the
14 allegations in paragraph 18 of the Cross-Complaint; therefore, Cross-Defendant denies said
15 allegations.

16 19. Answering Paragraph 19 of the Cross-Complaint, Defendant admits that the
17 referenced Counterclaim speaks for itself.

18 20. Answering Paragraph 20 of the Cross-Complaint, Cross-Defendant admits that
19 the referenced Second Amended Complaint speaks for itself.

20 21. Cross-Defendant does not possess enough information to admit or deny the
21 allegations in paragraph 21 of the Cross-Complaint; therefore, Cross-Defendant denies said
22 allegations.

23 22. Cross-Defendant does not possess enough information to admit or deny the
24 allegations in paragraph 22 of the Cross-Complaint; therefore, Cross-Defendant denies said
25 allegations.

26 23. Answering paragraph 23 of the Cross-Complaint, Cross-Defendant hereby
27 repeats, realleges, and incorporates each of its admissions, denials, or other responses to all the
28 paragraphs referenced hereinabove as if set forth at length and in full.

1 24. Cross-Defendant does not possess enough information to admit or deny the
2 allegations in paragraph 24 of the Cross-Complaint; therefore, Cross-Defendant denies said
3 allegations.

4 25. Cross-Defendant does not possess enough information to admit or deny the
5 allegations in paragraph 25 of the Cross-Complaint; therefore, Cross-Defendant denies said
6 allegations.

7 26. Cross-Defendant does not possess enough information to admit or deny the
8 allegations in paragraph 26 of the Cross-Complaint; therefore, Cross-Defendant denies said
9 allegations.

10 27. Answering paragraph 27 of the Cross-Complaint, Cross-Defendant denies the
11 allegations therein.

12 **CROSS-DEFENDANTS ASSERT THE FOLLOWING AFFIRMATIVE DEFENSES:**

13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to State a Claim)**

15 Cross-Plaintiff's Complaint fails to state a claim against Defendant upon which relief
16 can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Equitable Doctrines)**

19 Cross-Defendant alleges that the Cross-Plaintiff's claims are barred by the equitable
20 doctrines of laches, unclean hands, and failure to do equity.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Waiver and Estoppel)**

23 Cross-Defendant alleges that by reason of Cross-Plaintiff's acts and omissions, Cross-
24 Plaintiff has waived its rights and is estopped from asserting the claims against Cross-
25 Defendants.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 **(Statute of Limitations)**

28 Cross-Defendant alleges that the Cross-Plaintiff's Complaint, and each cause of action

1 therein, is barred by the statute of limitations.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 **(Conditions Precedent)**

4 Cross-Defendant alleges that Cross-Plaintiff's claims are barred as a result of the failure
5 of Plaintiff to satisfy conditions precedent.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(Failure to Join a Necessary Party)**

8 Cross-Defendant alleges that Cross-Plaintiff's claims are barred as a result of the failure
9 of Plaintiff to join a necessary party to the Cross-Complaint.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 **(Failure to Mitigate)**

12 Cross-Defendant alleges that by reason of Cross-Plaintiff's failure to mitigate its losses,
13 Cross-Plaintiff has waived its rights and is estopped from asserting the claims against Cross-
14 Defendants.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 **(Assumption of Risk)**

17 Cross-Defendant alleges that by reason of Cross-Plaintiff's acts and omissions, Cross-
18 Plaintiff has waived its rights and is estopped from asserting the claims against Cross-
19 Defendants.

20 **NINTH AFFIRMATIVE DEFENSE**

21 **(Bona Fide Purchaser)**

22 Cross-Defendant alleges that Cross-Plaintiff's is not entitled to relief from Cross-
23 Defendant as it is not a bona fide purchaser of the subject property.

24 **TENTH AFFIRMATIVE DEFENSE**

25 **(Additional Affirmative Defenses)**

26 Defendants reserve the right to assert additional affirmative defenses in the event
27 discovery and/or investigation indicates that additional affirmative defenses are applicable.
28

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1. That Cross-Plaintiffs take nothing by way of the Cross-Complaint;
2. For reasonable attorney's fees and costs; and
3. For any such other and further relief as the Court may deem just and proper in the case.

Ron M. Felt

AFFIRMATION

Pursuant to NRS 239B.03/603A.040

The undersigned does hereby affirm that the foregoing document does not contain any of the following information governed by NRS 239B.030 and NRS 603A.040:

1. Social Security Number;
2. Driver License Number or Identification Card Number; or
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include any publically available information that is lawfully made available to the general public.

DATED this 27th day of October, 2020.

WRIGHT, FINLAY & ZAK, LLP



Ramir M. Hernandez, Esq.
Nevada Bar No. 13146
7785 W. Sahara Ave, Suite 200
Las Vegas, NV 89117
*Attorney for Defendants, Prof-2013 M4-Legal Title
Trust, by U.S. Bank, National Association, as
Legal Title Trustee and Fay Servicing LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,
3 LLP, and that on this 27th day of October, 2020, I did cause a true copy of the foregoing
4 **ANSWER TO BRECKENRIDGE PROPERTY FUND 2016, LLC'S CROSSCLAIM**
5 **AGAINST PROF-2013-M4 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL**
6 **ASSOCIATION, AS LEGAL TITLE TRUSTEE** to be served by placing a copy in the mail,
7 addressed as follows:

8 Michael G. Millward, Esq.
9 MILLWARD LAW, LTD.
10 1591 Mono Ave.
11 Minden, NV 89423

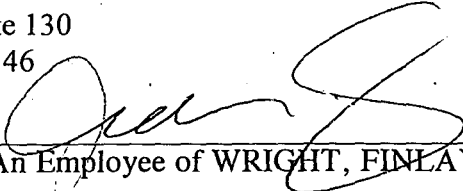
12 Justin M. Clouser, Esq.
13 1512 US Highway 395 N, Ste. 1
14 Gardnerville, NV 89410

15 Shadd A. Wade, Esq.
16 ZIEVE, BRODNAX & STEELE, LLP
17 9435 West Russell Road, Suite 120
18 Las Vegas, NV 89148

19 Darren T. Brenner, Esq.
20 Scott R. Lachman, Esq.
21 AKERMAN LLP
22 1635 Village Center Circle, Ste. 200
23 Las Vegas, NV 89134

24 John T. Steffen, Esq.
25 Matthew K. Schriever, Esq.
26 HUTCHISON & STEFFEN, PLLC
27 10080 W. Alta Dr., Suite 200
28 Las Vegas, NV 89145

Casey J. Nelson, Esq.
WEDGEWOOD, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146


An Employee of WRIGHT, FINLAY & ZAK, LLP

Notice of Entry of Order on Ordering Denying Plaintiffs
Motion for Partial Summary Judgment/Granting Motions for
Summary Judgment Filed by BANA, Prof-2013 M4 Legal Trust,
US Bank and Fay Servicing, LLC

Exhibit F

1 WRIGHT, FINLAY & ZAK, LLP

2 Darren T. Brenner, Esq.

3 Nevada Bar No. 8386

4 Ramir M. Hernandez, Esq.

5 Nevada Bar No. 13146

6 7785 W. Sahara Ave, Suite 200

7 Las Vegas, NV 89117

8 (702) 475-7964; Fax: (702) 946-1345

9 rhernandez@wrightlegal.net

10 *Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as*

11 *Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC*

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and
15 VICENTA LINCICOME,

16 Plaintiffs,

17 vs.

18 SABLES, LLC, a Nevada limited liability
19 company, as Trustee of the Deed of Trust, given
20 by Vicenta Lincicome and dated 5/23/2007 *et*
21 *al.*

22 Defendants.

23 and all related cases.

Case No.: 18-cv-01332

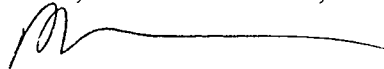
Dept. No.: II

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that an ORDER DENYING PLAINTIFFS MOTION FOR
25 PARTIAL SUMMARY JUDGMENT/GRANTING MOTIONS FOR SUMMARY JUDGMENT
26 FILED BY BANA, PROF-2013 M4 LEGALL TRUST, US BANK AND FAY SERVICING
27 LLC was entered in the above-entitled Court on the 23rd day of June, 2021. A copy of which is
28 attached hereto.

DATED this 29th day of June, 2021.

WRIGHT, FINLAY & ZAK, LLP



Ramir M. Hernandez, Esq.

Nevada Bar No. 13146

*Attorneys for Defendants, Prof-2013 M4-Legal Title
Trust, by U.S. Bank, National Association, as Legal*

*Title Trustee, Fay Servicing LLC, and Shellpoint
Mortgage Servicing, LLC*

AFFIRMATION

Pursuant to NRS 239B.03/603A.040

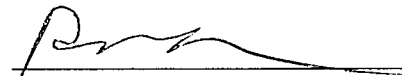
The undersigned does hereby affirm that the foregoing document does not contain any of the following information governed by NRS 239B.030 and NRS 603A.040:

1. Social Security Number;
2. Driver License Number or Identification Card Number; or
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include any publically available information that is lawfully made available to the general public.

DATED this 29th day of June, 2021.

WRIGHT, FINLAY & ZAK, LLP



Ramir M. Hernandez, Esq.

Nevada Bar No. 13146

*Attorneys for Defendants, Prof-2013 M4-Legal Title
Trust, by U.S. Bank, National Association, as Legal
Title Trustee, Fay Servicing LLC, and Shellpoint
Mortgage Servicing, LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,
3 LLP, and that on this 20th day of June, 2021, I did cause a true copy of the foregoing **NOTICE**
4 **OF ENTRY OF ORDER** to be served by depositing a true copy of same in the United States
5 Mail, at Las Vegas, Nevada, addressed as follows:

6 Michael G. Millward, Esq.
7 MILLWARD LAW, LTD.
8 1591 Mono Ave.
9 Minden, NV 89423

10 Justin M. Clouser, Esq.
11 1512 US Highway 395 N, Ste. 1
12 Gardnerville, NV 89410

13 Scott R. Lachman, Esq.
14 AKERMAN LLP
15 1635 Village Center Circle, Ste. 200
16 Las Vegas, NV 89134

17 John T. Steffen, Esq.
18 Matthew K. Schriever, Esq.
19 HUTCHISON & STEFFEN, PLLC
20 10080 W. Alta Dr., Suite 200
21 Las Vegas, NV 89145

22 Casey J. Nelson, Esq.
23 WEDGEWOOD, LLC
24 Office of the General Counsel
25 2320 Potosi Street, Suite 130
26 Las Vegas, Nevada 89146

27 
28 An Employee of WRIGHT, FINLAY & ZAK, LLP

Case No.: 18-CV-01332

Dept. No.: II

FILED

2021 JUN 23 PM 4:13

TANYA SCOTT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

~~Victoria Tovar~~ CLERK

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

* * *

ALBERT ELLIS LINCICOME, JR. and
VICENTA LINCICOME,

Plaintiffs,

vs.

SABES, LLC, a Nevada limited liability company, as
Trustee of the Deed of Trust given by Vicenta
Lincicome and dated 5/23/2007; FAY SERVICING,
LLC, a Delaware limited liability company and
subsidiary of Fay Financial, LLC; PROF-2013 M4
LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal
Title Trustee; for BANK OF AMERICAN, N.A.;
BRECKENRIDGE PROPERTY FUND 2016, A Utah
limited liability company; NEWREZ, LLC, d/b/a
SHELLPOINT MORTGAGE SERVICING, LLC
substituted in for DOE 1; 1900 CAPITAL TRUST II,
BY U.S. BANK TRUST NATIONAL ASSOCIATION,
substituted in for DOE 2; MNCM-2018-NPL@,
substituted in for DOE 3; and DOES 4-10.

Defendants.

**ORDER DENYING
PLAINTIFFS MOTION FOR
PARTIAL SUMMARY
JUDGMENT/ GRANTING
MOTIONS FOR SUMMARY
JUDGMENT FILED BY
BANA, PROF-2013 M4
LEGALL TRUST, US BANK
AND FAY SERVICING LLC**

I. STATEMENT OF THE CASE

On March 19, 2021, the Plaintiffs filed a Motion for Partial Summary Judgment. On April 19, 2021, Defendants, Prof-2013M4-Legal Trust, by U.S. Bank, National Association, as Legal Title trustee ("U.S. Bank Trust") and Fay Servicing LLC filed an Opposition. On May 5, 2021,

1 Breckenridge Property Fund 2016, LLC joined the Opposition. On May 6, 2021, Plaintiffs filed a
2 Reply.

3 On March 25, 2021, Shellpoint Mortgage Servicing filed a Motion for Summary Judgment. On
4 the same date Prof-2013 M4 Legal trust, U.S. Bank, National Association as Legal Trustee ("U.S.
5 Bank Trust") and Fay Servicing LLC, filed a Motion for Summary Judgment. On April 15, 2021, the
6 Plaintiffs filed an Opposition. On May 6, 2021 Prof-2013 M4 Legal trust, U.S. Bank, National
7 Association as Legal Trustee ("U.S. Bank Trust") and Fay Servicing LLC, filed a Reply. On May 10,
8 2021 Shellpoint Mortgage filed a Reply.

9 On March 17, 2021, Bank of America, hereinafter "BANA," filed a Motion for Summary
10 Judgment and request for discovery sanctions. On April 15, 2021, the Plaintiffs filed an Opposition.
11 On May 5, 2021, BANA filed a Reply. Defendant Breckenridge Property Fund 2016, LLC
12 ("Breckenridge") joined in the Motion on March 29, 2021. Defendants Prof-2013 M4-Legal Title
13 Trust, by U.S. Bank, National Association, as legal Title Trustee (U.S. Bank Trust"), Defendant Fay
14 Servicing LLC ("Fay") and Shellpoint Mortgage Servicing, LLC ("Shellpoint") joined the Motion on
15 April 19, 2021.

16 II. ISSUE PRESENTED

17 Should the Court sanction the Plaintiffs for discovery violations?

18 Should the Court grant the Plaintiffs' Motion for Summary Judgment?

19 Should the Court grant the Defendants' Motions for Summary Judgment?

20 III. SUMMARY OF DECISION

21 The Court finds that the Plaintiffs violated NRCP Rule 16.1 and sanctions are appropriate.

22 The Court finds that no genuine material issues of fact exist and Plaintiffs are not entitled to
23 summary judgment as a matter of law.

24 The Court finds that no genuine material issues of fact exist and the Defendants are entitled to
25 summary judgment as a matter of law.

26 IV. PRINCIPLES OF LAW

1 A. Standard of Review

2 NRCP 56(c) requires a court to enter summary judgment in favor of a party when the
3 “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if
4 any, show that there is no genuine issue as to any material fact and that the moving party is entitled to
5 a judgment as a matter of law. “ NRCP 56(c). A genuine issue of material fact exists where the
6 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Posada v. City*
7 *of Reno*, 109 Nev. 448 (1993).
8

9 When reviewing a motion for summary judgment, the evidence and all reasonable inferences
10 drawn from the evidence, must be viewed in a light most favorable to the non-moving party. *Richards*
11 *v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213 (2006). Summary judgment is appropriate and
12 “shall be rendered forthwith” when the pleadings and other evidence on file demonstrate that no
13 “genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a
14 matter of law. *Wood v. Safeway, Inc.*, 106 Nev. 601, 603 (1990).
15

16 B. Statutes of Limitation

17 NRS 11.190 states in relevant part:
18

19 (1) Within 6 years:

20 (a) Except as otherwise provided in NRS 62B.420 and 176.275, an action upon a
21 judgment or decree of any court of the United States, or of any state or territory within
22 the United States, or the renewal thereof.

23 (b) An action upon a contract, obligation or liability founded upon an instrument in
24 writing, except those mentioned in the preceding sections of this chapter.

25 C. Enforceability of FMA Agreement

26 The Supreme Court held in *Cain v Price*, 134 Nev. 193 195 (2018), that to be “legally
27 enforceable, a contract “must be supported by consideration.” In *Jones v SunTrust Mtg., Inc.* 128 Nev.
28

1 188, 191 (2012) the Nevada Supreme Court held that “Consideration is the exchange of a promise or
2 performance, bargained for by the parties.” The *Jones* Court held:

3 A party's affirmation of a preexisting duty is generally not adequate consideration to
4 support a new agreement. *See Cty. of Clark v. Bonanza No. 1*, 96 Nev. 643, 650, 615
5 P.2d 939, 943 (1980). However, where a party's promise, offered as consideration,
6 differs from that which it already promised, there is sufficient consideration to support
7 the subsequent agreement. 3 *Williston on Contracts* § 7:41 (4th ed. 2008).

8 In *Jones*, the Nevada Supreme Court had to determine the validity of a signed agreement
9 resulting from Nevada’s Foreclosure Mediation Program. The *Jones* Court held that, “when an
10 agreement is reached as a result of an FMO mediation, the parties sign the agreement, and it otherwise
11 comports with contract principles, the agreement is enforceable under District Court Rule 16.”*id.*

12 District Court Rule 16 states:

13 No agreement or stipulation between the parties in a cause or their attorneys, in respect
14 to proceedings therein, will be regarded unless the same shall, by consent, be entered in
15 the minutes in the form of an order, or unless the same shall be in writing subscribed by
16 the party against whom the same shall be alleged, or by the party's attorney.

17 NRS 40.453 states:

18 Except as otherwise provided in NRS 40.495:

19 1. It is hereby declared by the Legislature to be against public policy for any
20 document relating to the sale of real property to contain any provision whereby a
21 mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness
22 secured thereby, waives any right secured to the person by the laws of this state.

23 2. A court shall not enforce any such provision.

24 In *Lowe Enterprise Residential Partners, L.P. v Eighth Judicial District Court ex rel. County*
25 *of Clark*, 118 Nev. 92, 104 (2002) the Nevada Supreme Court delved into the legislative history of
26 NRS 40.453. The Court held that a “review of the legislative history reveals that NRS 40.453 was
27 enacted to protect the rights created by Nevada's anti-deficiency legislation, not to protect the right to a
28 jury trial.” This statute does not prohibit parties from agreeing to provide a deed in lieu of foreclosure.

29 D. Claim Preclusion

1 The Nevada Supreme Court has adopted a three-part test to determine the availability of claim
2 preclusion: “(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the
3 subsequent action is based on the same claims or any part of them that were or could have been
4 brought in the first case.” *G.C. Wallace, Inc. v Eighth Judicial District Court*, 127 Nev. 701, 706
5 (2011), citing to *Five Star*, 124 Nev. at 1054, 194 P.3d at 713 (footnote omitted).
6

7 E. Repudiation/Renunciation/Anticipatory Breach

8 17B C.J.S. Contracts § 718, *Acts constituting renunciation or repudiation*, states:

9 In order that the rule permitting the immediate institution of a suit on the renunciation
10 or repudiation of a contract may apply, the renunciation or repudiation must be a
11 present one. It must also be entire, or total, covering the entire performance to which
12 the contract binds the promisor, or the refusal to perform must be of a covenant going
13 to the whole consideration. Furthermore, the renunciation or repudiation must be
14 absolute or unequivocal. It has also been said that in order to be effective for this
15 purpose, the renunciation or repudiation must be clear, strict, positive, definite, specific,
16 distinct, final, unqualified, or unconditional.

17 In order to constitute an absolute and unequivocal repudiation, no precise form of
18 words is necessary. Whether an anticipatory repudiation has occurred is determined on
19 a case-by-case basis, depending on the particular language used.
20 The repudiation or renunciation may be by language or act making it futile for the other
21 party to proceed. An intent to repudiate may be expressly asserted or circumstantially
22 manifested by conduct. However, a party's words and acts communicated to the other
23 party, not its intention, should control. Thus, a mere expression of intention not to
24 perform, or not to be bound, is not enough, nor is a mere threat to abandon, or a mere
25 assertion that the party will be unable, or will refuse, to perform the contract. At the
26 same time, a refusal to perform may itself be a repudiation of the contract, in spite of a
27 party's words seeking to reassure the other party of its intent to perform in the future.

28 17B C.J.S. Contracts § 722, *Elections of remedies upon renunciation of executory contract-*

Acceptance or rejection of renunciation states:

The party injured by an anticipatory breach has an election to accept or reject the
refusal of performance. For the doctrine of breach by anticipatory repudiation to be
applied, the nonrepudiating party must treat the repudiation as a breach. That is, it must
accept and act on it. Moreover, it must also act promptly and within a reasonable
time. However, the effect of an anticipatory repudiation is not nullified by the fact that
the nonrepudiating party attempts to enforce performance.

1 The renunciation of a contract by the promisor before the time stipulated for
2 performance is not effective unless such repudiation is unequivocally or affirmatively
3 accepted by the promisee. If the promisee declines to accept the renunciation and
4 continues to insist on the performance of the promise, as it may do, the contract remains
5 in existence for the benefit, and at the risk, of both parties, and is binding on them, and,
6 if anything occurs to discharge it from other causes, the promisor may take advantage
7 of such discharge. Where the contract thus remains in existence, no actionable claim for
8 damages arises until the time for performance expires. Furthermore, a repudiation not
9 treated as an anticipatory breach is immaterial in an action thereafter brought to enforce
10 the contract.

11 If, after the attempted renunciation by one party to the contract, the other party elects to
12 treat the contract as still binding and to await the time for full performance, it is
13 incumbent on the party making such election to perform such of the obligations as may,
14 in the meantime, fall on it under the terms of the contract.

15 F. Tender of Payments

16 § 47:1. Showing of readiness and willingness to perform, 15 Williston on Contracts § 47:1 (4th
17 ed.) states:

18 A party to a contract who complains that the other party has breached the terms of the
19 contract must prove performance of the contract on his or her own part or a valid and
20 unconditional tender of performance rejected by the other party. Tender of performance
21 in this regard combines readiness, willingness, and ability to perform. In order to be
22 valid, tender of payment on a contract must be: (1) timely; (2) made to the person
23 entitled to payment; (3) unconditional; (4) an offer to pay the amount of money due;
24 and (5) coupled with an actual production of the money or its equivalent. The rules that
25 govern tenders are strict and strictly applied; a tender must be one of full performance
26 and unconditional to be valid; moreover, the party alleging an offer of tender must
27 possess the ability to perform, and the tender must be made in good faith. Unlike the
28 situation where performance by one party is a condition precedent to performance by
the other, where conditions are concurrent, the allegation of tender need not be of
absolute tender. A tender conditional on contemporaneous performance by the
defendant is sufficient and necessary. It has sometimes been said that in such a case, an
allegation of readiness and willingness on the part of the plaintiff is sufficient or even
that this is not part of the plaintiff's case. However, while in suits for specific
performance a different rule prevails in many jurisdictions to maintain an action for
legal relief, the plaintiff must not only be ready and willing to perform but also must
have manifested this before bringing the action, by some offer of performance to the
defendant, for, otherwise, both parties might be ready and willing and each stay at
home waiting for the other to come forward. While the situation is possible that each of
two parties has a right to specific performance against the other, it is not possible that
each shall have a right to damages for a total breach of the contract.

1 (Citations omitted).

2 In *Bank of America, N.A. v SFR Investment Pool 1*, LLC 134 Nev. 604, 610-11 (2018) the
3 Nevada Supreme Court discussed the obligation of a tendering party. The Supreme Court stated:
4

5 Whether a tendering party must pay the amount into court depends on the nature of the
6 proceeding and the statutory and common law of the
7 jurisdiction. *See* Annotation, *Necessity of Keeping Tender Good in Equity*, 12 A.L.R.
8 938 (1921) (“Generally, there is no fixed rule in equity which requires a tender to be
9 kept good in the sense in which that phrase is used at law.”); *see*
10 *also* Restatement (Third) of Prop.: Mortgages § 6.4 (Am. Law Inst. 1997) (“The tender
11 must be kept good in the sense that the person making the tender must continue at all
12 times to be ready, willing, and able to make the payment.”). Where payment into court
13 is not explicitly required, “avermment of a readiness and willingness to bring the money
14 into court, and pay the same on the order of the court, is sufficient.”
15 Annotation, *Necessity of Keeping Tender Good in Equity*, 12 A.L.R. 938 (1921). And,
16 “the necessity of keeping a tender good and of paying the money into court has no
17 application to a tender made for the purpose of discharging a mortgage lien.”
18 Annotation, *Unaccepted Tender as Affecting Lien of Real Estate Mortgage*, 93 A.L.R.
19 12 (1934) (explaining that such a tender would either immediately discharge the
20 mortgage lien or the lien would remain unimpaired by the tender).

21 (Citations omitted).

22 If a party seeks to reinstate a loan having alleged a wrongful foreclosure occurred in that the
23 party was not in default, then the party must still allege and prove the party performed and has the
24 ability to tender any amounts in contention and to continue performing. *Turner v Seterus, Inc*, 27
25 Cal.App 5th 516, 530-31 (Ct. App 3rd CA 2018).

26 G. Substantial Compliance and NRS 107.080

27 NRS 107.080 (5) through (8) states:

28 5. Every sale made under the provisions of this section and other sections of this
chapter vests in the purchaser the title of the grantor and any successors in interest
without equity or right of redemption. Except as otherwise provided in subsection 7, a
sale made pursuant to this section must be declared void by any court of competent
jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not substantially
comply with the provisions of this section;

1 (b) Except as otherwise provided in subsection 6, an action is commenced in the
2 county where the sale took place within 30 days after the date on which the trustee's
3 deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder
4 of the county in which the property is located; and

5 (c) A notice of lis pendens providing notice of the pendency of the action is
6 recorded in the office of the county recorder of the county where the sale took place
7 within 5 days after commencement of the action.

8 6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of
9 subsection 4 to the grantor, to the person who holds the title of record on the date the
10 notice of default and election to sell is recorded, to each trustor or to any other person
11 entitled to such notice, the person who did not receive such proper notice may
12 commence an action pursuant to subsection 5 within 90 days after the date of the sale.

13 7. Upon expiration of the time for commencing an action which is set forth in
14 subsections 5 and 6, any failure to comply with the provisions of this section or any
15 other provision of this chapter does not affect the rights of a bona fide purchaser as
16 described in NRS 111.180.

17 8. If, in an action brought by the grantor or the person who holds title of record in
18 the district court in and for the county in which the real property is located, the court
19 finds that the beneficiary, the successor in interest of the beneficiary or the trustee did
20 not comply with any requirement of subsection 2, 3 or 4, the court must award to the
21 grantor or the person who holds title of record:

22 (a) Damages of \$5,000 or treble the amount of actual damages, whichever is
23 greater;

24 (b) An injunction enjoining the exercise of the power of sale until the beneficiary,
25 the successor in interest of the beneficiary or the trustee complies with the requirements
26 of subsections 2, 3 and 4; and

27 (c) Reasonable attorney's fees and costs,
28 unless the court finds good cause for a different award. The remedy provided in this
subsection is in addition to the remedy provided in subsection 5.

In *Schleining v Cap One, Inc*, 130 Nev. 323, 327 (2014), the Supreme Court held that NRS
107.080 does not require strict adherence. The Court focused upon the "does not substantially comply
with" language. In *Dayco Funding Corporation v Mona*, 134 Nev. 929 (2018) the Nevada Supreme
Court held that substantial compliance is found when the title holder "had actual knowledge of the
default and the pending foreclosure sale" and "was not prejudiced by the lack of statutory notice." Id.
citations omitted.

1 This Court found one decision which stated that inaccurate numbers regarding a deficiency was
2 not grounds to find that a notice of default was not in substantial compliance. *Kehoe v Aurora Loan*
3 *Services LLC*, 2010 WL 4286331 (US Dst. Ct D. Nev 2010).

4 H. Computation of Damages-NRCP Rule 16.1

5 NRCP Rule 16.1 (a) (1) (iv) requires an initial disclosure regarding the Plaintiff's computation
6 of damages:

7 (iv) a computation of each category of damages claimed by the disclosing party--who
8 must make available for inspection and copying as under Rule 34 the documents or
9 other evidentiary material, unless privileged or protected from disclosure, on which
10 each computation is based, including materials bearing on the nature and extent of
11 injuries suffered;

12 In *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 265 (2017), the Nevada Supreme Court
13 held that NRCP Rule 37 (c) (1) "provides the appropriate analytical framework for district courts to
14 employ in determining the consequence..." for a failure to comply with NRCP Rule 16.1. The party
15 in violation must show a "substantial justification" or that the failure is harmless to avoid sanctions
16 that include the exclusion of evidence. *Id.*

17 NRCP Rule 37 (b) (1) states:

18 (b) Sanctions for Failure to Comply With a Court Order.

19 (1) For Not Obeying a Discovery Order. If a party or a party's officer,
20 director, or managing agent — or a witness designated under Rule 30(b)(6) or 31(a)(4)
21 — fails to obey an order to provide or permit discovery, including an order under Rule
22 35 or 37(a), the court may issue further just orders that may include the following:

23 (A) directing that the matters embraced in the order or other designated
24 facts be taken as established for purposes of the action, as the prevailing party claims;

25 (B) prohibiting the disobedient party from supporting or opposing
26 designated claims or defenses, or from introducing designated matters in evidence;

27 (C) striking pleadings in whole or in part;

28 (D) staying further proceedings until the order is obeyed;

(E) dismissing the action or proceeding in whole or in part;

(F) rendering a default judgment against the disobedient party; or

(G) treating as contempt of court the failure to obey any order except an
order to submit to a physical or mental examination.

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V. FINDINGS OF FACT

1. In May of 2007, Vicenta Lincicome financed a property known as 70 Riverside Drive, Dayton Nevada 89403 with a loan in the amount of \$381,150.00 secured by a recorded deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and Mortgage Electronic Registration Systems, Inc. "MERS" as the beneficiary and nominee of the lender. Vicenta Lincicome executed the documents that created the deed of trust and note and understood she had a 30-year maturity date.
2. On August 15, 2011, MERS recorded an assignment of the deed of trust, transferring the interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP.
3. On November 25, 2015, BANA recorded an assignment of the deed of trust transferring its interest to U.S. Bank.
4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
6. In July 2009, BANA offered the Plaintiffs a loan modification agreement "LMA." The new loan balance was \$417,198.58. The Plaintiffs were provided a post office box to send payments.
7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch in Carson City on September 1, 2009. The Plaintiffs attempted to make the second payment at a BANA Branch but it was rejected as BANA's computer system did not recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their deposition testimony states they were aware of the breach at that time.

- 1 8. The Plaintiffs made no other attempts to mail the payments. BANA then notified the
2 Plaintiffs in October of 2009 stating that the loan had not been modified. However, then
3 BANA signed the LMA and recorded it in March of 2011.
- 4 9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the
5 property at \$381,000. The Plaintiffs made no payment at the time of bankruptcy filing or
6 during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.
- 7 10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no
8 payment on the offer. BANA offered another modification on April 2015 but the loan was
9 service released to Fay Servicing prior to the final payment.
- 10 11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final
11 decree was filed by the Bankruptcy Court in July of 2015.
- 12 12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of
13 default.
- 14 13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation
15 assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank
16 and Fay Servicing as interested parties.
- 17 14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff
18 Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All
19 parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make
20 three payments of \$2462.30 as an offered trial period plan. The payments had to be made
21 on April 1, 2018, May 1, 2018 and June 1, 2018.
- 22 15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in
23 lieu of foreclosure. A certificate for foreclosure was issued.
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1 16. The Plaintiffs did not place the required monthly payments in a bank account or escrow
2 account. Plaintiffs spent all of their income on either items. Plaintiffs do not have
3 sufficient funds to pay off what is owed under any theory as to what instrument controls the
4 computation of what is owed.

5 17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that
6 they could not afford to make payments on the mortgage. The Plaintiffs have never averred
7 to the Court that they are ready, willing, and able to perform on the original mortgage or
8 subsequent modifications.
9

10 18. A Notice of Default and Notice of Sale was filed against the subject property.

11 19. On November 7, 2018, the Plaintiffs filed a complaint for injunctive relief, contractual
12 claims and declaratory relief regarding the foreclosure sale of the subject property.
13

14 20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and
15 then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and
16 Permanent Injunction with the Court.
17

18 21. On December 31, 2018, the Court entered an order enjoining the foreclosure sale if the
19 Plaintiffs posted a bond in the amount of \$172,610.67 and additional security in the amount
20 of \$2,105.10 per month thereafter. The Plaintiffs did not file the bond.

21 22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the
22 property for \$294,000.01.
23

24 23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of
25 the subject property was recorded.

26 ANALYSIS

27 The gravamen of the Plaintiffs' causes of action is the alleged breach of the 2009 Loan
28

1 Modification Agreement by Defendant BANA. The Plaintiffs allege that Vincenta Lincicome executed
2 and mailed the application in July of 2009. The Court infers from these allegations that the Plaintiffs
3 believe that the mailing of the application constituted an acceptance and the LMA was from that point
4 on a binding contract between the parties.

5 After mailing the forms, BANA accepted a payment and informed the Plaintiffs that they
6 would investigate whether the LMA was accepted. In October of 2009, the Plaintiffs received a
7 mortgage statement indicating that BANA had not accepted the LMA and was using the terms of the
8 original agreement. From these alleged facts, the Court cannot find an offer and acceptance of the
9 LMA had occurred. BANA's conduct and statements clearly indicated the original agreement had not
10 been modified.
11

12
13 If the original agreement was still in place, then the Plaintiffs were legally obligated to perform
14 as promised. No one argued that BANA had invited the Plaintiffs to apply for the modification which
15 could be rejected. The Plaintiffs never received any notice from BANA that BANA accepted the
16 LMA until March of 2011. It is unclear to the Court that the two year delay could constitute an
17 acceptance nunc pro tunc, but as explained herein, it makes no difference to the Court's analysis.
18

19 No issues of fact exist as to whether the Plaintiffs would have failed to make the required
20 payments under any of the purported offers and alleged agreements. The Plaintiffs, admittedly, had no
21 ability to pay and made no attempt to put any payments aside once BANA or other Defendants made a
22 demand for payment. The Plaintiffs also admitted that they entered into different modification plans
23 after the LMA based upon their inability to pay.
24

25 The Plaintiffs rely on a theory that their performance was permanently excused by the failure
26 of BANA to accept a single payment under the terms of the LMA. The Plaintiffs also rely on a theory
27 that their performance was excused by the failure of Fay to accept a payment under a modification on
28

1 a subsequent modification. These theories fail under relevant law for several reasons.

2 If, as alleged, the LMA was effective upon mailing, then the breach occurred in 2009. If as
3 alleged the LMA was effective in 2011, then the breach occurred in 2011. The Plaintiffs were told that
4 BANA would not accept the modified payment in 2009. They understood BANA would not perform
5 under the LMA in October of 2009. They failed to bring an action against BANA until November 7,
6 2018. The six year statute of limitations in NRS 11.190 would apply. The date of the filing of the
7 LMA had no impact on the date of the breach.
8

9 Additionally, if the LMA or subsequent modification was effective, then the Plaintiffs' theory
10 of excuse of performance also fails as contract law requires a non-breaching party to elect a remedy in
11 a reasonable time. As stated in 17B C.J.S. Contracts § 722, the non-breaching party must accept the
12 repudiation and elect a remedy. The non-breaching party must also act promptly and within a
13 reasonable time. The Plaintiffs did nothing in either 2009 or 2011. Restitution to the lenders would
14 also apply if the Plaintiffs had chosen to accept the repudiations and end the agreement.
15

16 The theory of excuse put forth by the Plaintiffs also ignores the materiality and order of the
17 performances under the agreement. A lender materially performs by providing the funds requested
18 under the loan. A borrower must then materially perform by making the monthly payments. Further,
19 the theory of excuse of performance may delay the need to perform but it does not discharge the duty
20 to pay once the performance was demanded. Performance could be demanded as the Plaintiffs did not
21 accept the repudiation.
22

23 Contract and mortgage law would also require that the Plaintiffs remain ready, willing and able
24 to perform each month. The deposition testimony clearly indicated that the Plaintiffs could not
25 perform under any of the offers and modifications of the original agreement.
26

27 The Plaintiffs entered into a bankruptcy after their incomes went down and they had an
28

1 unanticipated tax bill. The bankruptcy filing indicates that the Plaintiffs believed they were under the
2 original agreement and represented such to the bankruptcy court. The facts establish that the Plaintiffs
3 did not have the ability to make the payments under any of the offers or alleged agreements. They
4 have failed to pay for over a decade. The Plaintiffs had made no effort to tender the missed payments
5 under any of the agreements.
6

7 Additionally, as the Plaintiffs did not act upon the failure of BANA or its successors to accept
8 the payment and repudiate the LMA or modification in a reasonable time, then subsequent agreements
9 and the bankruptcy could act as an intervening event and excuse any breach of not accepting the
10 original LMA payments. The subsequent modifications and agreement to provide a deed in lieu of
11 foreclosure would have excused the original alleged breach.
12

13 The failure of the Plaintiffs to repudiate the agreement also allowed BANA or its successors to
14 demand at a later time that the Plaintiffs perform. Since their performance was merely delayed, the
15 Plaintiffs became the breaching party once BANA and its successors made a demand for payment and
16 payment did not occur. The Plaintiffs tendered very few payments over the course of a decade. The
17 Plaintiffs should have offered the payments under the LMA if they believed it was in effect. They
18 could have preserved any rights they believed they had under the LMA by making a tender after
19 receiving the notice of default.
20

21 Claim preclusion would also apply. The Plaintiffs are not entitled to switch theories depending
22 upon what court they are in. BANA would be bound as well by any representations made in the
23 bankruptcy proceedings.
24

25 Disturbing to the Court, the Plaintiffs seem to believe that they can game the system to avoid
26 repaying the money borrowed and to remain in a house rent free. Albert Ellis Lincicome, Jr.'s
27 testimony clearly establishes that the Plaintiffs want more time to continue their free ride. If they have
28

1 to abuse a mediation program to get more time then so be it. The Plaintiffs' signatures affirming that
2 they would be bound by the agreement meant nothing. The Plaintiffs admit to engaging in bad faith.

3 Under *Jones*, the mediated agreement of deed in lieu of foreclosure is enforceable. The
4 Plaintiffs admitted that they chose not to enter into the offered terms. The agreement settled all claims
5 regarding the mortgage. The Plaintiffs have an obligation under the agreement to surrender the
6 property. NRS 40.453 does not apply as argued in other motions.

7
8 The foreclosing defendants substantially complied with NRS 107.080 notice requirements.
9 The Plaintiffs were clearly noticed that they were in default and when the foreclosure sale would
10 occur. The fact that they disputed the amount of the default did not create any prejudice to them as
11 they never intended to make a tender of any amount. The notice provided them the opportunity to file
12 an action to stop the foreclosure sale which they then did. They were given an opportunity to file a
13 bond and then perform under the agreement they argued was in effect, but then failed to do so.

14
15 Finally, the Court finds that the failure to provide a computation of damages as required by
16 NRCP Rule 16 has not been justified. The Plaintiffs failure to provide the computation cannot be
17 justified by their counsel's belief that to deal with damages at a later point in time is more economical.
18 The epidemic and the Plaintiffs' hectic schedule has no impact on Counsel's determination of
19 damages. The Plaintiffs had over two years to comply with the rule.

20
21 The Court also notes that the Plaintiffs were supposed to negotiate in good faith during a
22 settlement conference that was ordered. How they could do so without understanding their damages is
23 perplexing. Is this just more bad faith? The Court believes that the appropriate sanction is to strike all
24 allegations concerning monetary damages from the Complaint as the failure appears to be made in bad
25 faith and in an effort to prolong this matter further.

26
27 **CONCLUSIONS OF LAW**
28

1. Sanctions striking allegations the Plaintiffs have suffered monetary damages are appropriate as the Plaintiffs have not justified their failure to provide a computation of damages pursuant to NRCP Rule 16.1.
2. The Plaintiffs are not entitled to partial summary judgment.
3. The Defendants are entitled to summary judgment.

VI. ORDER

Therefore, based upon the above and good cause appearing, **IT IS HEREBY ADJUDGED and ORDERED** that BANA's request for sanctions is **GRANTED**. The Court strikes all allegations in the Complaint that the Plaintiffs have suffered monetary damages.

IT IS HEREBY FURTHER ADJUDGED and ORDERED that that Plaintiffs' Motion for Partial Summary Judgment is **DENIED**.

IT IS HEREBY FURTHER ADJUDGED and ORDERED that the Motions for Summary Judgment filed by BANA, Shellpoint Mortgage Servicing, Prof-2013 M4 Legal Trust, U.S. Bank, National Association as Legal Trustee ("U.S. Bank Trust") and Fay Servicing LLC., are **GRANTED**.

IT IS HEREBY FURTHER ADJUDGED and ORDERED that BANA's request for NRCP Rule 54(b) certification as a final judgment is **GRANTED**. The Court finds no just reason for the delay.

IT IS HEREBY FURTHER ORDERED that the hearing on Motions set for July 28, 2021 is **VACATED**. The Court found the pleadings sufficient to enter an order without argument.

DATED: This 23rd day of June, 2021.



HON. LEON ABERASTURI
DISTRICT COURT JUDGE

Certificate of Mailing

I hereby certify that I, Quoc Thai, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

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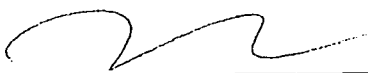
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DATED: This 23rd day of June, 2021.



Employee of Hon. Leon Aberasturi

Notice of Entry of Order on Breckenridge Motion for
Summary Judgment

Exhibit G

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10 *Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as*

11 *Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC*

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and
15 VICENTA LINCICOME,

16 Plaintiffs,

17 vs.

18 SABLES, LLC, a Nevada limited liability
19 company, as Trustee of the Deed of Trust, given
20 by Vicenta Lincicome and dated 5/23/2007 *et*
21 *al.*

22 Defendants.

23 and all related cases.

Case No.: 18-cv-01332

Dept. No.: II

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that an ORDER ON BRECKENRIDGE MOTION FOR
25 SUMMARY JUDGMENT was entered in the above-entitled Court on the 23rd day of June,
26 2021. A copy of which is attached hereto.

27 DATED this 29th day of June, 2021.

28 WRIGHT, FINLAY & ZAK, LLP



Ramir M. Hernandez, Esq.

Nevada Bar No. 13146

Attorneys for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC

AFFIRMATION

Pursuant to NRS 239B.03/603A.040

The undersigned does hereby affirm that the foregoing document does not contain any of the following information governed by NRS 239B.030 and NRS 603A.040:

1. Social Security Number;
2. Driver License Number or Identification Card Number; or
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include any publically available information that is lawfully made available to the general public.

DATED this 29th day of June, 2021.

WRIGHT, FINLAY & ZAK, LLP



Ramir M. Hernandez, Esq.

Nevada Bar No. 13146

Attorneys for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,
3 LLP, and that on this 30th day of June, 2021, I did cause a true copy of the foregoing **NOTICE**
4 **OF ENTRY OF ORDER** to be served by depositing a true copy of same in the United States
5 Mail, at Las Vegas, Nevada, addressed as follows:

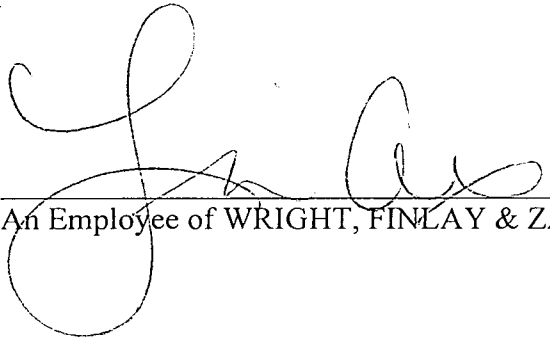
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9 Minden, NV 89423

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12 Gardnerville, NV 89410

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21 Las Vegas, NV 89145

22 Casey J. Nelson, Esq.
23 WEDGEWOOD, LLC
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25 2320 Potosi Street, Suite 130
26 Las Vegas, Nevada 89146

27 
28 An Employee of WRIGHT, FINLAY & ZAK, LLP

FILED

2021 JUN 23 PM 4:07

JANVA TEEBOW
CLERK, ADMINISTRATOR
THIRD JUDICIAL DISTRICT

U.S. DISTRICT COURT

LYON COUNTY, NEVADA

Case No.: 18-CV-01332

Dept. No.: II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

* * *

ALBERT ELLIS LINCICOME, JR. and
VICENTA LINCICOME,

Plaintiffs,

vs.

SABES, LLC, a Nevada limited liability company, as
Trustee of the Deed of Trust given by Vicenta
Lincicome and dated 5/23/2007; FAY SERVICING,
LLC, a Delaware limited liability company and
subsidiary of Fay Financial, LLC; PROF-2013 M4
LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal
Title Trustee; for BANK OF AMERICAN, N.A.;
BRECKENRIDGE PROPERTY FUND 2016, A Utah
limited liability company; NEWREZ, LLC, d/b/a
SHELLPOINT MORTGAGE SERVICING, LLC
substituted in for DOE 1; 1900 CAPITAL TRUST II,
BY U.S. BANK TRUST NATIONAL ASSOCIATION,
substituted in for DOE 2; MNCM-2018-NPL@,
substituted in for DOE 3; and DOES 4-10.

Defendants.

ORDER ON
BRECKENRIDGE MOTION
FOR SUMMARY
JUDGMENT

I. STATEMENT OF THE CASE

On March 18, 2021, Breckenridge Property Fund 2016, LLC ("Breckenridge") filed a Motion for Summary Judgment. On April 15, 2021, the Plaintiffs filed an Opposition. On May 10, 2021,

1 Breckenridge filed a Reply.

2 **II. ISSUE PRESENTED**

3 Should the Court grant Breckenridge's Motion for Summary Judgment?

5 **III. SUMMARY OF DECISION**

6 The Court finds that no genuine material issues of fact exist and Breckenridge is entitled to
7 summary judgment as a matter of law.

9 **IV. PRINCIPLES OF LAW**

10 **A. Standard of Review**

11 NRCP 56(c) requires a court to enter summary judgment in favor of a party when the
12 "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if
13 any, show that there is no genuine issue as to any material fact and that the moving party is entitled to
14 a judgment as a matter of law. " NRCP 56(c). A genuine issue of material fact exists where the
15 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Posada v. City*
16 *of Reno*, 109 Nev. 448 (1993).

17
18 When reviewing a motion for summary judgment, the evidence and all reasonable inferences
19 drawn from the evidence, must be viewed in a light most favorable to the non-moving party. *Richards*
20 *v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213 (2006). Summary judgment is appropriate and
21 "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no
22 "genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a
23 matter of law. *Wood v. Safeway, Inc.*, 106 Nev. 601, 603 (1990).

26 **B. NRS 40.010**

1 NRS 40.010 states, "An action may be brought by any person against another who claims an
2 estate or interest in real property, adverse to the person bringing the action, for the purpose of
3 determining such adverse claim."

4 D. NRS 111.180

5 NRS 111.180 states:

6
7 1. Any purchaser who purchases an estate or interest in any real property in good
8 faith and for valuable consideration and who does not have actual knowledge,
9 constructive notice of, or reasonable cause to know that there exists a defect in, or adverse
10 rights, title or interest to, the real property is a bona fide purchaser.

11 2. No conveyance of an estate or interest in real property, or charge upon real
12 property, shall be deemed fraudulent in favor of a bona fide purchaser unless it appears
13 that the subsequent purchaser in such conveyance, or person to be benefited by such
14 charge, had actual knowledge, constructive notice or reasonable cause to know of the
15 fraud intended.

16 E. NRS 40.250

17 NRS 40.250 states:

18 A tenant of real property or a mobile home for a term less than life is guilty of an
19 unlawful detainer when the tenant continues in possession, in person or by subtenant, of
20 the property or mobile home or any part thereof, after the expiration of the term for
21 which it is let to the tenant. In all cases where real property is leased for a specified
22 term or period, or by express or implied contract, whether written or parol, the tenancy
23 terminates without notice at the expiration of the specified term or period.

24 V. **FINDINGS OF FACT**

25 1. In May of 2007, Vicenta Lincicome financed a property known as 70 Riverside Drive,
26 Dayton Nevada 89403 with a loan in the amount of \$381,150.00 secured by a recorded
27 deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and
28 Mortgage Electronic Registration Systems, Inc. "MERS" as the beneficiary and nominee of
the lender. Vicenta Lincicome executed documents creating the deed of trust and note and
understood she had a 30-year maturity date.

2. On August 15, 2011, MERS recorded an assignment of the deed of trust, transferring the interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP.
3. On November 25, 2015, BANA recorded an assignment of the deed of trust transferring its interest to U.S. Bank.
4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
6. In July 2009, BANA offered the Plaintiffs a loan modification agreement "LMA." The new loan balance was \$417,198.58. The Plaintiffs were provided a post office box to send payments.
7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch in Carson City on September 1, 2009. The Plaintiffs attempted to make the second payment at a BANA Branch but it was rejected as BANA's computer system did not recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their deposition testimony states they were aware of the breach at that time.
8. The Plaintiffs made no other attempt to mail the payments. BANA then notified the Plaintiffs in October of 2009 stating that the loan had not been modified. However, then BANA signed the LMA and recorded it in March of 2011.
9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the property at \$381,000. The Plaintiffs made no payments at the time of bankruptcy filing or during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.

- 1 10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no
2 payments on the offer. BANA offered another modification on April 2015 but the loan was
3 service released to Fay Servicing prior to the final payment.
- 4 11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final
5 decree was filed by the Bankruptcy Court in July of 2015.
- 6 12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of
7 default.
- 8 13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation
9 assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank
10 and Fay Servicing as interested parties.
- 11 14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff
12 Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All
13 parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make
14 three payments of \$2462.30 as an offered trial period plan. The payments had to be made
15 on April 1, 2018, May 1, 2018 and June 1, 2018.
- 16 15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in
17 lieu of foreclosure. A certificate for foreclosure was issued.
- 18 16. The Plaintiffs did not place the required monthly payments in a bank account or escrow
19 account. Plaintiffs spent all of their income on either items. Plaintiffs do not have
20 sufficient funds to pay off what is owed under any theory as to what instrument controls the
21 computation of what is owed.
- 22 17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that
23 they could not afford to make payments on the mortgage. The Plaintiffs have never averred
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1 to the Court that they are ready, willing, and able to perform on the original mortgage or
2 subsequent modifications.

3 18. The foreclosing party recorded a Notice of Default and Notice of Sale against the subject
4 property.

5 19. On November 7, 2018, the Plaintiffs filed a complaint for injunctive relief, contractual
6 claims and declaratory relief regarding the foreclosure sale of the subject property.

7 20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and
8 then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and
9 Permanent Injunction with the Court.

10 21. On December 31, 2018, the Court entered an order enjoining the foreclosure sale if the
11 Plaintiffs posted a bond in the amount of \$172,610.67 and additional security in the amount
12 of \$2,105.10 per month thereafter. The Plaintiffs did not file the bond.

13 22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the
14 property for \$294,000.01.

15 23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of
16 the subject property was recorded.

17 VI. ANALYSIS

18 The Court incorporates the legal findings, factual findings and analysis contained in its
19 separate "ORDER DENYING PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT/
20 GRANTING MOTIONS FOR SUMMARY JUDGMENT FILED BY BANA, PROF-2013 M4
21 LEGAL TRUST, US BANK AND FAY SERVICING LLC." As Breckenridge purchased the subject
22 property at the foreclosure sale, Breckenridge is entitled to summary judgment regarding their claims
23 to title of the property.
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1 VII. CONCLUSIONS OF LAW

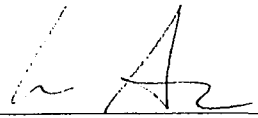
2 Breckenridge is entitled to a motion for summary judgment in its favor.

3
4 ORDER

5 Therefore, good cause appearing, **IT IS HEREBY ADJUDGED and ORDERED** that
6 Breckenridge's Motion for Summary Judgment is **GRANTED**.

7
8 **IT IS HEREBY FURTHER ORDERED** that the hearing on Motions set for July 28, 2021 is
9 **VACATED**. The Court found the pleadings sufficient to enter an order without argument.

10
11
12 DATED: This 23rd day of June, 2021.

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15 
16 _____
17 HON. LEON ABERASTURI
18 DISTRICT JUDGE
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Certificate of Mailing

I hereby certify that I, Guo Ther, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Michael G. Millward, Esq.
Millward Law, Ltd.
1591 Mono Ave.
Minden, NV 89423

Shadd A. Wade
Zieve, Brodnax & Steele, LLP
9435 W. Russel Rd., Ste. 120
Las Vegas, NV 89148

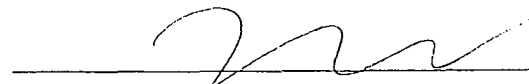
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7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

DATED: This 23rd day of June, 2021.



Employee of Hon. Leon Aberasturi

Breckenridge Property Fund 2016's Motion for Attorney Fees
and Costs

Exhibit H

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2 Brenoch R. Wirthlin, Esq. (10282)
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14 caseynelson@wedgewood-inc.com
15 *Attorney for Defendant, Counterclaimant, and Cross-Plaintiff*
16 *Breckenridge Property Fund 2016, LLC*

13 **THIRD JUDICIAL DISTRICT COURT**
14 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR., and
15 VICENTA LINCICOME,

16 Plaintiff,

17 v.

18 SABLES, LLC, a Nevada limited liability
19 company, as Trustee of the Deed of Trust given
20 by Vicenta Lincicome and dated 5/23/2007; FAY
21 SERVICING, LLC, a Delaware limited liability
22 company and subsidiary of Fay Financial, LLC;
23 PROF-2013-MF LEGAL TITLE TRUST by U.S.
24 BANK, N.A., as Legal Title Trustee; for BANK
25 OF AMERICA, N.A.; BRECKENRIDGE
26 PROPERTY FUND 2016; NEWREZ LLC dba
SHELLPOINT MORTGAGE SERVICING,
LLC; 1900 CAPITAL TRUST II, BY U.S.
BANK TRUST NATIONAL ASSOCIATION;
MCM-2018-NPL2 and DOES 1-50.,

27 Defendants.

28 AND RELATED MATTERS.

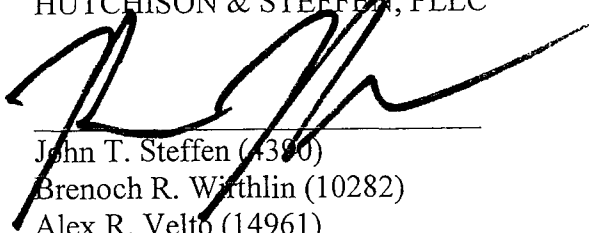
Case No.: 18-CV-01332
Dept No.: II

**BRECKENRIDGE PROPERTY FUND
2016'S MOTION FOR ATTORNEY FEES
AND COSTS**

COMES NOW Breckenridge Property Fund 2016, LLC ("Breckenridge"), by and through its attorney of record, Hutchison & Steffen, PLLC and hereby submits this motion for attorney fees and costs to the Court. This motion is made and based upon the following points and authorities, the pleadings and papers on file, the attached affidavits and exhibits, and any oral argument this court may entertain.

DATED this 19th day of July, 2021.

HUTCHISON & STEFFEN, PLLC


John T. Steffen (4390)
Brenoch R. Wirthlin (10282)
Alex R. Velto (14961)

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caseynelson@wedgewood-inc.com

*Attorney for Defendant, Counterclaimant, and
Cross-Plaintiff Breckenridge Property Fund 2016,
LLC*

DECLARATION OF BRENOCH R. WIRTHLIN, ESQ.

1. I am partner with the law firm of HUTCHISON & STEFFEN, LLC., counsel of record for Plaintiff Breckenridge Property Fund 2016 ("Breckenridge") in the above-captioned case.

2. I have personal knowledge of the costs and attorneys' fees expended in this case. Items contained herein are true and correct to the best of my knowledge and belief.

3. I make this affidavit in support of Breckenridge' application for attorneys' fees and costs.

1 4. Based upon my review of the attorneys' fees incurred by Breckenridge from Hutchison &
2 Steffen, the total amount of fees of \$44,648.00 was both reasonable and necessary. Redacted billing
3 records reflecting these fees are attached hereto as **Exhibit 6**.

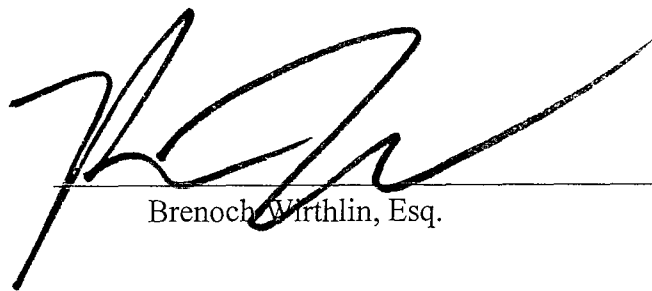
4 5. During the course of this litigation, Breckenridge's counsel has, among other things,
5 drafted and filed pleadings, initial appearance and fee disclosures, multiple pleadings and discovery
6 related documents, a motion for summary judgment, and a reply in support of summary judgment.
7 Counsel has also been required to prepare for and attend multiple hearings, conduct legal research
8 and analysis, communicate with opposing counsel, and engage in client consultation and strategy
9 meetings.

10 6. The total costs, as outlined in the Memorandum of Costs and Disbursements, were
11 \$3,788.01.

12 7. As set forth in this Motion, Breckenridge and the undersigned believe the fees and costs
13 requested are reasonable and necessary, and were reasonably and necessarily incurred in this matter.

14 I make this declaration pursuant to the requirements of NRCP 54(d)(2)(B) and NRCP 68(f) under
15 penalty of perjury of the laws of the State of Nevada, and its contents are true and correct to the best of
16 my knowledge and belief.
17

18 DATED this 19th day of July, 2021.

19
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22 
23 Brenoch Wirthlin, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

This case pertains to the foreclosure of real property commonly known as 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") that took place on or about January 4, 2019 at which time Breckenridge purchased the Subject Property for \$294,000.01.

Albert Ellis Lincicome, Jr. and Vicenta Lincicome ("Plaintiffs") formerly owned the Subject Property. Plaintiffs brought this lawsuit and argue that the foreclosure sale was improperly conducted but they ignore that the evidence uniformly confirms that they were in default and received actual notice of the same. No amount of distraction about the loan documents or issues of prior loan modification can change these facts. There is no dispute that the Plaintiffs were in default at the time of foreclosure and received both the Notice of Default and the Notice of Sale.

Plaintiffs had no viable claims against Breckenridge. The essence of Plaintiffs' Complaint is that the foreclosing lender did not have the ability to foreclose. Plaintiffs conceded that they executed the note and deed of trust and were in default of their loan obligations. Discovery has proven that the foreclosure complied with NRS, that the Plaintiffs were in default of the loan obligations and received both the notice of default and the notice of sale.

As a result of the foreclosure sale, Plaintiffs have been divested of any ownership interest in the Subject Property. Consequently, there were no genuine issues of material fact in this case. This Court so found and granted Breckenridge's motion for summary judgment. Breckenridge now seeks attorney fees and costs pursuant to applicable statute.

II. Statement of Undisputed Facts.

1. On or about May 23, 2007, Plaintiffs executed a Note and Deed of Trust that was secured by the Subject Property. *See Exhibit #1.*

1 2. Plaintiffs subsequently defaulted on that loan obligation resulting in a Notice of Default
2 and Notice of Sale being recorded against the Subject Property. *See Exhibits #2 and #3.*

3 3. On November 7, 2018, Plaintiffs filed a complaint for injunctive relief, contractual
4 claims, and declaratory relief regarding the scheduled foreclosure sale of the Subject Property.

5 4. On November 8, 2018, Plaintiffs recorded a lis pendens on the Property and also filed
6 an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.

7 5. On December 31, 2018, the Court entered an order enjoining the foreclosure on the
8 Subject Property if the Plaintiffs timely posted of a bond in the amount of \$172,610.67 and additional
9 security in the amount of \$2,105.10 per month thereafter.
10

11 6. Plaintiffs failed to post the bond and the Subject Property went to foreclosure sale on or
12 about January 4, 2019, at which time Breckenridge purchased the Subject Property for \$294,000.01,
13 relying on the fact that the noticed foreclosure sale was valid because Plaintiff failed to post the requisite
14 bond. *See Exhibit #4.*
15

16 7. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's
17 ownership of the Subject Property was recorded. *See Exhibit #5.*
18

19 8. On December 20, 2019, Plaintiffs filed their Second Amended Complaint, wherein they
20 brought claims against Breckenridge for Declaratory Relief and Quiet Title.

21 9. Breckenridge subsequently filed a Counterclaim against Plaintiffs through which it
22 claims ownership to the Subject Property, seeks to quiet title in its favor, seeks possession of the
23 Property, and seeks other monetary damages.
24

25 10. On June 23, 2021, this Court entered its Order on Breckenridge's Motion for Summary
26 Judgment ("MSJ Order") granting Breckenridge summary judgment on its claims.

27 ///
28

1 **III. Law and Argument**

2 **A. The law permits an award of attorney fees and costs.**

3 Nevada law permits an award of attorneys' fees whenever authorized by statute, rule, or contract. *See*
4 *U.S. Design & Const. Corp. v. Int'l Broth. of Elec. Workers*, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002).
5 NRS 18.010(2) sets forth those situations whereby the Court may properly award attorneys' fees:

6 In addition to the cases where an allowance is authorized by a specific statute, the court may make
7 an allowance of attorney's fees to a prevailing party:

8
9 (a) When the prevailing party has not recovered more than \$20,000; or

10 (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim,
11 cross-claim or third-party complaint or defense of the opposing party was brought or
12 maintained without reasonable ground or to harass the prevailing party. . .

13 Furthermore, NRS 18.010(2) goes on to describe the liberal construction of the provisions:

14 The court shall liberally construe the provisions of this paragraph in favor of awarding
15 attorneys' fees in all appropriate situations. It is the intent of the Legislature that the court
16 award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of
17 the Nevada Rules of Civil Procedure in all appropriate situations to punish for an deter
18 frivolous or vexatious claims and increase the costs of engaging in business and providing
19 professional services to the public.

20 *Id.*

21 Moreover, NRS 18.020 provides:

22 Costs must be allowed of course to the prevailing party against any adverse party against
23 whom judgment is rendered, in the following cases:

- 24 1. In an action for the recovery of real property or a possessory right thereto.
- 25 2. In an action to recover the possession of personal property, where the value of the
26 property amounts to more than \$2,500. The value must be determined by the jury, court
27 or master by whom the action is tried.
- 28 3. In an action for the recovery of money or damages, where the plaintiff seeks to recover
more than \$2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS
306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any
tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if
originally commenced in a Justice Court.

Nev. Rev. Stat. Ann. § 18.020 (West).

1
2
3 As such, an award of attorney fees and costs as requested above is merited on the cited bases.

4 Further, the Nevada Supreme Court has recognized that a claim or defense is groundless if it is
5 “not supported by any credible evidence at trial.” *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089,
6 1095, 901 P.2d 684, 687-88 (1995) (citation omitted). There must be evidence in the record supporting
7 the proposition that the claim was brought or the defense maintained “without reasonable grounds or to
8 harass the other party.” *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005).
9 Further, the decision to award attorney fees is within the sound discretion of the district court and will
10 not be overturned absent a manifest abuse of discretion. *Id.*

11 Breckenridge’s claims to superior title in this matter are supported by well-founded Nevada law.
12 Breckenridge was not involved with this matter until it purchased the Subject Property at the
13 foreclosure sale. Breckenridge took title to the Subject Property pursuant to an NRS 107.080
14 foreclosure sale. NRS 107.080 provides in pertinent part, “Every sale made under the provisions of this
15 section and other sections of this chapter vests in the purchaser the title of the grantor and any
16 successors in interest without equity or right of redemption.”

17 The majority of the allegations in the Second Amended Complaint allegedly occurred prior to
18 the foreclosure sale. Many of these allegations deal with the servicing and attempted
19 modifications of the underlying loan by a variety of servicers and beneficiaries. Breckenridge had
20 no role in this dispute prior to the foreclosure and cannot be responsible for the supposed actions of
21 other entities. Breckenridge’s first involvement in the matter was when it purchased the Subject
22 Property at the foreclosure sale. Breckenridge is not a lender, noteholder, or beneficiary of Plaintiffs’
23 loan obligations.

24
25 The Plaintiffs failed to meet their burden or provide any evidence that supports their allegations
26 the foreclosure sale was not valid. If the Court determines the sale was valid, Breckenridge is entitled to
27 title to the Subject Property as well as rent for the time in which Plaintiffs have been in unlawful
28 possession of the Subject Property.

1 Breckenridge took title to the Subject Property pursuant to an NRS 107.080 foreclosure sale.
2 NRS 107.080 provides in pertinent part:

3 5. Every sale made under the provisions of this section and other sections of this
4 chapter vests in the purchaser the title of the grantor and any successors in interest
5 without equity or right of redemption. Except as otherwise provided in subsection
6 **7, a sale made pursuant to this section must be declared void by any court of**
7 **competent jurisdiction in the county where the sale took place if:**

8 (a) **The trustee or other person authorized to make the sale does not**
9 **substantially comply with the provisions of this section;**

10 (b) Except as otherwise provided in subsection 6, an action is commenced in
11 the county where the sale took place within 30 days after the date on which the
12 trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the
13 county recorder of the county in which the property is located; and

14 (c) A notice of lis pendens providing notice of the pendency of the action is
15 recorded in the office of the county recorder of the county where the sale took
16 place within 5 days after commencement of the action.

17 Plaintiffs filed this lawsuit in a last-minute effort to stave off foreclosure in an attempt to retain
18 ownership and possession of the Subject Property. Plaintiffs' allegations of wrongful foreclosure were
19 not and could not have been established by any legal or factual support. Instead, it is clear that the
20 beneficiaries, servicers, and trustee not only substantially complied with NRS 107 throughout the entire
21 foreclosure process as required by NRS 107.080(5), but actually strictly complied with those
22 requirements. Accordingly, as this Court found, Breckenridge is entitled to an order quieting title in its
23 favor pursuant to NRS 111.180(1) which provides:

24 Any purchaser who purchases an estate or interest in any real property in good
25 faith and for valuable consideration and who does not have actual knowledge,
26 constructive notice of, or reasonable cause to know that there exists a defect in, or
27 adverse rights, title or interest to, the real property is a bona fide purchaser.

28 The beneficiaries, servicers, and trustee have complied with the requirements of NRS 107 by
providing undisputed evidence that the Plaintiffs were in default of their loan obligations and that the
Notice of Default and Notice of Sale were properly mailed to the Plaintiffs, facts that Plaintiffs do not
even dispute. Plaintiffs failed to provide any evidence that the foreclosure sale was defective or that they
have rights, title, or interest to the Subject Property. Any rights, title, or interest they previously had in

1 the Subject Property has been terminated by way of the valid foreclosure sale. Accordingly, this Court
2 found that Breckenridge is entitled to titled ownership because there are no defects in the sale.

3 Based upon the lack of a viable claim against Breckenridge, it respectfully submits that it is
4 entitled to an award of attorney fees and costs based upon NRS 18.020(b).

5 **B. The requested attorney fees are reasonable and satisfy *Brunzell*.**
6

7 The reasonableness of attorney fees is within the Court's discretion as determined by a
8 consideration of the following factors:

- 9 1. The character of the work performed;
10 2. The work actually performed by the attorney;
11 3. The qualities of the advocate;
12 4. The result obtained.

13 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 350, 455 P.2d 31, 33 (1969).

14 Here, counsel for Breckenridge prepared various pleadings, responded to Plaintiffs' frivolous
15 filings, and was forced to file a summary judgment and reply to dispose of Plaintiffs' claims and obtain
16 judgment on Breckenridge's claims. Counsel also spent time investigating the facts of the case, and
17 apprising Breckenridge of the status of the case, among other things. While these tasks, and others
18 necessary for the representation, were not necessarily legally complex, each required a thorough
19 review, legal research, and time to consult with the Client. More than 200 attorney hours were spent on
20 these tasks. *See* Exhibit 6.
21

22 With respect to the qualities of the advocate Breckenridge' counsel, Hutchison & Steffen, LLC,
23 is an AV-rated law firm, founded locally in 1996. *Id.* Matthew Schriever was an associate with
24 Hutchison & Steffen and was responsible for the day-to-day handling of the case. *Id.* Mr. Schriever
25 has been in practice since 2007 and is licensed in Nevada. *Id.* The firm's billing rates are reasonable
26 and customary in Clark County, Nevada. *See* Exhibit 6.

27 ///

28 ///

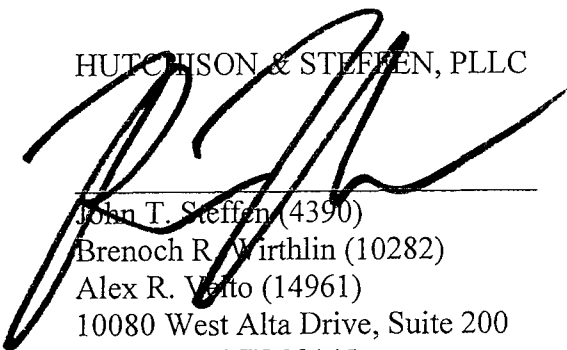
1 **V. Conclusion.**

2 For all these reasons, Breckenridge respectfully requests that this Court grant its Motion for
3 Attorney Fees and Costs in its entirety and grant such other and further relief as the Court deems
4 appropriate.

5
6 Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding
7 document filed in this court does not contain the social security number of any person

8 DATED this 19th day of July, 2021.

9
10 HUTCHINSON & STEFFEN, PLLC

11
12 
13 John T. Steffen (4390)
14 Brenoch R. Wirthlin (10282)
15 Alex R. Vello (14961)
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20 Office of the General Counsel
21 Casey J. Nelson, Esq. (12259)
22 2320 Potosi Street, Suite 130
23 Las Vegas, Nevada 89146
24 E-mail: caseynelson@wedgewood-inc.com

25 *Attorneys for Defendant*
26 *Breckenridge Property Fund 2016 LLC*
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ATTORNEY FEES AND COSTS** via U.S. Mail to the parties designated below.

Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
Minden, NV 89423
Attorney for Plaintiffs

Shadd A. Wade, Esq
ZIEVE BRODNAX & STEEL
9435 W. Russell Road, #120
Las Vegas, NV 89148
Attorney for Sables, LLC

Christopher A. J. Swift, Esq.
Ramir M. Hernandez, Esq.
WRIGHT FINLAY & ZAK, LLP
7785 W. Sahara Avenue, #200
Las Vegas, NV 89117
*Attorney for Fay Servicing, LLC and
US Bank Prof-2013-M4 Legal Title Trust*

Scott R. Lachman, Esq.
Darren T. Brenner, Esq.
ACKERMAN, LLP
1635 Village Center Circle, #200
Las Vegas, NV 89134
Attorney for Bank of America

DATED this 19th day of July, 2021.


An Employee of HUTCHISON & STEFFEN

EXHIBIT LIST

Exhibit #	Description	Pages
1	Deed of Trust	20
2	Notice of Breach and Default and of Election to Sell the Real Property Under Deed of Trust	6
3	Notice of Trustee's Sale	2
4	Declaration in Support of Breckenridge Property Fund 2016 LLC's Motion for Summary Judgment	3
5	Trustee's Deed Upon Sale	4
6	Attorneys' Fees and Costs Report	23

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

DOC # 407150

05/25/2007 04:34 PM

Official Record

Requested By
STEWART TITLE OF NEVADA

Lyon County - HV

Mary C Milligan - Recorder

Page 1 of 20 Fee \$52.00

Recorded By DLW RPT



0407150

Assessor's Parcel Number:
29-401-17

I hereby affirm that this document
submitted for recording does not
contain a social security number

/s/ LYNDA KLEIN
FUNDER

Recording Requested By
SIERRA PACIFIC MORTGAGE COMPANY, INC
280 BRINKBY STREET, SUITE 100
RENO, NV 89509
775-826-3700

[Space Above This Line For Recording Data]

Loan No 0000479436

DEED OF TRUST

MIN 1000703-0000479436-5

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated MAY 23, 2007 together with all Riders to this document.

(B) "Borrower" is VICENTA LINCICOME, A MARRIED WOMAN

Borrower is the trustor under this Security Instrument

(C) "Lender" is SIERRA PACIFIC MORTGAGE COMPANY, INC.

Lender is a CORPORATION organized and existing under the laws of CALIFORNIA
Lender's address is 50 IRON POINT CIRCLE, STE 200, FOLSOM, CA 95630

(D) "Trustee" is GREENHEAD INVESTMENTS, INC., A CALIFORNIA CORPORATION

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(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P O Box 2026, Flint, Michigan 48501-2026, tel (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MAY 23, 2007.
The Note states that Borrower owes Lender

THREE HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED FIFTY and NO/100 Dollars
(U S \$ 381,150.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 1, 2037.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input checked="" type="checkbox"/> Other(s) [specify]
<input type="checkbox"/> 1-4 Family Rider	<input type="checkbox"/> Biweekly Payment Rider	<u>INTEREST ONLY RIDER</u>
<input type="checkbox"/> V A Rider		

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for (i) damage to, or destruction of, the Property, (ii) condemnation or other taking of all or any part of the Property, (iii) conveyance in lieu of condemnation, or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

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TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note, and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY

of

LYON

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A."

which currently has the address of 70 RIVERSIDE DRIVE [Street],
DAYTON [City], Nevada 89403 [Zip Code] ("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property, and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash, (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity, or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is

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not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note, (b) principal due under the Note, (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property, (b) leasehold payments or ground rents on the Property, if any, (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount: (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

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The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement, (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded, or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either (a) a one-time charge for flood zone determination, certification and tracking services, or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts



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disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6 Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7 Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

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Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8 Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9 Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument, (b) appearing in court, and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

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Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has, if any, with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11 Assignment of Miscellaneous Proceeds, Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.



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If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12 Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13 Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer") (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument, (b) is not personally obligated to pay the sums secured by this Security Instrument, and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's



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acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge

15. **Notices** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender, (b) words in the singular shall mean and include the plural and vice versa, and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument, (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate, or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred, (b) cures any default of any other covenants or agreements, (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses.

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in one or more of the following forms, as selected by Lender (a) cash; (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity, or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note, Change of Loan Servicer, Notice of Grievance** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21 (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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NON-UNIFORM COVENANTS Borrower and Lender further covenant and agree as follows

22 Acceleration; Remedies Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify, (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lenders' election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25 Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U S \$ MAXIMUM ALLOWED BY LAW.



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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it

Vicenta Lincome (Seal)
VICENTA LINCOME -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

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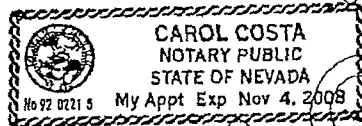
STATE OF NEVADA, *Carson City*

County ss.

This instrument was acknowledged before me on

May 23 2007

, by

*Vicenta Lincome**Carol Costa*
My Commission Expires *11-4-08*

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WHEN RECORDED MAIL TO

MIP INSURING DEPARTMENT
SIERRA PACIFIC MORTGAGE COMPANY, INC.
50 IRON POINT CIRCLE, STE 200
FOLSOM, CA 95630
916-932-1700

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(Assumable after Initial Period)

THIS ADJUSTABLE RATE RIDER is made this 23rd day of MAY 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure the Borrower's Adjustable Rate Note (the "Note") to

SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender") of the same date and covering the property described in the Security Instrument and located at

70 RIVERSIDE DRIVE
DAYTON, NV 89403

(Property Address)

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.875 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4 INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The interest rate I will pay may change on the first day of JUNE 2017, and may change on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U.S.

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MULTISTATE ADJUSTABLE RATE RIDER-1 Year LIBOR Index (Assumable after IP)-Single Family Freddie Mac Uniform Instrument

DRAW 0304 MD, CVL ARM RIDER 5131 1 WFF (P:\OPSS\SHARE\010\DOCS\RIDERS\CVL\MX\FH5131 ARM)

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dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **TWO AND ONE QUARTER** percentage points (**2.250** %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.875** % or less than **2.250** %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than **TWO** percentage points (**2.000** %) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **11.875** %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. UNTIL BORROWER'S INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION A ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL BE IN EFFECT AS FOLLOWS:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by

Loan No: 0000479436

MULTISTATE ADJUSTABLE RATE RIDER-1 Year LIBOR Index (Assumable after IP)-Single Family Freddie Mac Uniform Instrument

DEAW 0304 MX/CVL ARM RIDER 5131 2 WPF (P \OPSSHARE\0101DOC\RIDERS\CVL\MX\FH5131 ARM)

Form 5131 3/04
(Page 2 of 4)

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407150

05/25/2007
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Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2 AFTER MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT DESCRIBED IN SECTION 11(A) ABOVE SHALL THEN CEASE TO BE IN EFFECT, AND UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL INSTEAD BE DESCRIBED AS FOLLOWS:

Transfer of the Property or a Beneficial Interest in Borrower As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee, and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

Loan No: 0000479436

MULTISTATE ADJUSTABLE RATE RIDER-1 Year LIBOR Index (Assumable after IP)-Single Family Freddie Mac Uniform Instrument

DRAW 0304 MX CVL ARM RIDER 5131 3 WFF (P \OPSS\SHAREW\101\DOCS\RIDERS\CVL\MX\FH5131 ARM)

Form 5131 3/04
(Page 3 of 4)

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017 of 20

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable
Rate Rider

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

[Sign Original Only]

Loan No: 0000479436

MULTISTATE ADJUSTABLE RATE RIDER, Year LIBOR Index (Assumable after IP)-Single Family Freddie Mac Uniform Instrument

DRAW 0304 MX CVL ARM RIDER #131 & TYPE P *OPSSHARE0010DOCS\RIDERS\CVL\MXFH5131 ARM)

Form 5131 3/04
(Page 4 of 4)

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INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

Property Address 70 RIVERSIDE DRIVE
DAYTON, NV 89403

THIS ADDENDUM is made this 23rd day of MAY 2007
and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date
as this Addendum executed by the undersigned and payable to
SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender")

THIS ADDENDUM supersedes Section 4(C) of the Rider. None of the other provisions of the Rider are changed
by this Addendum.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding
TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

During the Interest-Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest-Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest-Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest at the then current interest rate on the lower principal balance. At the end of the Interest-Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest-Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest-Only Period, my payment amount will not be reduced due to voluntary prepayments.

Loan No: 0000479436

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE RIDER S/I LIBOR ARM -- MULTISTATE
BRAW MX CVL ARM IO ADNDM RIDER 1 WFF (0101DOCS\RIDERS\CVL\MXIO_ADN RID)

01/01
603F
(page 1 of 2 pages)

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05/25/2007
019 of 20

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

[Sign Original Only]

Loan No: 0000479436

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE RIDER 5/1 LIBOR ARM -- MULTISTATE
DRAW MX CVL ARM IO ADNDM RIDER 2 WPF (0101D005RIDERSCVL1MXIO_ADN RID)

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(page 2 of 2 pages)

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407150

05/25/2007
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EXHIBIT "A"
LEGAL DESCRIPTION

Order No: 06041897-JA

The land referred to herein is situated in the State of Nevada,
County of LYON, described as follows:

LOT 42 AS SHOWN ON THE OFFICIAL MAP OF GOLD CANYON ESTATES,
PHASE 2, FILE IN THE OFFICE OF THE LYON COUNTY, NEVADA RECORDER,
ON OCTOBER 20, 2005, AS DOCUMENT NO. 365687.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF, LYING BELOW THE
NATURAL ORDINARY HIGH WATER LINE OF THE CARSON RIVER.

ASSESSOR'S PARCEL NO. 029-401-17

Unofficial

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

DOC# 572258
11/03/2017 10:29AM

Official Record

Requested By
SERVICELINK TITLE AGENCY INC.

Lyon County - NV

Dawna L. Warr - Recorder

Page: 1 of 6

Fee: \$288.00

Recorded By BKC

RPT: \$0.00



0572258

APN: 029-401-17

WHEN RECORDED MAIL TO:

Sables, LLC

c/o Zieve Brodnax & Steele

3753 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169

TS No. : 16-42397

**NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO
SELL THE REAL PROPERTY UNDER DEED OF TRUST**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business day prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this Notice of Default may be recorded (which date of recordation appears on this notice). This amount is \$265,572.39 as of 10/31/2017 and will increase until your account becomes current.

NOTICE IS HEREBY GIVEN THAT: SABLES, LLC, a Nevada limited liability company is either the original trustee, or the duly appointed substituted Trustee, or acting as agent for the Trustee or the Beneficiary under a under a Deed of Trust dated 5/23/2007, executed by VICENTA LINCICOME, A MARRIED WOMAN, as trustor to secure obligations in favor of Mortgage Electronic Registration Systems, Inc., as nominee for SIERRA PACIFIC MORTGAGE COMPANY, INC. its successors and assigns, as Beneficiary, recorded 5/25/2007, instrument no. 407150 The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011 of Official Records in the office of the County recorder of Lyon, County, Nevada securing, among other obligations including

One note(s) for the Original sum of \$381,150.00, that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by Beneficiary; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:

The monthly installment which became due on 9/1/2008, along with late charges, and all subsequent monthly installments.

You are responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to; foreclosure trustee fees and costs, advances and late charges.

Furthermore, as a condition to bring your account in good standing, you must provide the undersigned with written proof that you are not in default on any senior encumbrance and provide proof of insurance.

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11/03/2017
2 of 6**T.S. No.: 16-42397**

Nothing in this Notice of Default should be construed as a waiver of any fees owing to the beneficiary under the Deed of Trust, pursuant to the terms and provisions of the loan documents.

That by reason thereof the present Beneficiary under such deed of Trust has executed and delivered to said duly appointed Trustee a written Declaration of Default and Demand for Sale and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. As to owner-occupied property, where reinstatement is possible, the time to reinstate may be extended to 5 days prior to the date of sale pursuant to NRS 107.080. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:

PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee
c/o Fay Servicing, LLC
c/o SABLES, LLC, a Nevada limited liability company
3753 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
Beneficiary Phone: 800-495-7166
Trustee Phone: (702) 664-1774

To reach a person with authority to negotiate a loan modification on behalf of the lender:

Lauren Jowers
800-495-7166

Property Address: **70 RIVERSIDE DRIVE, DAYTON, Nevada 89403**

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

Attached hereto and incorporated herein by reference is the Affidavit of Authority in Support of Notice of Default and Election to Sell pursuant to NRS 107.080.

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11/03/2017
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T.S. No.: 16-42397

You may wish to consult a credit counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with names and addresses of local HUD approved counseling agency by calling their approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to HUD's website: <http://portal.hud.gov>.

Dated: 11/1/2017

SABLES, LLC, a Nevada limited liability company, as Trustee
Sables, LLC
c/o Zieve Brodnax & Steele
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
(702) 948-8565


Michael Busby, Trustee Sale Officer

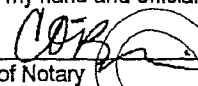
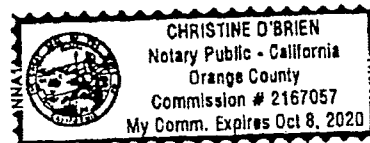
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 11/1/2017, before me, Christine O'Brien, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature of Notary

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11/03/2017
4 of 6**Affidavit of Authority**

(Nevada Revised Statute §107.080 as amended effective June 1, 2013)

Re: TS# 16-42397

Borrower Name: VICENTA LINCICOME

Property Address: 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403

I, Verónica Talley, am the Foreclosure Specialist of Fay Servicing, LLC, the current servicer for the beneficiary of the deed of trust described in the notice of default and election to sell to which this affidavit is attached ("Deed of Trust"). The following facts are based upon my personal review of documents that are of public record in the State of Nevada and personal knowledge acquired by my personal review of the business records of the beneficiary, which are within my custody and control. The business records of the beneficiary contain entries made in the ordinary course of business at or about the time the events reflected therein occurred.

- 1(a). The full name and business address of the current trustee of record for the Deed of Trust is Sables LLC, a Nevada Limited Liability Company, 3753 Howard Hughes Parkway, Suite 200, Las Vegas, Nevada 89169
- 1(b). The full name and business address of the current holder of the Note secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services - PROF
- 1(c). The full name and business address of the current beneficiary for the obligation or debt secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services - PROF
- 1(d). The full name and business address of the current servicer for the obligation secured by the Deed of Trust is Fay Servicing, LLC, 440 S. LaSalle St, Suite 2000, Chicago, IL 60605
2. From my review of the documents of public record and the business records of the current beneficiary and a title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to Chapter 692A of the NRS, the name of each assignee and each recorded assignment of the Deed of Trust.
- 2(a). Assignee Name: PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee
Instrument and Recording Information: Assignment of Deed of Trust recorded on 11/25/2016 Instrument No. 544042
- 2(b). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP
Instrument and Recording Information: Corporation Assignment of Deed of Trust recorded on 08/15/2011 Instrument No. 480360
- 2(c). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP
Instrument and Recording Information: Assignment of Mortgage recorded on 11/10/2010 Instrument No 467719
3. The current beneficiary under the Deed of Trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the Deed of Trust.
4. From my review of the documents of public record and the business records of the current beneficiary, the current trustee has authority to exercise the power of sale with respect to the property



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11/03/2017
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encumbered by the Deed of Trust, pursuant to instruction from the current beneficiary of record and current holder of the note secured by the Deed of Trust.

5. From my review of the documents of public record and the business records of the current beneficiary, the beneficiary, servicer of the obligation, or an attorney of the beneficiary or servicer has sent to VICENTA LINCICOME, a written statement of: (I) the amount of payment required to make good the deficiency in performance of payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement; (II) the amount in default; (III) the principal amount of the obligation or debt secured by the deed of trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the power of sale; and (VI) contact information for obtaining the most current amounts due and the local or toll-free telephone number that VICENTA LINCICOME may call to receive the most current amounts due and a recitation of the information in this affidavit.

6. The borrower or obligor of the loan secured by the Deed of Trust may call Fay Servicing, LLC at 800-495-7166 to receive the most current amounts due and a recitation of the information contained in this Affidavit.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this Affidavit was executed on October 5, 2016.

By: **Fay Servicing, LLC, its attorney in fact**

Verónica Talley

(Print Name)

(Signature)

Foreclosure Specialist IV

(Title)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Texas

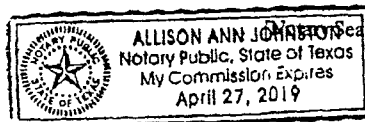
County of Denton

On October 5, 2016 before me, Allison Ann Johnston, Notary Public, personally appeared, Verónica Talley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature





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11/03/2017
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Declaration of Mortgage Servicer Pursuant to NR 107.510

T.S. Number: 16-42397
Borrower(s): VICENTA LINCICOME
Mortgage Servicer: Fay Servicing, LLC
Property Address: 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403

The undersigned, as an authorized agent or employee of the mortgage servicer named below, declares that:

1. ☒ The mortgage servicer has contacted the borrower pursuant to NRS 107.510 (2), to assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale. Thirty (30) days, or more, have passed since the initial contact was made.
2. ☐ The mortgage servicer has exercised due diligence to contact the borrower pursuant to NRS 107.510 (5), to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.
3. ☐ No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to NRS 107.410.
4. ☐ During the preceding annual reporting period, the Lender has foreclosed on 100 or fewer real properties located in this state and therefore, pursuant to NRS 107.460, the provisions of NRS 107.400 to 107.560, inclusive, do not apply.
5. ☐ The loan is not a "residential mortgage loan" as defined in NRS 107.450.

I certify that this declaration is accurate, complete and supported by competent and reliable evidence which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

Dated: 4-5-2016By: 

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EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Doc #: 587470

10/12/2018 02:27 PM Page: 1 of 2

OFFICIAL RECORD

Requested By: SERVICELINK TITLE AGENCY INC

Lyon County, NV
Dawna L. Warr, Recorder

Fee: \$38.00 RPTT: \$0.00

Recorded By: mkassebaum

APN No.: 029-401-17

[Recording requested by:]

[When recorded mail to:]

Sables LLC

c/o Zieve Brodnax & Steele

9435 West Russell Road, Suite 120

Las Vegas, Nevada 89148

T.S. No. 16-42397

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 5/23/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

TRUSTOR: VICENTA LINCICOME, A MARRIED WOMAN

Duly Appointed Trustee: **Sables LLC, a Nevada Limited Liability Company**

Recorded 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011 Official Records in the office of the Recorder of Lyon County, Nevada, Described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Date of Sale: 11/9/2018 at 11:00 AM

BRECK000066

Place of Sale: 31 S. Main Street Yerington, Nevada 89447
Lyon County Courthouse

Estimated Sale Amount: \$666,632.22

Street Address or other common designation of real property: 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403

A.P.N. No.: 029-401-17

The undersigned Trustee disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above. If no street address or other common designation is shown, directions to the location of the property may be obtained by sending a written request to the beneficiary within 10 days of the date of first publication of this Notice of Sale.

Date: 10/11/2018

Sables LLC, a Nevada Limited Liability Company
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
Phone: (702) 948-8565
Sale Information: (714) 848-9272 www.elitepostandpub.com
For Non-Automated Sale Information, call: (702) 664-1774

Michael Busby, Trustee Sale Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

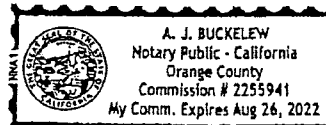
State of CALIFORNIA
County of ORANGE

On 10/11/2018, before me, A.J. Buckelew Notary Public, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

A.J. Buckelew
Signature of Notary



THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND
ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE.

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EXHIBIT PAGE ONLY

EXHIBIT 4

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

1 John T. Steffen (4390)
2 Matthew K. Schriever (10745)
3 Alex R. Velto (14961)
4 HUTCHISON & STEFFEN, PLLC
5 10080 West Alta Drive, Suite 200
6 Las Vegas, NV 89145
7 Tel (702) 385-2500
8 Fax (702) 385-2086
9 mschriever@hutchlegal.com

10 Casey J. Nelson, Esq. (12259)
11 Wedgewood, LLC
12 Office of the General Counsel
13 2320 Potosi Street, Suite 130
14 Las Vegas, Nevada 89146
15 Tel (702) 305-9157
16 Fax (310) 730-5967
17 caseynelson@wedgewood-inc.com
18 *Attorney for Defendant, Counterclaimant, and Cross-Plaintiff*
19 *Breckenridge Property Fund 2016, LLC*

20 **THIRD JUDICIAL DISTRICT COURT**
21 **LYON COUNTY, NEVADA**

22 ALBERT ELLIS LINCICOME, JR., and
23 VICENTA LINCICOME,

24 Plaintiff,

25 v.

26 SABLES, LLC, a Nevada limited liability
27 company, as Trustee of the Deed of Trust given
28 by Vicenta Lincicome and dated 5/23/2007; FAY
SERVICING, LLC, a Delaware limited liability
company and subsidiary of Fay Financial, LLC;
PROF-2013-MF LEGAL TITLE TRUST by U.S.
BANK, N.A., as Legal Title Trustee; for BANK
OF AMERICA, N.A.; BRECKENRIDGE
PROPERTY FUND 2016; NEWREZ LLC dba
SHELLPOINT MORTGAGE SERVICING,
LLC; 1900 CAPITAL TRUST II, BY U.S.
BANK TRUST NATIONAL ASSOCIATION;
MCM-2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED MATTERS.

Case No.: 18-CV-01332
Dept No.: II

**DECLARATION IN SUPPORT OF
BRECKENRIDGE PROPERTY FUND 2016
LLC'S MOTION FOR SUMMARY
JUDGMENT AGAINST PLAINTIFF**

1 The undersigned, Jason Campbell declares under penalty of perjury that the following assertions
2 are true;

3 1. I am an authorized agent of Breckenridge Property Fund 2016, LLC ("Breckenridge").

4 2. I am competent to testify to the matters asserted herein, of which I have personal
5 knowledge, except as to those matters stated upon information and belief. As to those matters stated
6 upon information and belief, I believe them to be true. I make this declaration in support of
7 Breckenridge's motion for summary judgment against Plaintiffs,
8

9 3. On January 4, 2019, Breckenridge purchased real property located at 70 Riverside Drive,
10 Dayton, Nevada 89403 ("Subject Property") at a foreclosure sale conducted pursuant to NRS 107.
11 ("Foreclosure Sale").

12 4. Breckenridge was the highest bidder and paid \$294,000.01 to purchase the Subject
13 Property at the Foreclosure Sale.

14 5. Breckenridge relied on the fact that the noticed Foreclosure Sale was valid because
15 Plaintiffs failed to post the court-ordered bond.
16

17 6. Breckenridge had no role in this dispute prior to its purchase of the Subject Property at
18 the Foreclosure Sale.

19 7. Breckenridge is entitled to an order quieting title in its favor because there were no defects
20 in the Foreclosure Sale and any rights, title, or interest that Plaintiffs previously had in the Subject
21 Property has been terminated by way of the Foreclosure Sale
22

23 8. I declare under penalty of perjury of the laws of the United States and the State of Nevada
24 that these facts are true to the best of my knowledge and belief.
25

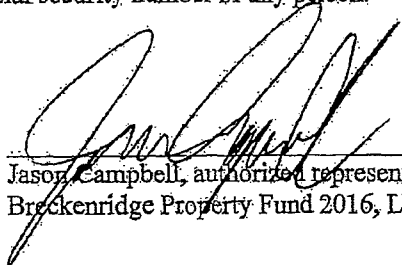
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Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person.


Jason Campbell, authorized representative of
Breckenridge Property Fund 2016, LLC

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EXHIBIT PAGE ONLY

EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

70 RIVERSIDE DR

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:
Breckenridge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NV 89146

Recorded As An Accommodation

Forward Tax Statements to
the address given above

Doc #: 591393

01/26/2019 08:21 AM Page: 1 of 2

OFFICIAL RECORD

Requested By: FIRST AMERICAN TITLE INSURANCE C

Lyon County, NV
Margie Kassebaum, Recorder

Fee: \$38.00 RPTT: \$1,148.55
Recorded By: Inhumildad

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397
Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55
The Grantee Herein WAS NOT the Foreclosing Beneficiary.
The Amount of the Unpaid Debt was \$671,249.37
The Amount Paid by the Grantee was \$294,000.01
Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

BRECK000025

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO;
Breckenridge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NV 89146

Recorded As An Accommodation

Forward Tax Statements to
the address given above

Only Without Liability

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55

The Grantee Herein WAS NOT the Foreclosing Beneficiary.

The Amount of the Unpaid Debt was \$671,249.37

The Amount Paid by the Grantee was \$294,000.01

Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

BRECK000026

TRUSTEE'S DEED UPON SALE

T.S. #: 16-42397

Order #: 160069595-NV-VOO

Trustee having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Breach and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified return receipt mail, postage pre-paid to each person entitled to notice in compliance with Nevada Revised Statutes 107.080.

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 1/4/2019. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being \$ \$294,000.01, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, SABLES, LLC, a Nevada limited liability company, as Trustee, has this day, caused its name to be hereunto affixed.

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 1/15/2019 before me, the undersigned, J. Develasco Notary Public, personally appeared Geoffrey Neal who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

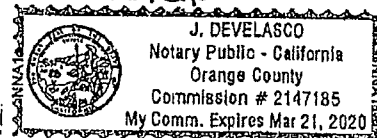
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

J. Develasco

(Seal)



BRECK000027

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

- a) 029-401-17
b) _____
c) _____
d) _____

2. Type of Property:

- | | |
|--|---|
| a) <input type="checkbox"/> Vacant Land | b) <input checked="" type="checkbox"/> Single Fam. Res. |
| c) <input type="checkbox"/> Condo/Twnhse | d) <input type="checkbox"/> 2-4 Plex |
| e) <input type="checkbox"/> Apt. Bldg | f) <input type="checkbox"/> Comm'l/Ind'l |
| g) <input type="checkbox"/> Agricultural | h) <input type="checkbox"/> Mobile Home |
| <input type="checkbox"/> Other | |

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. a. Total Value/Sales Price of Property
b. Deed in Lieu of Foreclosure Only (value of property)
c. Transfer Tax Value:
d. Real Property Transfer Tax Due

\$ \$294,000.01

\$ \$294,000.01
\$ 1148.55

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity AGENT

Signature _____ Capacity AGENT

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Sables, LLC, a Nevada
limited liability company
Address: 3753 Howard Hughes Parkway,
Suite 200, Las Vegas, NV 89169

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Breckenridge Property Fund,
2016, LLC
Address: 2320 Potosi St. Ste 130
Las Vegas, NV 89146

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: First American Escrow #: ACCW
Address: 1000 W Charleston
City: Las Vegas State: NV Zip: 89102

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

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EXHIBIT PAGE ONLY

EXHIBIT 6

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

2320 Potosi Street, Suite 130
Las Vegas, NV 89146

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
3/25/2020	MKS		2.50	\$200	\$500.00	\$500.00
3/25/2020	MKS		1.50	\$200	\$300.00	\$300.00
3/26/2020	MKS		0.70	\$200	\$140.00	\$140.00
3/26/2020	AMO		0.40	\$95	\$38.00	\$38.00
3/26/2020	AMO		0.50	\$95	\$47.50	\$47.50
3/27/2020	AMO		0.10	\$95	\$9.50	\$9.50
3/27/2020	AMO		0.40	\$95	\$38.00	\$38.00
3/30/2020	MKS		0.60	\$200	\$120.00	\$120.00
Total Fees: 03/2020			6.70		\$1,193.00	\$1,193.00
4/6/2020	MKS		1.00	\$200	\$200.00	\$200.00
4/7/2020	MKS		0.50	\$200	\$100.00	\$100.00
4/8/2020	MKS		2.80	\$200	\$560.00	\$560.00
4/9/2020	MKS		2.50	\$200	\$500.00	\$500.00
4/10/2020	MKS		1.30	\$200	\$260.00	\$260.00
4/14/2020	MKS		1.00	\$200	\$200.00	\$200.00
4/20/2020	MKS		0.40	\$200	\$80.00	\$80.00
4/21/2020	MKS		4.00	\$200	\$800.00	\$800.00
4/21/2020	MKS		0.50	\$200	\$100.00	\$100.00
4/21/2020	MKS		0.50	\$200	\$100.00	\$100.00
4/23/2020	MKS		1.00	\$200	\$200.00	\$200.00
4/23/2020	MKS		1.00	\$200	\$200.00	\$200.00
4/24/2020	ARV		0.30	\$200	\$60.00	\$60.00
4/24/2020	MKS		0.30	\$200	\$60.00	\$60.00
4/24/2020	AMO		0.50	\$95	\$47.50	\$47.50
4/24/2020	AMO		0.30	\$95	\$28.50	\$28.50

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
		18-CV-0132.				
4/24/2020	AMO		0.20	\$95	\$19.00	\$19.00
4/27/2020	MKS		1.00	\$200	\$200.00	\$200.00
4/29/2020	MKS		0.50	\$200	\$100.00	\$100.00
4/30/2020	MKS		0.40	\$200	\$80.00	\$80.00
Total Fees: 04/2020			20.00		\$3,895.00	\$3,895.00
5/15/2020	MKS		0.80	\$225	\$180.00	\$180.00
5/19/2020	MKS		0.40	\$225	\$90.00	\$90.00
5/22/2020	MKS		0.50	\$225	\$112.50	\$112.50
5/26/2020	MKS		0.30	\$225	\$67.50	\$67.50
5/27/2020	MKS		0.30	\$225	\$67.50	\$67.50
Total Fees: 05/2020			2.30		\$517.50	\$517.50
6/1/2020	MKS		0.50	\$225	\$112.50	\$112.50
6/2/2020	MKS		0.80	\$225	\$180.00	\$180.00
6/15/2020	MKS		0.30	\$225	\$67.50	\$67.50
6/19/2020	MKS		0.60	\$225	\$135.00	\$135.00
6/23/2020	MKS		0.70	\$225	\$157.50	\$157.50
6/24/2020	MKS		0.30	\$225	\$67.50	\$67.50
6/25/2020	MKS		1.50	\$225	\$337.50	\$337.50
6/26/2020	MKS		2.50	\$225	\$562.50	\$562.50
6/29/2020	MKS		2.00	\$225	\$450.00	\$450.00
Total Fees: 06/2020			9.20		\$2,070.00	\$2,070.00
7/1/2020	MKS		1.00	\$225	\$225.00	\$225.00
7/6/2020	MKS		0.40	\$225	\$90.00	\$90.00
7/7/2020	MKS		0.30	\$225	\$67.50	\$67.50
7/8/2020	MKS		5.00	\$225	\$1,125.00	\$1,125.00

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
7/9/2020	MKS		1.20	\$225	\$270.00	\$270.00
7/9/2020	AMO		0.40	\$100	\$40.00	\$40.00
7/10/2020	MKS		0.30	\$225	\$67.50	\$67.50
7/10/2020	AMO		0.40	\$100	\$40.00	\$40.00
7/13/2020	MKS		0.60	\$225	\$135.00	\$135.00
7/16/2020	MKS		0.30	\$225	\$67.50	\$67.50
7/23/2020	MKS		0.40	\$225	\$90.00	\$90.00
7/24/2020	MKS		0.30	\$225	\$67.50	\$67.50
Total Fees: 07/2020			10.60		\$2,285.00	\$2,285.00
8/4/2020	MKS		0.30	\$225	\$67.50	\$67.50
8/5/2020	MKS		0.30	\$225	\$67.50	\$67.50
8/14/2020	MKS		0.50	\$225	\$112.50	\$112.50
8/21/2020	MKS		0.30	\$225	\$67.50	\$67.50
8/24/2020	MKS		0.60	\$225	\$135.00	\$135.00
8/31/2020	MKS		2.00	\$225	\$450.00	\$450.00
Total Fees: 08/2020			4.00		\$900.00	\$900.00
9/2/2020	MKS		2.00	\$225	\$450.00	\$450.00
9/3/2020	MKS		4.00	\$225	\$900.00	\$900.00
9/9/2020	MKS		0.30	\$225	\$67.50	\$67.50
9/10/2020	ARV		0.40	\$225	\$90.00	\$90.00
9/10/2020	MKS		0.80	\$225	\$180.00	\$180.00
9/10/2020	AMO		0.40	\$100	\$40.00	\$40.00
9/10/2020	AMO		0.30	\$100	\$30.00	\$30.00
9/11/2020	MKS		0.30	\$225	\$67.50	\$67.50

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
9/14/2020	MKS		0.40	\$225	\$90.00	\$90.00
9/16/2020	MKS		0.40	\$225	\$90.00	\$90.00
9/17/2020	MKS		0.30	\$225	\$67.50	\$67.50
9/25/2020	MKS		0.40	\$225	\$90.00	\$90.00
9/26/2020	MKS		0.30	\$225	\$67.50	\$67.50
9/28/2020	MKS		0.50	\$225	\$112.50	\$112.50
9/30/2020	MKS		0.70	\$225	\$157.50	\$157.50
Total Fees: 09/2020			11.50		\$2,500.00	\$2,500.00
10/1/2020	MKS		0.30	\$225	\$67.50	\$67.50
10/1/2020	AMO		0.20	\$100	\$20.00	\$20.00
10/2/2020	MKS		0.30	\$225	\$67.50	\$67.50
10/2/2020	AMO		0.30	\$100	\$30.00	\$30.00
10/5/2020	MKS		0.30	\$225	\$67.50	\$67.50
10/23/2020	MKS		0.30	\$225	\$67.50	\$67.50
10/26/2020	MKS		0.30	\$225	\$67.50	\$67.50
10/27/2020	MKS		0.70	\$225	\$157.50	\$157.50
10/28/2020	MKS		0.30	\$225	\$67.50	\$67.50
10/29/2020	MKS		0.80	\$225	\$180.00	\$180.00
Total Fees: 10/2020			3.80		\$792.50	\$792.50
11/2/2020	MKS		1.00	\$225	\$225.00	\$225.00
11/10/2020	MKS		0.40	\$225	\$90.00	\$90.00
11/11/2020	MKS		0.20	\$225	\$45.00	\$45.00
11/12/2020	MKS		0.40	\$225	\$90.00	\$90.00
11/17/2020	MKS		0.20	\$225	\$45.00	\$45.00
11/20/2020	MKS		0.30	\$225	\$67.50	\$67.50
Total Fees: 11/2020			2.50		\$562.50	\$562.50

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
12/3/2020	MKS		0.30	\$225	\$67.50	\$67.50
12/4/2020	MKS		0.10	\$225	\$22.50	\$22.50
12/16/2020	MKS		0.50	\$225	\$112.50	\$112.50
12/17/2020	MKS		0.30	\$225	\$67.50	\$67.50
12/18/2020	MKS		0.30	\$225	\$67.50	\$67.50
12/21/2020	MKS		0.50	\$225	\$112.50	\$112.50
12/30/2020	MKS		0.30	\$225	\$67.50	\$67.50
12/31/2020	MKS		0.50	\$225	\$112.50	\$112.50
Total Fees: 12/2020			2.80		\$630.00	\$630.00
1/4/2021	MKS		2.00	\$225	\$450.00	\$450.00
1/5/2021	MKS		5.50	\$225	\$1,237.50	\$1,237.50
1/6/2021	MKS		6.20	\$225	\$1,395.00	\$1,395.00
1/8/2021	MKS		0.40	\$225	\$90.00	\$90.00
1/11/2021	MKS		0.20	\$225	\$45.00	\$45.00
1/14/2021	MKS		2.50	\$225	\$562.50	\$562.50
1/15/2021	MKS		4.30	\$225	\$967.50	\$967.50
1/19/2021	MKS		1.00	\$225	\$225.00	\$225.00
1/20/2021	MKS		0.30	\$225	\$67.50	\$67.50
1/22/2021	MKS		0.30	\$225	\$67.50	\$67.50

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Fees

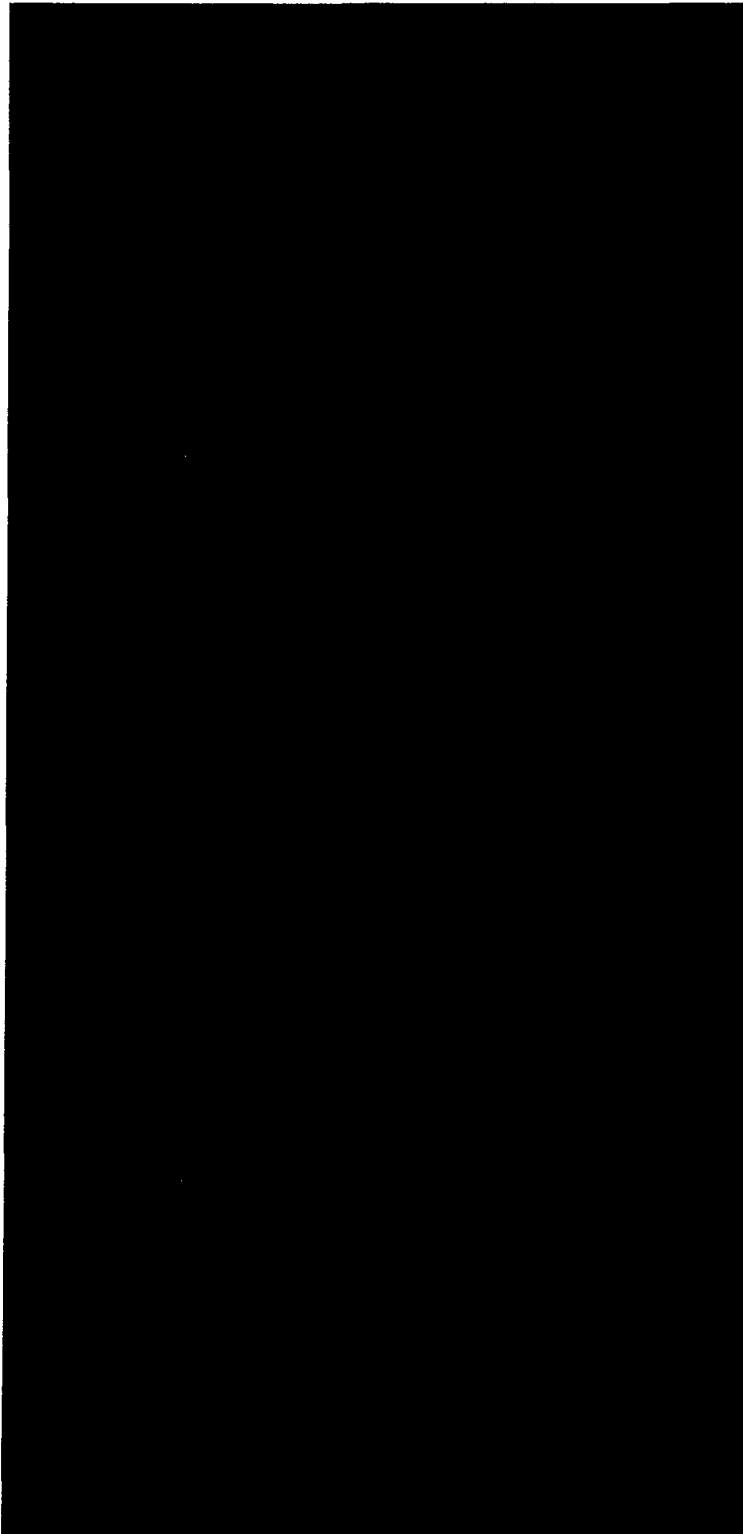
Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
1/25/2021	MKS		0.40	\$225	\$90.00	\$90.00
1/27/2021	MKS		2.00	\$225	\$450.00	\$450.00
1/28/2021	MKS		0.40	\$225	\$90.00	\$90.00
Total Fees: 01/2021			25.50		\$5,737.50	\$5,737.50
2/1/2021	MKS		0.40	\$225	\$90.00	\$90.00
2/3/2021	MKS		0.30	\$225	\$67.50	\$67.50
2/4/2021	MKS		4.50	\$225	\$1,012.50	\$1,012.50
2/8/2021	MKS		0.50	\$225	\$112.50	\$112.50
2/9/2021	MKS		0.30	\$225	\$67.50	\$67.50
2/10/2021	MKS		0.50	\$225	\$112.50	\$112.50
2/16/2021	MKS		1.50	\$225	\$337.50	\$337.50
2/18/2021	MKS		0.30	\$225	\$67.50	\$67.50
2/22/2021	MKS		0.80	\$225	\$180.00	\$180.00
2/23/2021	MKS		0.70	\$225	\$157.50	\$157.50
2/24/2021	MKS		0.30	\$225	\$67.50	\$67.50
2/24/2021	MKS		0.50	\$225	\$112.50	\$112.50
2/26/2021	MKS		0.80	\$225	\$180.00	\$180.00
Total Fees: 02/2021			11.40		\$2,565.00	\$2,565.00
3/3/2021	MKS		0.80	\$225	\$180.00	\$180.00
3/3/2021	MKS		0.40	\$225	\$90.00	\$90.00
3/5/2021	MKS		2.00	\$225	\$450.00	\$450.00

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
3/5/2021	MKS		0.30	\$225	\$67.50	\$67.50
3/5/2021	MKS		0.30	\$225	\$67.50	\$67.50
3/8/2021	MKS		0.40	\$225	\$90.00	\$90.00
3/16/2021	MKS		6.00	\$225	\$1,350.00	\$1,350.00
3/17/2021	MKS		0.30	\$225	\$67.50	\$67.50
3/17/2021	MKS		0.80	\$225	\$180.00	\$180.00
3/18/2021	DTR		0.30	\$225	\$67.50	\$67.50
3/18/2021	MKS		1.20	\$225	\$270.00	\$270.00
3/18/2021	MKS		1.80	\$225	\$405.00	\$405.00
3/18/2021	GLM		1.50	\$100	\$150.00	\$150.00
3/19/2021	MKS		0.40	\$225	\$90.00	\$90.00
3/22/2021	MKS		1.20	\$225	\$270.00	\$270.00
3/24/2021	MKS		0.30	\$225	\$67.50	\$67.50
3/26/2021	MKS		0.50	\$225	\$112.50	\$112.50
3/26/2021	MKS		0.30	\$225	\$67.50	\$67.50
3/26/2021	MKS		0.50	\$225	\$112.50	\$112.50
3/29/2021	MKS		0.40	\$225	\$90.00	\$90.00
3/29/2021	GLM		2.00	\$100	\$200.00	\$200.00
3/29/2021	GLM		0.20	\$100	\$20.00	\$20.00
3/29/2021	GLM		0.30	\$100	\$30.00	\$30.00
3/30/2021	MKS		0.60	\$225	\$135.00	\$135.00

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
3/31/2021	MKS		0.60	\$225	\$135.00	\$135.00
3/31/2021	MKS		0.30	\$225	\$67.50	\$67.50
Total Fees: 03/2021			23.70		\$4,832.50	\$4,832.50
4/1/2021	MKS		0.50	\$225	\$112.50	\$112.50
4/1/2021	MKS		0.30	\$225	\$67.50	\$67.50
4/2/2021	MKS		0.60	\$225	\$135.00	\$135.00
4/9/2021	MKS		0.50	\$225	\$112.50	\$112.50
4/13/2021	MKS		0.30	\$225	\$67.50	\$67.50
4/15/2021	MKS		0.60	\$225	\$135.00	\$135.00
4/16/2021	MKS		0.30	\$225	\$67.50	\$67.50
4/22/2021	MKS		0.30	\$225	\$67.50	\$67.50
4/23/2021	MKS		1.00	\$225	\$225.00	\$225.00
4/23/2021	MKS		0.30	\$225	\$67.50	\$67.50
4/27/2021	MKS		0.30	\$225	\$67.50	\$67.50
Total Fees: 04/2021			5.00		\$1,125.00	\$1,125.00
5/3/2021	BRW		0.70	\$250	\$175.00	\$175.00
5/3/2021	MKS		0.80	\$225	\$180.00	\$180.00
5/4/2021	MKS		0.30	\$225	\$67.50	\$67.50
5/4/2021	MKS		4.00	\$225	\$900.00	\$900.00
5/5/2021	MKS		0.30	\$225	\$67.50	\$67.50
5/6/2021	MKS		0.40	\$225	\$90.00	\$90.00
5/10/2021	MKS		0.30	\$225	\$67.50	\$67.50
5/17/2021	BRW		0.90	\$250	\$225.00	\$225.00
5/18/2021	BRW		0.40	\$250	\$100.00	\$100.00
5/20/2021	BRW		1.80	\$250	\$450.00	\$450.00

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
5/22/2021	BRW		1.10	\$250	\$275.00	\$275.00
5/24/2021	BRW		0.40	\$250	\$100.00	\$100.00
5/26/2021	BRW		0.80	\$250	\$200.00	\$200.00
Total Fees: 05/2021			12.20		\$2,897.50	\$2,897.50
Total Fees:			151.20		\$32,503.00	\$32,503.00

Costs and Expenses

Date	Description	Orig Expense	Orig Cost	Bill Amount
04/21/2020	Westlaw online legal research (MKS)	\$126.37		\$126.37
04/24/2020	Delivery Services/Messengers	\$105.00		\$105.00
04/30/2020	Photocopies	\$7.20		\$7.20
04/30/2020	Postage	\$3.25		\$3.25
Total Costs/Expenses: 04/2020		\$241.82	\$0.00	\$241.82
05/27/2020	Photocopies -- BW Prints	\$0.30		\$0.30
Total Costs/Expenses: 05/2020		\$0.30	\$0.00	\$0.30
06/23/2020	Westlaw online legal research (MKS)	\$131.29		\$131.29
Total Costs/Expenses: 06/2020		\$131.29	\$0.00	\$131.29
07/09/2020	Delivery Services/Messengers	\$105.00		\$105.00
07/31/2020	Photocopies	\$14.40		\$14.40
07/31/2020	Postage	\$8.00		\$8.00
Total Costs/Expenses: 07/2020		\$127.40	\$0.00	\$127.40
09/03/2020	Westlaw online legal research (MKS)	\$73.67		\$73.67
09/10/2020	Delivery Services/Messengers	\$105.00		\$105.00
09/30/2020	Photocopies	\$10.80		\$10.80
09/30/2020	Postage	\$4.80		\$4.80
Total Costs/Expenses: 09/2020		\$194.27	\$0.00	\$194.27
10/02/2020	Delivery Services/Messengers	\$105.00		\$105.00
10/31/2020	Postage	\$3.25		\$3.25
10/31/2020	Photocopies	\$6.30		\$6.30
Total Costs/Expenses: 10/2020		\$114.55	\$0.00	\$114.55
01/06/2021	All American Court Reporters- Court Reporting/Transcripts- re Vecenta J. Lincicome [Inv #1163227]		\$927.75	\$927.75
01/27/2021	All American Court Reporters- Court Reporting/Transcripts- re Albert Ellis Lincicome, Jr [Inv #1163496]		\$288.75	\$288.75
01/27/2021	All American Court Reporters- Court Reporting/Transcripts- re Vicenta J. Lincicome, Vol. II [Inv #1163492]		\$393.75	\$393.75
Total Costs/Expenses: 01/2021		\$0.00	\$1,610.25	\$1,610.25
03/30/2021	Photocopies -- BW Prints	\$1.35		\$1.35

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Costs and Expenses

Date	Description	Orig Expense	Orig Cost	Bill Amount
03/30/2021	Delivery Services/Messengers	\$135.00		\$135.00
03/31/2021	Photocopies	\$45.90		\$45.90
03/31/2021	Photocopies	\$0.90		\$0.90
03/31/2021	Postage	\$4.46		\$4.46
Total Costs/Expenses: 03/2021		\$187.61	\$0.00	\$187.61
04/23/2021	Photocopies -- BW Prints	\$0.60		\$0.60
04/30/2021	Postage -- Postage	\$1.40		\$1.40
04/30/2021	Postage -- Postage	\$2.55		\$2.55
Total Costs/Expenses: 04/2021		\$4.55	\$0.00	\$4.55
05/05/2021	Photocopies -- BW Prints	\$0.60		\$0.60
05/05/2021	Photocopies -- BW Copies	\$3.75		\$3.75
05/05/2021	Postage -- Postage	\$1.42		\$1.42
05/05/2021	Postage -- Postage	\$0.71		\$0.71
05/05/2021	Postage -- Postage	\$3.20		\$3.20
05/24/2021	Photocopies -- BW Prints	\$0.75		\$0.75
Total Costs/Expenses: 05/2021		\$10.43	\$0.00	\$10.43
06/04/2021	HOLO Discovery- Outside Printing- [Inv #11834]		\$85.02	\$85.02
06/29/2021	Photocopies -- BW Prints	\$2.10		\$2.10
Total Costs/Expenses: 06/2021		\$2.10	\$85.02	\$87.12
Total Costs/Expenses:		\$1,014.32	\$1,695.27	\$2,709.59

Other Accounting

Date	Description	Amount
06/12/2019	Payment	\$200.10
06/21/2019	Payment	\$1,464.60
07/18/2019	Payment	\$1,188.20
08/15/2019	Payment	\$281.05
09/16/2019	Payment	\$600.00
10/18/2019	Payment	\$2,491.20
11/27/2019	Payment	\$1,611.00
12/30/2019	Payment	\$2,151.00
01/24/2020	Payment	\$621.35
03/17/2020	Payment	\$1,038.70
04/10/2020	Payment	\$600.65
04/27/2020	Payment	\$975.57
05/06/2020	Retainer Applied as Payment	\$600.65
06/10/2020	Payment	\$4,729.17
06/25/2020	Payment	\$517.80
08/10/2020	Payment	\$2,201.29
08/25/2020	Payment	\$2,412.40
09/16/2020	Payment	\$900.00
10/21/2020	Payment	\$2,694.27
11/20/2020	Payment	\$907.05
12/22/2020	Payment	\$562.50
	Payment	

Statement of Account

004451 Wedgewood, LLC
000848 70 Riverside Drive, Dayton (Breckenridge adv.

Time & Rate: Bill Value

Other Accounting

Date	Description	Amount
01/26/2021		\$630.00
03/01/2021	Payment	\$7,347.75
03/17/2021	Payment	\$2,565.00
04/28/2021	Payment	\$5,020.11
05/21/2021	Payment	\$1,129.55

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv.
Lincicome)

	ATTY SERVICES RENDERED	HOURS	AMOUNT
05/24/19	MKS	0.1	20.00
05/29/19	MKS	0.3	60.00
06/07/19	MKS	0.3	60.00
06/11/19	MKS	0.3	60.00
06/12/19	MKS	0.3	60.00
06/18/19	MKS	4.0	800.00
06/19/19	MKS	0.3	60.00
07/08/19	MKS	0.4	80.00
07/11/19	MKS	0.4	80.00
07/15/19	MKS	0.3	60.00
07/18/19	MKS	0.3	60.00

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv.
Lincicome)

	ATTY SERVICES RENDERED	HOURS	AMOUNT
08/21/19	MKS		
		0.3	60.00
08/22/19	MKS		
		1.0	200.00
08/23/19	MKS		
		1.5	300.00
08/26/19	MKS		
		0.2	40.00
09/03/19	MKS		
		1.2	240.00
09/03/19	MKS		
		0.3	60.00
09/04/19	MKS		
		0.3	60.00
09/05/19	MKS		
		0.2	40.00
09/09/19	AMO		
		0.2	19.00
09/11/19	MKS		

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv.
Lincicome)

	ATTY SERVICES RENDERED	HOURS	AMOUNT
09/17/19	MKS	0.4	80.00
09/19/19	MKS	0.7	140.00
09/20/19	AMO	0.3	60.00
09/20/19	AMO	0.2	19.00
09/26/19	MKS	0.3	28.50
09/27/19	MKS	1.5	300.00
10/01/19	MKS	6.0	1,200.00
10/03/19	AMO	1.0	200.00
10/03/19	JDG	0.4	38.00
		0.6	120.00

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv.
Lincicome)

	ATTY SERVICES RENDERED	HOURS	AMOUNT
10/04/19	MKS		
		0.3	60.00
10/11/19	MKS		
		0.3	60.00
10/11/19	MKS		
		0.3	60.00
10/18/19	MKS		
		0.3	60.00
10/21/19	AMO		
		0.2	19.00
10/21/19	MKS		
		0.2	40.00
10/23/19	MKS		
		0.5	100.00
10/28/19	MKS		
		0.5	100.00
10/29/19	MKS		
		0.3	60.00
10/29/19	MKS		
		2.5	500.00

Wedgewood, LLC

Our file # 4451-848/JTS


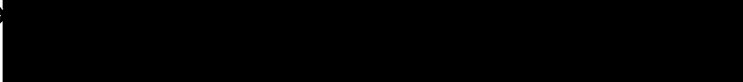
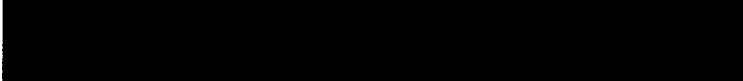
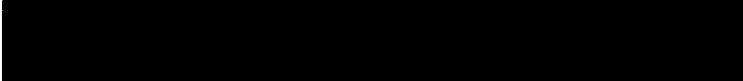
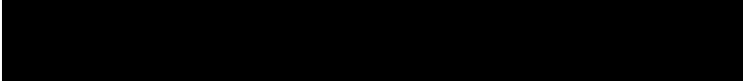
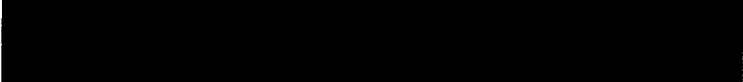
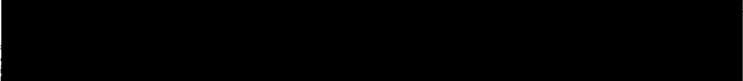

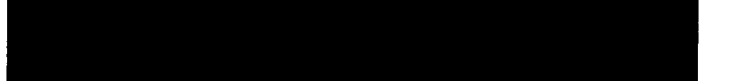
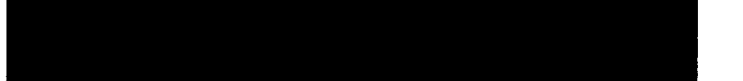
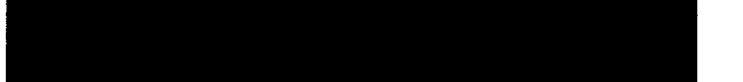
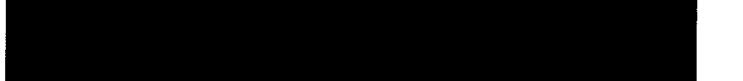
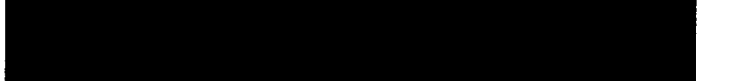
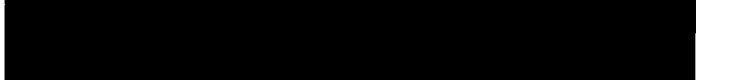
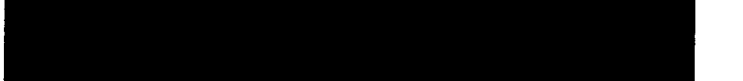

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv.
Lincicome)

	ATTY SERVICES RENDERED	HOURS	AMOUNT
10/30/19	AMO	0.2	19.00
10/31/19	MKS	0.3	60.00
11/01/19	MKS	1.0	200.00
11/07/19	MKS	0.3	60.00
11/08/19	AMO	0.3	28.50
11/08/19	AMO	0.4	38.00
11/08/19	MKS	0.3	60.00
11/12/19	MKS	0.3	60.00
11/13/19	MKS	1.3	260.00
11/14/19	MKS		

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv.
Lincicome)

	ATTY SERVICES RENDERED	HOURS	AMOUNT
		3.0	600.00
11/18/19	AMO		
		0.3	28.50
11/18/19	ARV		
		0.5	100.00
11/18/19	MKS		
			
			
		1.0	200.00
11/19/19	MKS		
		0.2	40.00
11/22/19	MKS		
		0.5	100.00
11/27/19	MKS		
		0.2	40.00
12/02/19	MKS		
		0.3	60.00
12/03/19	MKS		
			
			
			
		1.0	200.00
12/09/19	MKS		
		0.3	60.00
12/17/19	MKS		
		0.3	60.00

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv.
Lincicome)

	ATTY SERVICES RENDERED	HOURS	AMOUNT
12/19/19	MKS	0.2	40.00
12/24/19	MKS	0.3	60.00
12/26/19	MKS	0.2	40.00
12/27/19	MKS	0.2	40.00
12/31/19	MKS	0.3	60.00
01/07/20	MKS	2.5	500.00
01/08/20	AMO	0.5	47.50
01/09/20	MKS	0.2	40.00
01/13/20	MKS	0.2	40.00
01/22/20	MKS	0.3	60.00
01/23/20	MKS	0.5	100.00

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv.
Lincicome)

	ATTY SERVICES RENDERED	HOURS	AMOUNT
01/27/20	MKS	0.3	60.00
01/31/20	MKS	0.4	80.00
02/03/20	MKS	0.5	100.00
02/04/20	MKS	1.2	240.00
02/05/20	MKS	0.4	80.00
02/06/20	MKS	0.2	40.00
02/14/20	MKS	0.4	80.00
02/21/20	MKS	0.3	60.00
03/03/20	MKS	0.3	60.00
03/09/20	MKS	0.3	60.00
03/17/20	MKS	0.2	40.00

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv.
Lincicome)

ATTY SERVICES RENDERED		HOURS	AMOUNT
03/18/20	MKS	0.3	60.00
03/23/20	MKS	0.2	40.00
03/24/20	MKS	0.5	100.00
03/24/20	MKS	2.5	500.00
Current fees through 03/24/20		<u>62.3</u>	<u>\$12,145.00</u>

SUMMARY	HOURS	RATE	AMOUNT
Alex R. Velto	0.50	200.00	100.00
Jason D. Guinasso	0.60	200.00	120.00
Matthew K. Schriever	58.20	200.00	11,640.00
Amy M. Otutaha	3.00	95.00	285.00

DATE	COSTS ADVANCED	AMOUNT
04/29/19	Total Photocopies @ .10	1.50
05/31/19	Total postage charges	29.60
06/14/19	Reno/Carson Messenger Service - process service	40.00
06/30/19		105.00
07/12/19	Total Photocopies @ .15	26.40
09/09/19	Courier Service	105.00
09/20/19	Courier Service	105.00
09/26/19	Westlaw - online legal research (MKS)	29.80
10/03/19	Courier service	105.00

HUTCHISON & STEFFEN
ATTORNEYS

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July 1, 2021

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv.
Lincicome)

DATE	COSTS ADVANCED	AMOUNT
11/05/19	Westlaw - online legal research (MKS)	100.55
11/08/19	Courier service	105.00
11/18/19	Courier service	105.00
01/08/20	Courier fee	105.00
03/24/20	Westlaw - online legal research (MKS)	115.57
	Current costs through 03/24/20	<u>\$1,078.42</u>
	Total current fees & costs through 03/24/20	<u>\$13,223.42</u>

	Invoice	CREDITS/PAYMENTS	AMOUNT
06/12/19	289565	ACH Payment Received - THANK YOU!	200.10 CR
06/21/19	290909	ACH Payment Received - THANK YOU! (Breckenridge Property)	1,464.60 CR
07/18/19	292197	ACH Payment Received - THANK YOU!	1,188.20 CR
08/15/19	293515	ACH Payment Received - THANK YOU!	281.05 CR
09/16/19	294849	ACH Payment Received - THANK YOU!	600.00 CR
10/18/19	296158	ACH Payment Received - THANK YOU!	2,491.20 CR
11/27/19	297438	ACH Payment Received - THANK YOU!	1,611.00 CR
12/30/19	298769	ACH Payment Received - THANK YOU!	2,151.00 CR
01/24/20	300011	ACH Payment Received - THANK YOU!	621.35 CR
03/17/20	301400	ACH Payment Received - THANK YOU!	1,038.70 CR
04/27/20	303770	Payment Received - THANK YOU!	<u>975.57 CR</u>
		Total credits applied	<u>\$12,622.77 CR</u>

TOTAL DUE-PLEASE PAY THIS AMOUNT \$600.65

Wedgewood, LLC

Our file # 4451-848/JTS

Legal Services Re: 70 Riverside Drive, Dayton (Breckenridge adv.
Lincicome)

STATEMENTS ARE DUE ON RECEIPT.

PLEASE REFERENCE OUR FILE NUMBER ON ALL PAYMENTS

A 1% finance charge will be assessed on all
amounts over 30 days past due.

If you have any questions regarding your account, please
immediately contact the attorney handling your matter, or
call Janet Vinante in accounting at 702-385-2500, or email
her at Janet@Hutchlegal.com

Our Federal Tax I.D. No. is 75-3141066

Breckenridge Property Fund 2016's Motion for Entry of Order
Granting Permanent Writ of Restitution and Payment of
Overdue Rents

Exhibit I

ORIGINAL

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caseynelson@wedgewood-inc.com
Attorney for Defendant, Counterclaimant, and Cross-Plaintiff
Breckenridge Property Fund 2016, LLC

**THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA**

ALBERT ELLIS LINCICOME, JR., and VICENTA
LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability company, as
Trustee of the Deed of Trust given by Vicenta Lincicome
and dated 5/23/2007; FAY SERVICING, LLC, a Delaware
limited liability company and subsidiary of Fay Financial,
LLC; PROF-2013-MF LEGAL TITLE TRUST by U.S.
BANK, N.A., as Legal Title Trustee; for BANK OF
AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND
2016; NEWREZ LLC dba SHELLPOINT MORTGAGE
SERVICING, LLC; 1900 CAPITAL TRUST II, BY U.S.
BANK TRUST NATIONAL ASSOCIATION; MCM-
2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED MATTERS.

Case No.: 18-CV-01332
Dept No.: II

**BRECKENRIDGE PROPERTY
FUND 2016'S MOTION FOR
ENTRY OF ORDER GRANTING
PERMANENT WRIT OF
RESTITUTION AND PAYMENT
OF OVERDUE RENTS**

COMES NOW Breckenridge Property Fund 2016, LLC ("Breckenridge"), by and through its
attorneys of record, Hutchison & Steffen, PLLC and hereby submits this motion for entry of an order

1 granting a permanent writ of restitution in favor of Breckenridge and payment of overdue rents pursuant
2 to this Court's summary judgment order. This motion is made and based upon the following points and
3 authorities, the pleadings and papers on file, the attached exhibits, and any oral argument this court may
4 entertain at a hearing on this matter

5 DATED this 8th day of September, 2021.

6 HUTCHISON & STEFFEN, PLLC

7 

8 John T. Steffen (4390)

9 Brenoch R. Wirthlin (10282)

10 Alex R. Velto (14961)

11 HUTCHISON & STEFFEN, PLLC

12 Peccole Professional Park

13 10080 West Alta Drive, Suite 200

14 Las Vegas, NV 89145

15 bwirthlin@hutchlegal.com

16 Casey J. Nelson, Esq. (12259)

17 Wedgewood, LLC

18 Office of the General Counsel

19 2320 Potosi Street, Suite 130

20 Las Vegas, Nevada 89146

21 caseynelson@wedgewood-inc.com

22 *Attorney for Breckenridge Property Fund 2016,*
23 *LLC*

24 ///

25 ///

26 ///

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

This case pertains to the foreclosure of real property commonly known as 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property") that took place on or about January 4, 2019 at which time Breckenridge purchased the Subject Property for \$294,000.01.

Albert Ellis Lincicome, Jr. and Vicenta Lincicome ("Plaintiffs") formerly owned the Subject Property. Plaintiffs brought this lawsuit and argue that the foreclosure sale was improperly conducted but they ignore that the evidence uniformly confirms that they were in default and received actual notice of the same. No amount of distraction about the loan documents or issues of prior loan modification can change these facts. There is no dispute that the Plaintiffs were in default at the time of foreclosure and received both the Notice of Default and the Notice of Sale.

Plaintiffs had no viable claims against Breckenridge. The essence of Plaintiffs' Complaint is that the foreclosing lender did not have the ability to foreclose. Plaintiffs conceded that they executed the note and deed of trust and were in default of their loan obligations. Discovery proved that the foreclosure complied with NRS, that the Plaintiffs were in default of the loan obligations and received both the notice of default and the notice of sale.

As a result of the foreclosure sale, Plaintiffs have been divested of any ownership interest in the Subject Property. Consequently, there were no genuine issues of material fact in this case. This Court so found and granted Breckenridge's motion for summary judgment. Breckenridge now seeks an order for a permanent writ of restitution and payment of overdue rents pursuant to this Court's summary judgment order.

///

///

1 **II. Statement of Undisputed Facts.**

2 1. On or about May 23, 2007, Plaintiffs executed a Note and Deed of Trust that was secured
3 by the Subject Property. *See Exhibit #1.*

4 2. Plaintiffs subsequently defaulted on that loan obligation resulting in a Notice of Default
5 and Notice of Sale being recorded against the Subject Property. *See Exhibits #2 and #3.*

6 3. On November 7, 2018, Plaintiffs filed a complaint for injunctive relief, contractual
7 claims, and declaratory relief regarding the scheduled foreclosure sale of the Subject Property.

8 4. On November 8, 2018, Plaintiffs recorded a lis pendens on the Property and also filed
9 an Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.

10 5. On December 31, 2018, the Court entered an order enjoining the foreclosure on the
11 Subject Property if the Plaintiffs timely posted of a bond in the amount of \$172,610.67 and additional
12 security in the amount of \$2,105.10 per month thereafter.

13 6. Plaintiffs failed to post the bond and the Subject Property went to foreclosure sale on or
14 about January 4, 2019, at which time Breckenridge purchased the Subject Property at the NRS 107
15 foreclosure sale for \$294,000.01, relying on the fact that the noticed foreclosure sale was valid because
16 Plaintiff failed to post the requisite bond. *See Exhibit #4.*

17 7. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's
18 ownership of the Subject Property was recorded. *See Exhibit #5.*

19 8. The Plaintiffs were in possession of the Property at the time Breckenridge purchased the
20 Property and have been in possession since that date. On or about January 28, 2019, Breckenridge
21 served a Three-Day Notice to quit to the Plaintiffs ("Three-Day Notice"). *See Exhibit #6.*

22 9. Notwithstanding the Three-Day Notice, the Plaintiffs have remained in possession of
23 the Subject Property up to and including the present time.
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1 10. Breckenridge has made repeated demand on the Plaintiffs to vacate the Subject Property,
2 but Plaintiffs, without cause or reason, have refused to vacate the Subject Property.

3 11. The Plaintiffs continue in possession of the Subject Property notwithstanding the
4 termination of the tenancy by services of the aforesaid Three-Day Notice.

5 12. The Plaintiffs' actions are in violation of NRS § 40.250-255 and Breckenridge is entitled
6 to possession of the Subject Property as prescribed in NRS § 40.290-420.

7 13. On December 20, 2019, Plaintiffs filed their Second Amended Complaint, wherein they
8 brought claims against Breckenridge for Declaratory Relief and Quiet Title.

9 14. Breckenridge subsequently filed a Counterclaim against Plaintiffs through which it
10 claims ownership to the Subject Property, sought to quiet title in its favor, sought other monetary
11 damages, as well as possession of the Property through a claim for writ of restitution ("Restitution
12 Claim").

13 15. In addition, Breckenridge sought payment of "reasonable rents for the period of time
14 from service of the Three-Day Notice until such time as the [Plaintiffs] vacate the Subject Property."
15 See Breckenridge's Counterclaim on file herein, at ¶ 34.

16 16. Because the Plaintiffs remained in possession of the Subject Property even after service
17 of the Three-day Notice, Plaintiffs should be required to pay rent to Breckenridge from February 1,
18 2019, until the date they vacate the Subject Property.

19 17. Ultimately, this Court made a determination granting Breckenridge' counterclaims and
20 denying Plaintiffs' claims. The Plaintiffs have been and continue to reap a windfall by being able to
21 stay in the Subject Property without having to make any payments. To add to that windfall, the
22 Plaintiffs have an incentive to delay final resolution because every month of delay is another month of
23 living rent free.
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18. Based on the current rental market, a range of \$2,250.00 - \$2,500.00 is a fair market rental value for the Subject Property. *See Exhibit #7.* That rental range is consistent with the monthly security of \$2,105.10 per month that this court previously ordered to stay foreclosure.¹

19. Plaintiffs have been in the Subject Property from February 1, 2019, to the present, August, 2021, or a total of 31 months, which would equate to rent in the principal amount of not less than \$69,750 - \$77,500.

20. Accordingly, Breckenridge requests this Court issue an order and judgment against the Plaintiffs, in this range (and additional amounts due at this rate by entry of such an order) for rents due to Breckenridge due to the Plaintiffs' continued wrongful possession of the Subject Property.

21. On June 23, 2021, this Court entered its Order on Breckenridge's Motion for Summary Judgment ("MSJ Order") granting Breckenridge summary judgment on its claims against the Plaintiffs.

22. In its MSJ Order this Court made numerous findings of fact and conclusions of law, adopted herein by reference, including but not limited to the findings that Breckenridge purchased the Property at a proper foreclosure sale and is therefore entitled to summary judgment regarding its claims to title of the Property as against Plaintiffs.

III. Law and Argument

A. Based upon this Court's MSJ Order, Breckenridge is entitled to a permanent writ of restitution regarding the Property.

As noted above, on or about January 4, 2019, Breckenridge purchased the Subject Property at the NRS 107 foreclosure sale for \$294,000.01. The Three-Day Notice was served on the Plaintiffs on January 28, 2019. NRS § 40.255(1)(c) provides for removal of a person who holds over and continues in possession of real property after a 3-day written notice to surrender has been served upon the person:

¹ Plaintiffs did not dispute this amount when proffered as part of Breckenridge's motion requesting Plaintiff's post rental payments with the Court.

1 (c) Where the property or mobile home has been sold under a power of sale granted by
2 NRS 107.080 to the trustee of a deed of trust executed by the person, or by another person
3 under whom the person claims, and the title under such sale has been perfected;

4 Nev. Rev. Stat. Ann. § 40.255 (West). Breckenridge is the sole owner of the Property by virtue of
5 purchasing the Property at a valid foreclosure sale conducted pursuant to NRS Chapter 107 on January
6 4, 2019. Service of the Three-Day Notice terminated the Plaintiffs' right to remain in the Property.
7 Despite this, the Plaintiffs refused to vacate the Property within the three days as required by NRS 40.280
8 *et seq.* Rather, the Plaintiffs continued to squat in the Property without Breckenridge's permission or
9 consent. Plaintiffs have paid no rent to Breckenridge during the time they are illegally squatting in the
10 Property. Plaintiffs had no objective basis in law or fact to remain in the Property after foreclosure.
11 Breckenridge was vested with title to the Property and the foreclosure proceeded properly.

12 Plaintiffs' continued occupation of the Property was in clear violation of NRS § 40.255 and
13 Breckenridge is entitled to permanent possession of the Property as prescribed in NRS §§ 40.290 to
14 40.420. Breckenridge, as purchaser of the Property, is entitled to a permanent writ of restitution of the
15 Property.
16

17 **B. Breckenridge is entitled to rental payments during the time Plaintiffs have unjustly**
18 **remained in the Subject Property without making a single rental payment.**

19 "Unjust enrichment occurs whenever a person has and retains a benefit which in equity and good
20 conscience belongs to another. Unjust enrichment is the unjust retention of a benefit to the loss of
21 another." *Topaz Mutual Co. v. Marsh*, 108 Nev. 845, 856 (1992); *Nevada Industrial Development v.*
22 *Benedetti*, 103 Nev. 360, 363 (footnote 2) (1987).
23

24 Plaintiffs have been unjustly enriched by being allowed to remain in the Subject Property without
25 paying rent or a mortgage payment since February, 2019. The foreclosure in this matter occurred over
26 two years ago and Plaintiffs were not making payments to their lender prior to that time either. The
27 Plaintiffs are squatting in the Subject Property without Breckenridge's permission. They are aware that
28

1 the Subject Property has been foreclosed. However, Plaintiffs continue to occupy the Subject Property
2 without paying fair market rent to Breckenridge's detriment.

3 NRS 40.385(3) provides, "A tenant who retains possession of the premises that are the subject of
4 the appeal during the pendency of the appeal shall pay to the landlord rent in the amount provided in the
5 underlying contract between the tenant and the landlord as it becomes due." This Court should follow
6 the guidance and rationale of NRS 40.385(3) – which has now been confirmed due to the MSJ Order –
7 and require the Plaintiffs to pay fair market rent for their years' long wrongful occupation of the Subject
8 Property.
9

10 Breckenridge has provided proof that the fair market rental value of the Subject Property is in the
11 range of \$2,250.00 to \$2,500.00. This rental range is consistent with the monthly security of \$2,105.10
12 per month that this Court previously ordered to stay foreclosure.
13

14 **IV. Conclusion.**

15 For all these reasons, Breckenridge respectfully requests that this Court grant its Motion for entry
16 of an order granting Breckenridge a permanent writ of restitution, as well as payment of all overdue rents
17 until the Subject Property is vacated, and to grant such and further relief as the Court deems appropriate.
18

19 Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding
20

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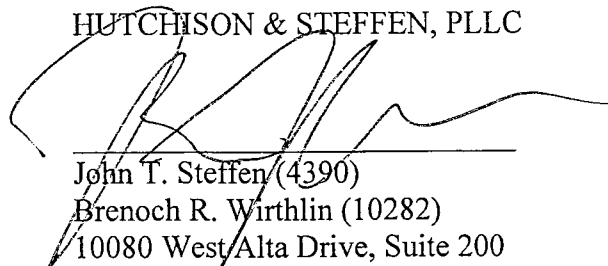
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1 document filed in this court does not contain the social security number of any person

2 DATED this 8th day of September, 2021.

3 HUTCHISON & STEFFEN, PLLC

4 

5 John T. Steffen (4390)

6 Brenoch R. Wirthlin (10282)

7 10080 West Alta Drive, Suite 200

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10 Wedgewood, LLC

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12 Casey J. Nelson, Esq. (12259)

13 2320 Potosi Street, Suite 130

14 Las Vegas, Nevada 89146

15 E-mail: caseynelson@wedgewood-inc.com

16 *Attorneys for Breckenridge Property Fund 2016, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a true and correct copy of the
**BRECKENRIDGE PROPERTY FUND 2016'S MOTION FOR ENTRY OF ORDER GRANTING
PERMANENT WRIT OF RESTITUTION AND PAYMENT OF OVERDUE RENTS** via U.S. Mail
to the parties designated below.

Michael G. Millward, Esq.
MILLWARD LAW, LTD.
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Minden, NV 89423
Attorney for Plaintiffs

Shadd A. Wade, Esq
ZIEVE BRODNAX & STEEL
9435 W. Russell Road, #120
Las Vegas, NV 89148
Attorney for Sables, LLC

Darren T. Brenner, Esq.
Ramir M. Hernandez, Esq.
WRIGHT FINLAY & ZAK, LLP
7785 W. Sahara Avenue, #200
Las Vegas, NV 89117
*Attorney for Fay Servicing, LLC and
US Bank Prof-2013-M4 Legal Title Trust*

Scott R. Lachman, Esq.
ACKERMAN, LLP
1635 Village Center Circle, #200
Las Vegas, NV 89134
Attorney for Bank of America

DATED this 8th day of September, 2021.


An Employee of HUTCHISON & STEFFEN

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

DOC # 407150

05/25/2007 04:34 PM

Official Record

Requested By
STEWART TITLE OF NEVADA

Lyon County - HV

Mary C Milligan, Recorder

Page 1 of 28 Fee \$58.00

Recorded By PLW RPTT



0407150

Assessor's Parcel Number
29-401-17

I hereby affirm that this document
submitted for recording does not
contain a social security number

/s/ LYNDIA KLEIN
FUNDER

Recording Requested By
SIERRA PACIFIC MORTGAGE COMPANY, INC
280 BRINKBY STREET, SUITE 100
RENO, NV 89509
775-826-3700

Loan No 0000479436

[Space Above This Line For Recording Date]

DEED OF TRUST

MIN 1000703-0000479436-5

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated MAY 23, 2007
together with all Riders to this document.

(B) "Borrower" is VICENTA LINCICOME, A MARRIED WOMAN

Borrower is the trustor under this Security Instrument

(C) "Lender" is SIERRA PACIFIC MORTGAGE COMPANY, INC.

Lender is a CORPORATION organized and existing under the laws of CALIFORNIA
Lender's address is 50 IRON POINT CIRCLE, STE 200, FOLSOM, CA 95630

(D) "Trustee" is GREENHEAD INVESTMENTS, INC., A CALIFORNIA CORPORATION

NEVADA- Single Family- Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS
DRAW MERS NV CVL DT 1 WPF (0101DOCS\DEEDS\CVL\NV_MERS CVL)

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(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P O Box 2028, Flint, Michigan 48501-2026, tel (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MAY 23, 2007. The Note states that Borrower owes Lender

THREE HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED FIFTY and NO/100 Dollars (U S \$ 381,150.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 1, 2037.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input checked="" type="checkbox"/> Other(s) [specify]
<input type="checkbox"/> 1-4 Family Rider	<input type="checkbox"/> Biweekly Payment Rider	INTEREST ONLY RIDER
<input type="checkbox"/> V A Rider		

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for (i) damage to, or destruction of, the Property, (ii) condemnation or other taking of all or any part of the Property, (iii) conveyance in lieu of condemnation, or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

NEVADA-Single Family-Pamela Mae/Freddie Mae UNIFORM INSTRUMENT with MERS
DRAW MERS NV CVL DT 2 WFF (0101DOCS\DEEDS\CVL\NV_MERS CVL)

Loan No: 0000479436

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(page 2 of 13 pages)

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TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note, and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY

of

LYON

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A."

which currently has the address of 70 RIVERSIDE DRIVE [Street],
DAYTON [City], Nevada 89403 [Zip Code] ("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property, and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS Borrower and Lender covenant and agree as follows

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash, (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity, or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is

Loan No: 0000479436

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS
DRAW MERS NV CVL DT 3 WPF (0101DOCS\DEEDS\CVL\NV_MERS CVL)

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(page 3 of 13 pages)

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not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note, (b) principal due under the Note, (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property, (b) leasehold payments or ground rents on the Property, if any, (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

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The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement, (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded, or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either (a) a one-time charge for flood zone determination, certification and tracking services, or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts

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disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

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Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8 Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9 Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to (a) paying any sums secured by a lien which has priority over this Security Instrument, (b) appearing in court, and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has, if any, with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11 Assignment of Miscellaneous Proceeds, Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.



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If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12 Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13 Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer") (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument, (b) is not personally obligated to pay the sums secured by this Security Instrument, and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's



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acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action. Borrower might have arising out of such overcharge.

15. **Notices** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender, (b) words in the singular shall mean and include the plural and vice versa, and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument, (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate, or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred, (b) cures any default of any other covenants or agreements, (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses.

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in one or more of the following forms, as selected by Lender (a) cash; (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity, or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note, Change of Loan Servicer, Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

Loan No: 0000479436

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT with MERS
DRAW MERS NV CVL DT 11 WFF (0101DOCS/DEEDS/CVLLNV_MERS CVL)

Form 3029 1/01
(page 11 of 13 pages)

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012 of 20**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 \$ MAXIMUM ALLOWED BY LAW.



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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

Loan No: 0000479436

STATE OF NEVADA, *Carson City*

County ss.

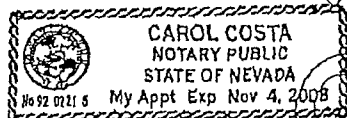
This instrument was acknowledged before me on

May 23 2007

, by

*Vicenta Lincicome**Carol Costa*

My Commission Expires

11-4-08

NEVADA-Single Family-Panther Mac/Fred Mac UNIFORM INSTRUMENT with MERS
DRAW MERS NV CVL DT 13 WPR (0101DOSSDEEDSCVLNV_MERS CVL)

Form 3029 1/01
(page 13 of 13 pages)

WHEN RECORDED MAIL TO

MIP INSURING DEPARTMENT
SIERRA PACIFIC MORTGAGE COMPANY, INC.
50 IRON POINT CIRCLE, STE 200
FOLSOM, CA 95630
916-932-1700

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ADJUSTABLE RATE RIDER
(1 Year LIBOR Index - Rate Caps)
(Assumable after Initial Period)

THIS ADJUSTABLE RATE RIDER is made this 23rd day of MAY 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure the Borrower's Adjustable Rate Note (the "Note") to SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender") of the same date and covering the property described in the Security Instrument and located at

70 RIVERSIDE DRIVE
DAYTON, NV 89403
(Property Address)

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.875 %. The Note provides for changes in the interest rate and the monthly payments, as follows

4 INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of JUNE 2017, and may change on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the one-year London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for one-year U.S.

Loan No: 0000479436

MULTISTATE ADJUSTABLE RATE RIDER-1 Year LIBOR Index (Assumable after 1P)-Single Family Freddie Mac Uniform Instrument

DRAW 0304 MLCVL ARM RIDER 5131 1 WFF (P) OPSSHARE\010\DOCS\RIDERS\CVL\MCPH5131 ARM

Form 5131 3/04
(Page 1 of 4)

BRECK000044

If the Index is no longer available, the Note Holder will choose a new Index which is based upon comparable information. The Note Holder will give me notice of this choice.

Before each Change Date, the Note Holder will calculate my new interest rate by adding

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

The interest rate I am required to pay at the first Change Date will not be greater than 11.975 % or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO percentage points (2.000 %) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.875 %

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

1 UNTIL BORROWER'S INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION A ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL BE IN EFFECT AS FOLLOWS.

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

MULTISTATE ADJUSTABLE RATE RIDER-1 Year LIBOR Index (Assumable after IP)-Single Family Freddie Mac Uniform Instrument

Form 5131 3/04
(Page 2 of 4)



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Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2 AFTER MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED IN SECTION 4 ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT DESCRIBED IN SECTION 11(A) ABOVE SHALL THEN CEASE TO BE IN EFFECT, AND UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL INSTEAD BE DESCRIBED AS FOLLOWS

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee, and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

Loan No: 0000479436

MULTISTATE ADJUSTABLE RATE RIDER-1 Year LIBOR Index (Assumable after IF)-Single Family Freddie Mac Uniform Instrument

DRAW D304 M/CVL ARM RIDER 5131 3 WFF (P)OPSSHAREW101DOCSRIDERS/CVLAMXHF5131 ARM)

Form 5131 3/04
(Page 3 of 4)

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05/25/2007
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable
Rate Rider

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

[Sign Original Only]

Loan No: 0000479436

MULTISTATE ADJUSTABLE RATE RIDER, Year LIBOR Index (Assumable after 1P)-Single Family Freddie Mac Uniform Instrument

DRAW 0304 MX CVL ARM RIDER 5131 (WFF (P) QPSSHARE (01) DOCS \RIDERS \ CVL \ MX \ PH6131 ARM)

Form 5131 3/04
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05/25/2007
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INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

Property Address 70 RIVERSIDE DRIVE
DAYTON, NV 89403

THIS ADDENDUM is made this 23rd day of MAY 2007
and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date
as this Addendum executed by the undersigned and payable to
SIERRA PACIFIC MORTGAGE COMPANY, INC., A CALIFORNIA CORPORATION (the "Lender")

THIS ADDENDUM supersedes Section 4(C) of the Rider. None of the other provisions of the Rider are changed
by this Addendum.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding
TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

During the Interest-Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest-Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest-Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest at the then current interest rate on the lower principal balance. At the end of the Interest-Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest-Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest-Only Period, my payment amount will not be reduced due to voluntary prepayments.

Loan No: 0000479436

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE RIDER S/I LIBOR ARM - MULTISTATE
DRAW MX CVL ARM IO ADNDM RIDER 1 WFF (0101DOCS\RIDERS\CVL\MXIO_ADN RID)

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(page 1 of 2 pages)

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider

Vicenta Lincicome (Seal)
VICENTA LINCICOME -Borrower

(Seal)
Borrower

_____ (Seal)
-Borrower

(Seal)
Borrower

Borrower

(Seal)
-Borrower

-Borrower

(Seal)
-Harrower

[Sign Original Only]

Loan No: 0000479436

INTEREST ONLY ADDENDUM TO ADJUSTABLE RATE RIDER 5/1 LIBOR ARM - MULTISTATE
DRAW MX CVL ARM 10 ADNDM RIDER 2 WPI (01010005RIDERS/CVL/MXIO_ADN RID)

01/01
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(page 2 of 2 pages)



407150

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EXHIBIT "A"
LEGAL DESCRIPTION

Order No: 06041897-JA

The land referred to herein is situated in the State of Nevada,
County of LYON, described as follows:

LOT 42 AS SHOWN ON THE OFFICIAL MAP OF GOLD CANYON ESTATES,
PHASE 2, FILE IN THE OFFICE OF THE LYON COUNTY, NEVADA RECORDER,
ON OCTOBER 20, 2005, AS DOCUMENT NO. 365687.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF, LYING BELOW THE,
NATURAL ORDINARY HIGH WATER LINE OF THE CARSON RIVER.

ASSESSOR'S PARCEL NO. 029-401-17

Unofficial

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

APN: 029-401-17

WHEN RECORDED MAIL TO:
Sables, LLC
c/o Zieve Brodnax & Steele
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169

DOC# 572258
11/03/2017 10:29AM
Official Record
Requested By
SERVICELINK TITLE AGENCY INC.
Lyon County - NV
Dawna L. Warr - Recorder
Page: 1 of 6 Fee: \$288.00
Recorded By BKC RPTT: \$0.00



TS No. : 16-42397

NOTICE OF BREACH AND DEFAULT AND OF ELECTION TO SELL THE REAL PROPERTY UNDER DEED OF TRUST

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business day prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this Notice of Default may be recorded (which date of recordation appears on this notice). This amount is ~~\$266,872.39~~ as of 10/31/2017 and will increase until your account becomes current.

NOTICE IS HEREBY GIVEN THAT: SABLES, LLC, a Nevada limited liability company is either the original trustee, or the duly appointed substituted Trustee, or acting as agent for the Trustee or the Beneficiary under a under a Deed of Trust dated 6/23/2007, executed by VICENTA LINGICOME, A MARRIED WOMAN, as trustor to secure obligations in favor of Mortgage Electronic Registration Systems, Inc., as nominee for SIERRA PACIFIC MORTGAGE COMPANY, INC. its successors and assigns, as Beneficiary, recorded 5/25/2007, instrument no. 407150 The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011 of Official Records in the office of the County recorder of Lyon, County, Nevada securing, among other obligations including

One note(s) for the Original sum of \$381,150.00, that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by Beneficiary; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:

The monthly installment which became due on 9/1/2008, along with late charges, and all subsequent monthly installments.

You are responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to; foreclosure trustee fees and costs, advances and late charges.

Furthermore, as a condition to bring your account in good standing, you must provide the undersigned with written proof that you are not in default on any senior encumbrance and provide proof of insurance.

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11/03/2017
2 of 6

T.S. No.: 16-42397

Nothing in this Notice of Default should be construed as a waiver of any fees owing to the beneficiary under the Deed of Trust, pursuant to the terms and provisions of the loan documents.

That by reason thereof the present Beneficiary under such deed of Trust has executed and delivered to said duly appointed Trustee a written Declaration of Default and Demand for Sale and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. As to owner-occupied property, where reinstatement is possible, the time to reinstate may be extended to 5 days prior to the date of sale pursuant to NRS 107.080. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:

PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee
c/o Fay Servicing, LLC
c/o SABLES, LLC, a Nevada limited liability company
3753 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
Beneficiary Phone: 800-495-7166
Trustee Phone: (702) 664-1774

To reach a person with authority to negotiate a loan modification on behalf of the lender:

Lauren Jowers
800-495-7166

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

Attached hereto and incorporated herein by reference is the Affidavit of Authority in Support of Notice of Default and Election to Sell pursuant to NRS 107.080.

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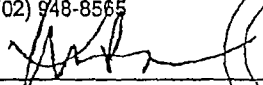
11/03/2017
3 of 6

T.S. No.: 16-42397

You may wish to consult a credit counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with names and addresses of local HUD approved counseling agency by calling their approved Local Housing Counseling Agency toll free number: (800) 669-4287 or you can go to HUD's website: <http://portal.hud.gov>.

Dated: 11/1/2017

SABLES, LLC, a Nevada limited liability company, as Trustee
Sables, LLC
c/o Zieve Brodnax & Steele
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
(702) 948-8565


Michael Busby, Trustee Sale Officer

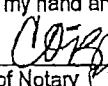
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

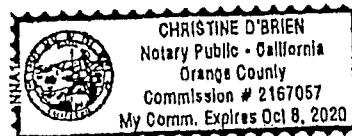
On 11/1/2017, before me, Christine O'Brien, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary



BRECK000062



572258

11/03/2017
4 of 6**Affidavit of Authority**

(Nevada Revised Statute §107.080 as amended effective June 1, 2013)

Re: TS# 16-42397

Borrower Name: VICENTALINCICOME

Property Address: 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403

I, Veronica Talley, am the Foreclosure Specialist at Pay Servicing, LLC, the current servicer for the beneficiary of the deed of trust described in the notice of default and election to sell to which this affidavit is attached ("Deed of Trust"). The following facts are based upon my personal review of documents that are of public record in the State of Nevada and personal knowledge acquired by my personal review of the business records of the beneficiary, which are within my custody and control. The business records of the beneficiary contain entries made in the ordinary course of business at or about the time the events reflected therein occurred.

- 1(a). The full name and business address of the current trustee of record for the Deed of Trust is Sables LLC, a Nevada Limited Liability Company, 3753 Howard Hughes Parkway, Suite 200, Las Vegas, Nevada 89169
- 1(b). The full name and business address of the current holder of the Note secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services - PROF.
- 1(c). The full name and business address of the current beneficiary for the obligation or debt secured by the Deed of Trust is PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee 60 Livingston Ave EP-MN-WS3D St. Paul MN 55107, Attn: Structured Finance Services - PROF
- 1(d). The full name and business address of the current servicer for the obligation secured by the Deed of Trust is Pay Servicing, LLC, 440 S. LaSalle St, Suite 2000, Chicago, IL 60605
2. From my review of the documents of public record and the business records of the current beneficiary and a title guaranty of title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to Chapter 692A of the NRS, the name of each assignee and each recorded assignment of the Deed of Trust.
 - 2(a). Assignee Name: PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee
Instrument and Recording Information: Assignment of Deed of Trust recorded on 11/25/2016 Instrument No. 544042
 - 2(b). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP
Instrument and Recording Information: Assignment of Deed of Trust recorded on 08/15/2011 Instrument No. 480360
 - 2(c). Assignee Name: Bank of America, N.A. Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP
Instrument and Recording Information: Assignment of Mortgage recorded on 11/10/2010 Instrument No 467719
3. The current beneficiary under the Deed of Trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the Deed of Trust.
4. From my review of the documents of public record and the business records of the current beneficiary, the current trustee has authority to exercise the power of sale with respect to the property



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11/03/2017
5 of 6

encumbered by the Deed of Trust, pursuant to instruction from the current beneficiary of record and current holder of the note secured by the Deed of Trust.

5. From my review of the documents of public record and the business records of the current beneficiary, the beneficiary, servicer of the obligation, or an attorney of the beneficiary or servicer has sent to VICENTA LINCICOME, a written statement of: (I) the amount of payment required to make good the deficiency in performance of payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement; (II) the amount in default; (III) the principal amount of the obligation or debt secured by the deed of trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the power of sale; and (VI) contact information for obtaining the most current amounts due and the local or toll-free telephone number that VICENTA LINCICOME may call to receive the most current amounts due and a recitation of the information in this affidavit.

6. The borrower or obligor of the loan secured by the Deed of Trust may call Fay Servicing, LLC at 800-495-7166 to receive the most current amounts due and a recitation of the information contained in this Affidavit.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this Affidavit was executed on April 5, 2016.

By: Fay Servicing, LLC, its attorney in fact

Veronica Talley

(Print Name)

(Signature)

Foreclosure Specialist IV

(Title)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Texas

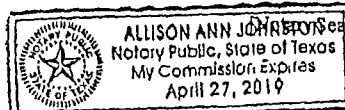
County of Denton

On October 27, 2016 before me, Allison Ann Johnston, Notary Public, personally appeared, Veronica Talley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature





572258

11/03/2017
6 of 6

Declaration of Mortgage Servicer Pursuant to NR 107.510

T.S. Number: 16-42397
Borrower(s): VICENTA LINCICOME
Mortgage Servicer: Fay Servicing, LLC
Property Address: 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403

The undersigned, as an authorized agent or employee of the mortgage servicer named below, declares that:

1. ☒ The mortgage servicer has contacted the borrower pursuant to NRS 107.510 (2), to "assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale". Thirty (30) days, or more, have passed since the initial contact was made.
2. ☐ The mortgage servicer has exercised due diligence to contact the borrower pursuant to NRS 107.510 (5), to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.
3. ☐ No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to NRS 107.410.
4. ☐ During the preceding annual reporting period, the Lender has foreclosed on 100 or fewer real properties located in this state and therefore, pursuant to NRS 107.460, the provisions of NRS 107.400 to 107.560, inclusive, do not apply.
5. ☐ The loan is not a "residential mortgage loan" as defined in NRS 107.450.

I certify that this declaration is accurate, complete and supported by competent and reliable evidence which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

Dated: 11-5-2016

By:

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EXHIBIT PAGE ONLY

EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Doc #: 587470

10/12/2018 02:27 PM Page: 1 of 2

OFFICIAL RECORD

Requested By: SERVICELINK TITLE AGENCY INC

Lyon County, NV
Dawna L. Warr, Recorder

Fee: \$38.00 RPTT: \$0.00

Recorded By: mkassebaum

APN No.: 029-401-17

[Recording requested by:]

[When recorded mail to:]

Sables LLC
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, Nevada 89148

T.S. No. 16-42397

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 5/23/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

TRUSTOR: VICENTA LINCICOME, A MARRIED WOMAN
Duly Appointed Trustee: **Sables LLC**, a Nevada Limited Liability Company
Recorded 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011 Official Records in the office of the Recorder of Lyon County, Nevada, Described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 42 as shown on the official map of **GOLD CANYON ESTATES, PHASE 2**, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Date of Sale: 11/9/2018 at 11:00 AM

BRECK000066

Place of Sale: 31 S. Main Street Yerington, Nevada 89447
Lyon County Courthouse
Estimated Sale Amount: \$666,632.22
Street Address or other common designation of real property: 70 RIVERSIDE DRIVE
DAYTON, Nevada 89403

A.P.N. No.: 029-401-17

The undersigned Trustee disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above. If no street address or other common designation is shown, directions to the location of the property may be obtained by sending a written request to the beneficiary within 10 days of the date of first publication of this Notice of Sale.

Date: 10/11/2018

Sables LLC, a Nevada Limited Liability Company
c/o Zieve Brodnax & Steele
9435 West Russell Road, Suite 120
Las Vegas, NV 89148
Phone: (702) 948-8565
Sale Information: (714) 848-9272 www.elitepostandpub.com
For Non-Automated Sale Information, call: (702) 664-1774

Michael Busby, Trustee Sale Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

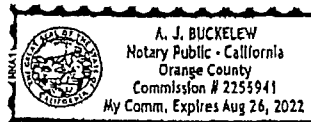
State of CALIFORNIA
County of ORANGE

On 10/11/2018, before me, A.J. Buckelew Notary Public, personally appeared Michael Busby who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

A.J. Buckelew
Signature of Notary



THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND
ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE.

BRECK000067

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EXHIBIT PAGE ONLY

EXHIBIT 4

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

1 John T. Steffen (4390)
2 Matthew K. Schriever (10745)
3 Alex R. Velto (14961)
4 HUTCHISON & STEFFEN, PLLC
5 10080 West Alta Drive, Suite 200
6 Las Vegas, NV 89145
7 Tel (702) 385-2500
8 Fax (702) 385-2086
9 mschriever@hutchlegal.com

10 Casey J. Nelson, Esq. (12259)
11 Wedgewood, LLC
12 Office of the General Counsel
13 2320 Potosi Street, Suite 130
14 Las Vegas, Nevada 89146
15 Tel (702) 305-9157
16 Fax (310) 730-5967
17 caseynelson@wedgewood-inc.com
18 *Attorney for Defendant, Counterclaimant, and Cross-Plaintiff*
19 *Breckenridge Property Fund 2016, LLC*

20 **THIRD JUDICIAL DISTRICT COURT**
21 **LYON COUNTY, NEVADA**

22 ALBERT ELLIS LINCICOME, JR., and
23 VICENTA LINCICOME,

24 Plaintiff,

25 v.

26 SABLES, LLC, a Nevada limited liability
27 company, as Trustee of the Deed of Trust given
28 by Vicenta Lincicome and dated 5/23/2007; FAY
SERVICING, LLC, a Delaware limited liability
company and subsidiary of Fay Financial, LLC;
PROF-2013-MF LEGAL TITLE TRUST by U.S.
BANK, N.A., as Legal Title Trustee; for BANK
OF AMERICA, N.A.; BRECKENRIDGE
PROPERTY FUND 2016; NEWREZ, LLC dba
SHELLPOINT MORTGAGE SERVICING,
LLC; 1900 CAPITAL TRUST II, BY U.S.
BANK TRUST NATIONAL ASSOCIATION;
MCM-2018-NPL2 and DOBS 1-50.,

Defendants.

AND RELATED MATTERS.

Case No.: 18-CV-01332
Dept No.: II

**DECLARATION IN SUPPORT OF
BRECKENRIDGE PROPERTY FUND 2016
LLC'S MOTION FOR SUMMARY
JUDGMENT AGAINST PLAINTIFF**

1 The undersigned, Jason Campbell declares under penalty of perjury that the following assertions
2 are true:

3 1. I am an authorized agent of Breckenridge Property Fund 2016, LLC ("Breckenridge").

4 2. I am competent to testify to the matters asserted herein, of which I have personal
5 knowledge, except as to those matters stated upon information and belief. As to those matters stated
6 upon information and belief, I believe them to be true. I make this declaration in support of
7 Breckenridge's motion for summary judgment against Plaintiffs.

8 3. On January 4, 2019, Breckenridge purchased real property located at 70 Riverside Drive,
9 Dayton, Nevada 89403 ("Subject Property") at a foreclosure sale conducted pursuant to NRS 107.
10 ("Foreclosure Sale").

11 4. Breckenridge was the highest bidder and paid \$294,000.01 to purchase the Subject
12 Property at the Foreclosure Sale.

13 5. Breckenridge relied on the fact that the noticed Foreclosure Sale was valid because
14 Plaintiffs failed to post the court-ordered bond.

15 6. Breckenridge had no role in this dispute prior to its purchase of the Subject Property at
16 the Foreclosure Sale.

17 7. Breckenridge is entitled to an order quieting title in its favor because there were no defects
18 in the Foreclosure Sale and any rights, title, or interest that Plaintiffs previously had in the Subject
19 Property has been terminated by way of the Foreclosure Sale

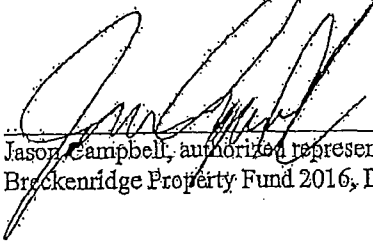
20 8. I declare under penalty of perjury of the laws of the United States and the State of Nevada
21 that these facts are true to the best of my knowledge and belief.

22 ///

23 ///

24 ///

1 Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding
2 document filed in this court does not contain the social security number of any person,
3
4

5 
6 Jason Campbell, authorized representative of
7 Breckenridge Property Fund 2016, LLC
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EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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EXHIBIT PAGE ONLY

EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

70 RIVERSIDE DR

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:
Breckenridge Property Fund, 2016, LLC
2320 Potosi St, Ste 130
Las Vegas, NV 89146

Forward Tax Statements to
the address given above

Recorded As An Accommodation
Only Without Liability

Doc #: 591393

01/26/2018 08:21 AM Page 1 of 2

OFFICIAL RECORD

Requested By: FIRST AMERICAN TITLE INSURANCE CO

Lyon County, NV
Margie Kassebaum, Recorder

Fee: \$38.00 RPTT: \$1,148.65

Recorded By: Inhumidad

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.65
The Grantee Herein WAS NOT the Foreclosing Beneficiary.
The Amount of the Unpaid Debt was \$671,249.37
The Amount Paid by the Grantee was \$294,000.01
Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:
Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.
EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

BRECK000025

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:
Breckenridge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NV 89146

Forward Tax Statements to
the address given above

Recorded As An Accommodation
Only Without Liability

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55
The Grantee Herein WAS NOT the Foreclosing Beneficiary.
The Amount of the Unpaid Debt was \$671,249.37
The Amount Paid by the Grantee was \$294,000.01
Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:

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EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by VICENTA LINCICOME, A MARRIED WOMAN as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

BRECK000026

TRUSTEE'S DEED UPON SALE

T.S. #: 16-42397

Order #: 160069595-NV-VOO

Trustee having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Breach and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified return receipt mail, postage pre-paid to each person entitled to notice in compliance with Nevada Revised Statutes 107.080.

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 1/4/2019. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being \$ \$294,000.01, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, SABLES, LLC, a Nevada limited liability company, as Trustee, has this day, caused its name to be hereunto affixed.

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey
Neal

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 1/15/2019 before me, the undersigned, J. Develasco Notary Public, personally appeared Geoffrey Neal who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

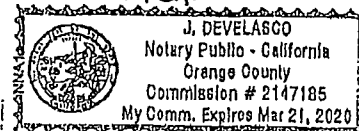
WITNESS my hand and official seal.

Signature

J. Develasco

(Seal)

J. Develasco
#2147185 Expires 3/21/20



BRECK000027

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

a) 029-401-17

b) _____

c) _____

d) _____

2. Type of Property:

a) ☐

Vacant Land

c) ☐

Condo/Townhse

e) ☐

Apt. Bldg

g) ☐

Agricultural

Other _____

b) ☒

Single Fam. Res.

d) ☐

2-4 Plex

f) ☐

Comm'l./Ind'l

h) ☐

Mobile Home

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property

\$ \$294,000.01

b. Deed in Lieu of Foreclosure Only (value of property)

(_____)

c. Transfer Tax Value:

\$ \$294,000.01

d. Real Property Transfer Tax Due

\$ 1148.86

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest; Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____

Capacity AGENT

Signature _____

Capacity AGENT

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: Sables, LLC, a Nevada
limited liability company
Address: 3753 Howard Hughes Parkway,
Suite 200, Las Vegas, NV 89169

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Breckenridge Property Fund,
2016, LLC
Address: 2320 Potosi St. Ste 130
Las Vegas, NV 89146

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: First American Escrow #: ACCU
Address: 1000 Wynn Avenue
City: Las Vegas State: NV Zip: 89103

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

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EXHIBIT PAGE ONLY

EXHIBIT 6

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

THREE-DAY NOTICE TO QUIT

TO: VICENTA LINCICOME
TENANT AND SUBTENANT AND ALL OCCUPANTS
70 RIVERSIDE DR.
DAYTON, NEVADA 89403

Or any occupants of the above-named property or any persons in possession of the above-mentioned property.

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

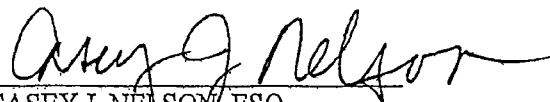
YOU ARE HEREBY NOTIFIED AND DEMAND IS MADE that you surrender possession of the property to the undersigned at or before noon of the third (3) day after receipt of this Notice pursuant to Sections 40.255, 40.280, and 40.290 to 40.420 of the Nevada Revised Statutes.

YOU ARE HEREBY NOTIFIED that if you are a tenant of the prior owner of the Property, you are to refer to the Notice to Tenant which is attached as Exhibit A to this Three-Day Notice to Quit. If you need another copy of the Notice to Tenant, please contact the undersigned below.

UPON YOUR FAILURE TO VACATE OR SURRENDER THE PREMISES AS DEMANDED, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC


CASEY J. NELSON, ESQ.
Nevada Bar # 12259
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorney for Plaintiff
Breckenridge Property Fund 2016, LLC

EXHIBIT A

EXHIBIT A

NOTICE TO TENANT

TO: VICENTA LINCICOME
TENANT AND SUBTENANT AND ALL OCCUPANTS
70 RIVERSIDE DR.
DAYTON, NEVADA 89403

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED OF A CHANGE OF OWNERSHIP. The new owner of the property is BRECKENRIDGE PROPERTY FUND 2016, LLC, 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146.

YOU MUST CONTACT US AND ESTABLISH YOUR BONA FIDE TENANCY in the property within three (3) business days of receipt of this Notice.

IN ORDER TO ESTABLISH YOUR TENANCY, within three (3) business days of receipt of this Notice you must furnish a copy of your fully executed, current lease or rental agreement and proof of all past payments to Breckenridge Property Fund 2016, c/o the owner's attorney, Casey J. Nelson, Esq., at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Failure to produce valid documentation clearly demonstrating a bona fide tenancy will result in eviction proceedings immediately being brought against all occupants.

A LEASE OR TENANCY shall be considered bona fide only if:

- 1) The mortgagor/prior owner or the child, spouse, or parent of the mortgagor/prior owner under the contract is not the tenant or occupant;
- 2) The lease or tenancy was the result of an arms-length transaction; and
- 3) The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy

The new owner reserves the right to challenge the authenticity and validity of any purported lease or tenancy based upon other terms, conditions, or factors which appear fraudulent or which are not otherwise standard terms within residential leases in the geographic area.

YOU ARE HEREBY NOTIFIED that if you are a bona fide tenant or subtenant in the property, you must still vacate the property within either 1) 90 days of this notice; or 2) upon the expiration of the remainder of the term of your bona fide lease, whichever date is later.

YOU ARE HEREBY NOTIFIED that you must continue to pay rent to the new owner throughout the remainder of your tenancy in order to avoid eviction proceedings being brought against you for non-payment of rent.

Rent shall be remitted to BRECKENRIDGE PROPERTY FUND 2016, LLC at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Your failure to pay rent to the new owner throughout the notice period or comply with any other term of the agreement or applicable law shall constitute a breach of the lease or rental agreement and may result in eviction proceedings.

YOU ARE HEREBY NOTIFIED that upon your failure to timely establish your tenancy or upon your failure to fully vacate or surrender the premises as demanded, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC



CASEY J. NELSON, ESQ.

Nevada Bar # 12259

Office of the General Counsel

2320 Potosi Street, Suite 130

Las Vegas, Nevada 89146

Attorney for Plaintiff

Breckenridge Property Fund 2016, LLC

Attorney or Party without Attorney: Wedgewood, LLC Casey J. Nelson, Esq. (SBN 12259) 2320 Potosi Street, Suite 130 Las Vegas, NV 89146 Telephone No: (702) 305-9157 Attorney For: Plaintiff				For Court Use Only	
Ref. No. or File No.: 70 RIVERSIDE DR.					
Insert name of Court, and Judicial District and Branch Court:					
Plaintiff: BRECKENRIDGE PROPERTY FUND 2016, LLC Defendant: VICENTA LINCICOME; TENANT AND SUBTENANT AND ALL OCCUPANTS					
AFFIDAVIT OF SERVICE		Hearing Date:	Time:	Dept/Div:	Case Number:

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Three-Day Notice to Quit, Notice to Tenant
3. a. Party served: Vicenta Lincicome; Tenant and Subtenant and All Occupants
 b. Person served: Posted
4. Address where the party was served: 70 Riverside Drive, Dayton, NV 89403
5. I served the party:
 - a. By Posting. On: Mon, Jan 28 2019 (2) at: 02:20 PM by posting a copy of the documents in a conspicuous place on the property.
 - b. By Mailing. On: Mon, Jan 28 2019 by mailing a copy of the documents, addressed as shown in Item 4, via Certified Mail Issued by United States Post Office from: Las Vegas, NV.
6. Person Who Served Papers:
 - a. Toni Ruckman (R-052005, Washoe)
 - b. FIRST LEGAL
 2920 N. Green Valley Parkway, Suite 514
 Henderson, NV 89014
 - c. (702) 671-4002
 - d. The Fee for Service was:

Pursuant to NRS 53.045

7. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

01/29/2019

(Date)

Toni L Ruckman

(Signature)



AFFIDAVIT OF
SERVICE

3012509
(55105770)

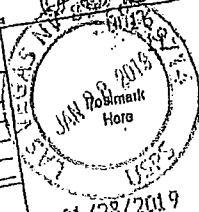
1520 SOUT 2000 DEPT BLD

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OFFICIAL USE

Certified Mail Fee	\$2.50
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<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Total Postage and Fees	\$6.85



01/28/2019

55105770

Sent To: **VICENTA LINCICOME**
Street or PO Box: **TENANT/SUBTENANT/ALL OCCUPANTS**
City/State: **70 RIVERSIDE DR.**
City/State: **DAYTON, NV 89403-9055**

PS Form

Situations

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EXHIBIT PAGE ONLY

EXHIBIT 7

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

1 John T. Steffen (4390)
2 Matthew K. Schriever (10745)
3 HUTCHISON & STEFFEN, PLLC
4 10080 W. Alta Dr., Suite 200
5 Las Vegas, NV 89145
6 Telephone: (702) 385-2500
7 Facsimile: (702) 385-2086
8 mschriever@hutchlegal.com

9 Casey J. Nelson (12259)
10 WEDGEWOOD, LLC
11 Office of the General Counsel
12 2320 Potosi Street, Suite 130
13 Las Vegas, Nevada 89146
14 Telephone: (702) 305-9157
15 Facsimile: (310) 730-5967
16 caseynelson@wedgewood-inc.com

17 *Attorney for Defendant / Counterclaimant*
18 *Breckenridge Property Fund 2016, LLC*

19 **THIRD JUDICIAL DISTRICT COURT**
20 **LYON COUNTY, NEVADA**

21 ALBERT ELLIS LINCICOME, JR., and
22 VICENTA LINCICOME,

23 Plaintiff,

24 v.

25 SABLES, LLC, a Nevada limited liability
26 company, as Trustee of the Deed of Trust
27 given by Vicenta Lincicome and dated
28 5/23/2007; FAY SERVICING, LLC, a
Delaware limited liability company and
subsidiary of Fay Financial, LLC; PROF-
2013-MF LEGAL TITLE TRUST by U.S.
BANK, N.A., as Legal Title Trustee; for
BANK OF AMERICA, N.A.;
BRECKENRIDGE PROPERTY FUND
2016; NEWREZ LLC dba SHELLPOINT
MORTGAGE SERVICING, LLC; 1900
CAPITAL TRUST II, BY U.S. BANK
TRUST NATIONAL ASSOCIATION;
MCM-2018-NPL2 and DOES 1-50.,

Defendants.

Case No.: 18-CV-01332
Dept No.: II

**DECLARATION IN SUPPORT OF
MOTION FOR ORDER REQUIRING
PLAINTIFF TO DEPOSIT RENTAL
AND/OR MORTGAGE PAYMENTS
WITH COURT**

1 AND RELATED ACTIONS
2

3 The undersigned, Jason Campbell declares under penalty of perjury that the
4 following assertions are true:

5 1. I am the Director of Regional Operations for Wedgewood, LLC, which is
6 the managing member of Defendant / Counterclaimant Breckenridge Property Fund 2016,
7 LLC ("Breckenridge").
8

9 2. I am an authorized representative of Breckenridge.

10 3. Breckenridge is a limited liability company authorized to do business in
11 Nevada, that purchases real estate throughout the state of Nevada.
12

13 4. I am competent to testify to the matters asserted herein, of which I have
14 personal knowledge, except as to those matters stated upon information and belief. As to
15 those matters stated upon information and belief, I believe them to be true.

16 5. As the Director of Regional Operations for Wedgewood, LLC, the major
17 responsibilities and duties of my position include, among other, the following:
18

19 a. Daily analysis of upcoming properties scheduled to go to sale in
20 foreclosure;

21 b. Daily analysis of real property market conditions and property valuations;

22 c. Area Property Manager oversight, renovation direction, budgeting,
23 approval; and
24

25 d. Area real estate professional oversight including pricing, offer negotiation,
26 and repair negotiation.
27
28

1 6. Breckenridge purchased the real property located at 70 Riverside Drive,
2 Dayton, Nevada 89403 ("Subject Property") at a foreclosure sale that occurred on January
3 4, 2019.

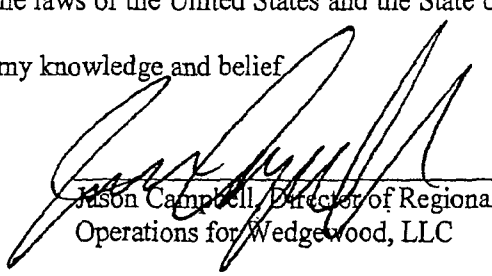
4 7. Breckenridge purchased the Subject Property at the foreclosure sale as an
5 independent, good faith purchaser.
6

7 8. I have reviewed the publicly available information available for the Subject
8 Property and compared that information with online rental availability of other real estate
9 available for rent in Dayton, Nevada and Fernley, Nevada.

10 9. Based on current available rental prices and rentals in those surrounding areas
11 I have determined that a fair market rental value for the Subject Property to be in the
12 \$2,250.00 to \$2,500.00 per month range.
13

14 10. The factors I utilized to determine that fair market rental range in comparing
15 the Subject Property with other properties for rent included year built, square footage,
16 bed/bath count, neighborhood, larger garage size, single story, lot size, availability, and
17 desirability.
18

19 I declare under penalty of perjury of the laws of the United States and the State of
20 Nevada that these facts are true to the best of my knowledge and belief
21

22 
23 Jason Campbell, Director of Regional
24 Operations for Wedgewood, LLC
25
26
27
28

Notice of Entry of Order on Order Concerning:
Breckenridge Property Fund 2016, LLC's Motion for Entry of
Order Granting Permanent Writ of Restitution and Payment
of Overdue Rents and Plaintiffs' Motion for Stay Pending
Appeal

Exhibit J

1 John T. Steffen (4390)
Brenoch R. Wirthlin (10282)
2 Todd W. Prall (9154)
HUTCHISON & STEFFEN, PLLC
3 10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
4 Telephone: (702) 385-2500
Facsimile: (702) 385-2086
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8 Las Vegas, Nevada 89146
Telephone: (702) 305-9157
9 Facsimile: (310) 730-5967
caseynelson@wedgewood-inc.com

10 *Attorney for Defendant / Counterclaimant*
11 *Breckenridge Property Fund 2016, LLC*

12 **THIRD JUDICIAL DISTRICT COURT**
13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

15 Plaintiff,

16 v.

17 SABLES, LLC, a Nevada limited liability
18 company, as Trustee of the Deed of Trust
given by Vicenta Lincicome and dated
19 5/23/2007; FAY SERVICING, LLC, a
Delaware limited liability company and
20 subsidiary of Fay Financial, LLC; PROF-
2013-MF LEGAL TITLE TRUST by U.S.
21 BANK, N.A., as Legal Title Trustee; for
BANK OF AMERICA, N.A.;
22 BRECKENRIDGE PROPERTY FUND
2016; NEWREZ LLC dba SHELLPOINT
23 MORTGAGE SERVICING, LLC; 1900
CAPITAL TRUST II, BY U.S. BANK
24 TRUST NATIONAL ASSOCIATION;
MCM-2018-NPL2 and DOES 1-50.,

25 Defendants.

26 AND RELATED ACTIONS
27

Case No.: 18-CV-01332

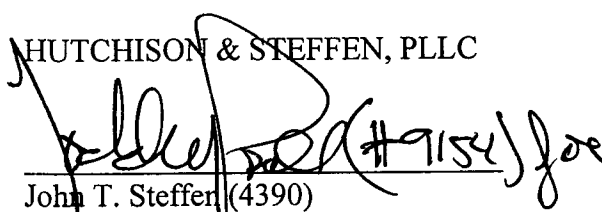
Dept No.: II

NOTICE OF ENTRY OF ORDER

1 Please take notice that an Order Concerning: Breckenridge Property Fund 2016, LLC's
2 Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents
3 and Plaintiffs' Motion for Stay Pending Trial was entered on the 5th day of November, 2021, a
4 copy of which is attached hereto.

5 DATED this 15th day of November, 2021.

6 HUTCHISON & STEFFEN, PLLC

7  (4390)

8 Brenoch R. Wirthlin (10282)

9 Todd W. Prall (9154)

10 10080 W. Alta Dr., Suite 200

11 Las Vegas, NV 89145

12 Casey J. Nelson (12259)

13 WEDGEWOOD, LLC

14 Office of the General Counsel

15 2320 Potosi Street, Suite 130

16 Las Vegas, Nevada 89146

17 *Attorney for Defendant / Counterclaimant*
18 *Breckenridge Property Fund, LLC*
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Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
Minden, NV 89423
Attorney for Plaintiffs

R. Samuel Ehlers, Esq.
Ramir M. Hernandez, Esq.
WRIGHT FINLAY & ZAK, LLP
7785 W. Sahara Avenue, #200
Las Vegas, NV 89117
*Attorney for Prof-2013-M4 Legal Title Trust by
US. Bank, National Association as Legal Title
Trustee; Fay Servicing, LLC, and Shellpoint
Mortgage Servicing, LLC*
Melanie Morgan, Esq.
Scott R. Lachman, Esq.
ACKERMAN, LLP
1635 Village Center Circle, #200
Las Vegas, NV 89134
Attorney for Bank of America

Melanie Morgan, Esq.
Scott R. Lachman, Esq.
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Attorney for Bank of America

Darren T. Brenner, Esq.
Ramir M. Hernandez, Esq.
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7785 W. Sahara Avenue, #200
Las Vegas, NV 89117
*Attorneys for Prof-2013-M4 Legal Title Trust
by US Bank, National Association as Legal
Title Trustee; Fay Servicing, LLC, and
Shellpoint Mortgage Servicing, LLC*

DATED this 15th day of November 2021.

Danielle Kelley
An Employee of HUTCHISON & STEFFEN

1 John T. Steffen (4390)
2 Brenoch R. Wirthlin (10292)
3 Alex R. Velto (14961)
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15 Las Vegas, Nevada 89146
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17 Fax: (310) 730-5967
18 caseynelson@wedgewood-inc.com

19 *Attorneys for Intervenor*

20 **THIRD JUDICIAL DISTRICT COURT**
21 **LYON COUNTY, NEVADA**

22 ALBERT ELLIS LINCICOME, JR., and
23 VICENTA LINCICOME,

24 Plaintiff,

25 v.

26 SABLES, LLC, a Nevada limited liability
27 company, as Trustee of the Deed of Trust given
28 by Vicenta Lincicome and dated 5/23/2007; FAY
SERVICING, LLC, a Delaware limited liability
company and subsidiary of Fay Financial, LLC;
PROF-2013-MF LEGAL TITLE TRUST by U.S.
BANK, N.A., as Legal Title Trustee; for BANK
OF AMERICA, N.A.; and DOES 1-50.,

Defendants.

BRECKENRIDGE PROPERTY FUND 2016,
LLC,

Defendant in Intervention.

FILED

2021 NOV -5 AM 11:05

TANYA SUE BONE
COURT ADMINISTRATOR
Bayley Baptist
CLERK OF DISTRICT COURT

Case No.: 18-CV-01332
Dept No.: II

ORDER CONCERNING:

**BRECKENRIDGE PROPERTY FUND 2016,
LLC'S MOTION FOR ENTRY OF ORDER
GRANTING PERMANENT WRIT OF
RESTITUTION AND PAYMENT OF
OVERDUE RENTS**

AND

**PLAINTIFFS' MOTION FOR STAY
PENDING APPEAL**

1 On October 12, 2021, at 1:30 p.m., the Court held a hearing in the above-captioned matter to
2 consider Defendant in Intervention Breckenridge Property Fund 2016, LLC's Motion for Entry of Order
3 Granting Writ of Permanent Restitution and Payment of Overdue Rents and on Plaintiffs' Motion for
4 Stay Pending Appeal. Todd W. Prall and Casey J. Nelson appeared on behalf of Defendant in
5 Intervention Breckenridge Property Fund 2016, LLC. Michael G. Millward appeared on behalf of the
6 Plaintiffs. Ramir M. Hernandez appeared on behalf of Fay Servicing, LLC and US Bank Prof-2013-M4
7 Legal Title Trust. Paige L. Magaster appeared on behalf of Bank of America, N.A.

9 The Court, after hearing arguments of counsel and sworn testimony from Plaintiffs Albert Ellis
10 Lincicome, Jr., and Vincenta Lincicome, and for good cause, enters the following Findings of Fact,
11 Conclusions of Law, and Order.

12
13 **A. Findings of Fact.**

14 1. On June 23, 2021, the Court entered an order denying Plaintiffs' motion for partial
15 summary judgment and granting summary judgment in favor of Defendants Bank of American, N.A.,
16 Shellpoint Mortgage Servicing, Prof-2013 M4 Legal Trust, U.S. Bank, N.A. as Legal Trustee (the and
17 Fay Servicing, LLC (hereinafter the "Banks MSJ Order") and certified the judgment as final under NRC
18 54(b).

20 2. On June 23, 2021, the Court entered a separate order granting summary judgment in favor
21 of Breckenridge Property Fund 2016, LLC ("Breckenridge") on its First and Third Claims for Relief for
22 Quiet Title and Writ of Possession (hereinafter, the "Breckenridge MSJ Order").

23 3. The Breckenridge MSJ Order and the Banks MSJ Order are collectively the MSJ Orders.

24 4. In the MSJ Orders, the Court made numerous findings of fact and conclusions of law
25 which are adopted herein by reference.
26
27
28

1 5. In granting summary judgment in favor of Breckenridge, the Court found that
2 Breckenridge purchased the Property at a properly noticed foreclosure sale and is therefore entitled to
3 both title to and possession of the real property at issue in this case, which is located at 70 Riverside
4 Drive, Dayton, Nevada 89403 (the "Property").

5 6. On July 23, 2021, Plaintiffs filed a Notice of Appeal, which sought review of both the
6 MSJ Orders, among other things.

7 7. On September 9, 2021, Breckenridge filed a Motion for Entry of Order Granting
8 Permanent Writ of Restitution and Payment of Overdue Rents (the "Motion for Permanent Writ of
9 Restitution")
10

11 8. On or about September 14, 2021, Plaintiffs served their Motion for Stay Pending Appeal
12 (the "Motion for Stay").
13

14 9. On or about September 22, 2021, Plaintiffs served an opposition to the Motion for Writ
15 of Permanent Restitution in which Plaintiffs simply incorporated the Motion for Stay as their opposition.
16

17 10. On October 1, 2021, Breckenridge filed an opposition to the Motion for Stay.

18 11. On October 6, 2021, Breckenridge filed a Reply in Support of the Motion for Permanent
19 Writ of Restitution.

20 12. On September 28, 2021, the Court entered an Order Granting Ex Parte Application for
21 Order shortening Time for Hearing on Breckenridge's Motion for Permanent Writ of Restitution, which
22 set a hearing on Breckenridge's motion for October 13, 2021 at 1:30 p.m.
23

24 13. Breckenridge purchased the Property at a properly noticed foreclosure sale on January 4,
25 2019 for \$294,000.00. A Three-Day Notice to vacate the Property was served on the Plaintiffs on January
26 28, 2019.
27
28

1 14. Plaintiffs have continued to live in the Property from February 1, 2021 to the present,
2 which is a total of 32 months through the end of September 2021.

3 15. Based on the current rental market and the evidence provided by Breckenridge, the Court
4 finds that a fair market rental value for the Property is \$2,500 per month.

5 16. Plaintiffs testified concerning their assets at the hearing on October 13, 2021. Plaintiffs
6 testified that they have a rental property that is secured by a trust deed located Carson City, Nevada. The
7 debt secured by the deed of trust is somewhere between \$225,000 and \$250,000, with a potential market
8 value of around \$325,000. The rental income they receive from the property is only a few hundred dollars
9 more than the mortgage payment each month.
10

11 17. Plaintiffs testified that they have a retirement account with approximately \$125,000.00
12 and that they live on approximately \$3,000.00 per month in social security income.
13

14 18. Plaintiffs testified that they have a significant amount of medical bills.

15 19. Plaintiffs testified that they did not believe they could make a monthly rental payment for
16 the Property in the amount of \$2,500.
17

18 **B. Conclusions of Law.**

19 20. NRS § 40.255(1)(c) provides for removal of a person who holds over and continues in
20 possession of real property after a 3-day written notice to surrender has been served upon the person
21 “where the property . . . has been sold under a power of sale granted by NRS 107.080 to the trustee of a
22 deed of trust executed by the person . . . , and the title under such sale has been perfected” Nev.
23 Rev. Stat. Ann. § 40.255 (West).
24

25 21. Plaintiffs’ continued occupation of the Property was and is in clear violation of NRS §
26 40.255 and Breckenridge is entitled to permanent possession of the Property as prescribed in NRS §§
27 40.290 to 40.420. Therefore, Breckenridge is entitled to a permanent writ of restitution for the Property.
28

1 22. Plaintiffs have requested a stay of the proceedings in this Court to enforce the MSJ Orders,
2 including Breckenridge's request for a permanent writ of restitution.

3 23. The Nevada Supreme Court has noted that "generally, in determining whether to issue a
4 stay pending disposition of an appeal, [a court] considers the following factors:

- 5 (1) whether the object of the appeal will be defeated if the stay is denied,
6 (2) whether appellant will suffer irreparable or serious injury if the stay is denied,
7 (3) whether respondent will suffer irreparable or serious injury if the stay is granted, and
8 (4) whether appellant is likely to prevail on the merits in the appeal.

9
10 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

11 24. The Nevada Supreme Court has "not indicated that any one factor carries more weight
12 than the others" although some courts have recognized "that if one or two factors are especially strong,
13 they may counterbalance other weak factors." *Id.*

14
15 25. Here, rather than focusing on these factors, the Court believes a stay is warranted under
16 NRCP 62(d) so long as Plaintiffs meet the requirements of securing Breckenridge's interests.

17 26. NRCP 62(d) provides:

18 Stay Pending an Appeal.

19
20 (1) *By Supersedeas Bond.* If an appeal is taken, the appellant may obtain a stay by
21 supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be
22 given upon or after filing the notice of appeal or after obtaining the order allowing
the appeal. The stay is effective when the supersedeas bond is filed.

23 (2) *By Other Bond or Security.* If an appeal is taken, a party is entitled to a stay by
24 providing a bond or other security. Unless the court orders otherwise, the stay takes
25 effect when the court approves the bond or other security and remains in effect for
the time specified in the bond or other security.

26 27. The amended rule, which appears to have added subsection (2) essentially adopts the case
27 law from Nevada and the federal courts that had recognized that the rule "allows an appellant to obtain a
28

1 stay pending appeal as of right upon the posting of a supersedeas bond for the full judgment amount, but
2 that courts retain the inherent power to grant a stay in the absence of a full bond.” *Nelson v. Heer*, 121
3 Nev. 832, 834, 122 P.3d 1252, 1253 (2005), as modified (Jan. 25, 2006) (citations omitted).

4 28. Here, the appeal was taken upon a certification of a final judgment pursuant to NRCP
5 54(b) prior to Breckenridge obtaining a final judgment. However, Breckenridge has demonstrated that
6 it will be entitled to damages against Plaintiffs based on the fair market monthly rental value of the
7 Property multiplied by the number of months in the Property.
8

9 29. Based on the facts presented, the Court finds that the approximately fair market monthly
10 rental value for the Property is \$2,500.00. The Court further finds that an adequate supersedeas bond in
11 this case would be the amount of a judgment were it to be entered today plus another 24 months of rental
12 payments. This amount is \$80,000.00 (32 months * \$2,500.00) plus \$60,000.00 (24 months * \$2,500),
13 which equals \$140,000.00.
14

15 30. Plaintiffs, however, request that the Court consider allowing Plaintiffs to provide other
16 types of security in place of a “full judgment” bond. Specifically, Plaintiffs ask for the Court to approve
17 the other real property owned by Plaintiffs, or the real property Plaintiffs own in Carson City that they
18 rent out (the “Carson City Property”).
19

20 31. “The purpose of security for a stay pending appeal is to protect the judgment creditor's
21 ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to
22 the creditor arising from the stay.” *Id.* at 835, 122 P.3d at 1254. “[T]he focus is properly on what security
23 will maintain the status quo and protect the judgment creditor pending an appeal.” *Id.* at 835-36, 122
24 P.3d at 1254.
25

26 32. The Nevada Supreme Court has recognized five factors to consider in determining
27 whether other alternative security for less than a full supersedeas bond:
28

- 1 (1) the complexity of the collection process;
- 2 (2) the amount of time required to obtain a judgment after it is affirmed on appeal;
- 3 (3) the degree of confidence that the district court has in the availability of funds to pay the
- 4 judgment;
- 5 (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would
- 6 be a waste of money; and
- 7 (5) whether the defendant is in such a precarious financial situation that the requirement to post
- 8 a bond would place other creditors of the defendant in an insecure position.
- 9

10 *Id.* at 836, 122 P.3d at 1254.

11 33. The Court finds that the facts and circumstances of this case do not warrant allowing an

12 alternative security other than a supersedeas bond.

13 34. Because Plaintiffs only asset being submitted as alternative to a bond is the Carson City

14 Property, which has a mortgage on it, and a retirement account, the complexity of collecting on the

15 proposed collateral is very high.

16 35. Because the current appeal is based on a Rule 54(b) certification, there will be a significant

17 amount of time between an appeal and when Breckenridge can obtain a judgment in this case.

18 Breckenridge will be required to complete the process of obtaining a judgment.

19 36. The Court is not confident that there will be funds available to pay Breckenridge for any

20 judgment. Plaintiffs testimony demonstrates that their income is such that they would not be able to pay

21 such a judgment.

22 37. Finally, although Plaintiffs do not appear to be in a strong financial situation, there is no

23 evidence indicating that requirement a full supersedeas bond would place any other creditor in an

24 unsecure position.

1
2 38. As noted above the Court finds that that a reasonable fair market monthly rental rate for
3 the Property is \$2,500. The Court further finds that a reasonably expected judgment against Plaintiffs
4 would be the amount of rent due from February 1, 2019 to the culmination of the appeal, which is
5 anticipated to be an approximate 56 months and which would equal \$140,000.00
6

7 39. Based on this findings and conclusions, the Court finds that Breckenridge is entitled to a
8 permanent writ of restitution.

9 40. The Court further finds, however, that Plaintiffs should be granted a stay pending appeal
10 which would become effective upon the posting of a \$140,000.00 supersedeas bond from which
11 Breckenridge may recover its damages should it prevail on appeal. Plaintiffs shall have until November
12 12, 2021 to post the supersedeas bond.
13

14 41. The Court authorizes the issuance of a permanent writ of restitution effective November
15 15, 2021 allowing Breckenridge to remove the Plaintiffs and their belongings from the Property. Should
16 Plaintiffs post the \$140,000.00 supersedeas bond with the Court by 5:00 p.m. on November 12, 2021, the
17 permanent writ of restitution shall issue, but will be stayed pending the appeal.
18

19 **C. Order**

20 IT IS SO ORDERED.

21 IT IS FURTHER ORDERED that Breckenridge's Motion for Entry of Order Granting Permanent
22 Writ of Restitution and Payment of Overdue Rents is GRANTED IN PART and DENIED IN PART.
23

24 IT IS FURTHER ORDERED that the Permanent Writ of Restitution shall issue effective
25 immediately on November 15, 2021.

26 IT IS FURTHER ORDERED that all other relief sought in Breckenridge's Motion for Entry of
27 Order Granting Permanent Writ of Restitution and Payment of Overdue is DENIED.
28

1 IT IS FURTHER ORDERED that Plaintiffs' Motion for Stay Pending Appeal is GRANTED IN
2 PART and DENIED IN PART.

3 IT IS FURTHER ORDERED that Plaintiffs' shall be granted a stay pending appeal upon the
4 posting of a \$140,000.00 supersedeas bond.

5 /././

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1 IT IS FURTHER ORDERED that Plaintiffs' shall have until November 12, 2021 to post the
2 \$140,000.00 supersedeas bond, otherwise no stay pending appeal shall be granted and Breckenridge may
3 proceed with execution upon the writ of restitution.

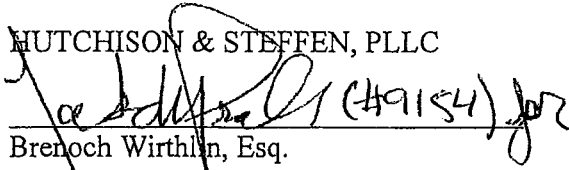
4 DATED this 3rd day of November 2021.

5
6 
7
8 DISTRICT COURT JUDGE

9 Respectfully submitted by:

10 Dated this 28th day of October, 2021

11 HUTCHISON & STEFFEN, PLLC

12 
13 Brenoch Wirthlin, Esq.
14 Nevada Bar No. 10282
15 10080 W. Alta Dr., Suite 200
16 Las Vegas, NV 89145
Attorneys for Defendant, Breckenridge
Property Fund 2016, LLC

Approved as to form and content by:

Dated this _____ day of _____, 2021

MILLWARD LAW, LTD.

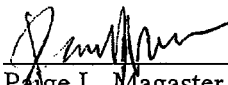
17 Refused to sign

Michael Millward, Esq.
Nevada Bar No. 11212
1591 Mono Ave.
Minden, NV 89423
Attorneys for Plaintiffs

18 Approved as to form and content by:

19 Dated this 28 day of October, 2021

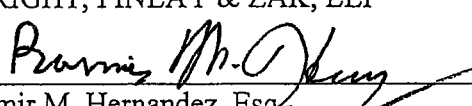
20 AKERMAN LLP

21 
22 Paige L. Magaster, Esq.
23 Nevada Bar No. 15557
24 1635 Village Center Circle, Ste. 200
25 Las Vegas, Nevada 89134
26 Attorneys for Defendant Bank of America, N.A.

Approved as to form and content by:

Dated this 22nd day of October, 2021

27 WRIGHT, FINLAY & ZAK, LLP

28 
Ramir M. Hernandez, Esq.
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7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for Defendants, Prof-2013 M4-
Legal Title Trust, by U.S. Bank, National
Association, as Legal Title Trustee, Fay
Servicing LLC, and Shellpoint Mortgage
Servicing, LLC

Notice of Entry of Order on Permanent Writ of Restitution

Exhibit K

1 John T. Steffen (4390)
Brenoch R. Wirthlin (10282)
2 Todd W. Prall (9154)
HUTCHISON & STEFFEN, PLLC
3 10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
4 Telephone: (702) 385-2500
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5 bwirthlin@hutchlegal.com

6 Casey J. Nelson (12259)
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7 Office of the General Counsel
2320 Potosi Street, Suite 130
8 Las Vegas, Nevada 89146
Telephone: (702) 305-9157
9 Facsimile: (310) 730-5967
caseynelson@wedgewood-inc.com

10 *Attorney for Defendant / Counterclaimant*
11 *Breckenridge Property Fund 2016, LLC*

12 **THIRD JUDICIAL DISTRICT COURT**
13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

15 Plaintiff,

16 v.

17 SABLES, LLC, a Nevada limited liability
18 company, as Trustee of the Deed of Trust
given by Vicenta Lincicome and dated
19 5/23/2007; FAY SERVICING, LLC, a
Delaware limited liability company and
20 subsidiary of Fay Financial, LLC; PROF-
2013-MF LEGAL TITLE TRUST by U.S.
21 BANK, N.A., as Legal Title Trustee; for
BANK OF AMERICA, N.A.;
22 BRECKENRIDGE PROPERTY FUND
2016; NEWREZ LLC dba SHELLPOINT
23 MORTGAGE SERVICING, LLC; 1900
CAPITAL TRUST II, BY U.S. BANK
24 TRUST NATIONAL ASSOCIATION;
MCM-2018-NPL2 and DOES 1-50.,

25 Defendants.

26 AND RELATED ACTIONS
27

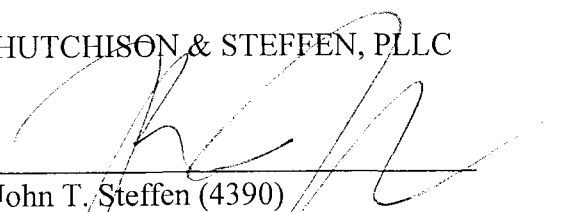
Case No.: 18-CV-01332
Dept No.: II

NOTICE OF ENTRY OF ORDER

1 Please take notice that a Permanent Writ of Restitution was entered on the 22nd day of
2 November, 2021, a copy of which is attached hereto.

3 DATED this 24th day of November, 2021.

4 HUTCHISON & STEFFEN, PLLC

5 
6 John T. Steffen (4390)
7 Brenoch R. Wirthlin (10282)
8 Todd W. Prall (9154)
9 10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145

10 Casey J. Nelson (12259)
11 WEDGEWOOD, LLC
12 Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

13 *Attorney for Defendant / Counterclaimant*
14 *Breckenridge Property Fund, LLC*
15
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER** via U.S. Mail to the parties designated below.

Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
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Attorney for Plaintiffs

Justin M. Clouser, Esq.
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Gardnerville, NV 89410
Attorney for Plaintiff

R. Samuel Ehlers, Esq.
Ramir M. Hernandez, Esq.
WRIGHT FINLAY & ZAK, LLP
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Las Vegas, NV 89117
*Attorney for Prof-2013-M4 Legal Title Trust by
US Bank, National Association as Legal Title
Trustee; Fay Servicing, LLC, and Shellpoint
Mortgage Servicing, LLC*

Shadd A. Wade, Esq
ZIEVE BRODNAX & STEEL
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Las Vegas, NV 89148
Attorney for Sables, LLC

Melanie Morgan, Esq.
Scott R. Lachman, Esq.
ACKERMAN, LLP
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Attorney for Bank of America

Darren T. Brenner, Esq.
Ramir M. Hernandez, Esq.
WRIGHT FINLAY & ZAK, LLP
7785 W. Sahara Avenue, #200
Las Vegas, NV 89117
*Attorneys for Prof-2013-M4 Legal Title Trust
by US Bank, National Association as Legal
Title Trustee; Fay Servicing, LLC, and
Shellpoint Mortgage Servicing, LLC*

DATED this 24th day of November 2021.


An Employee of HUTCHISON & STEFFEN

FILED

2021 NOV 22 AM 9:52

JANVA S. LINDSEY
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Bayley Baptist

John T. Steffen, Esq. (4390)
Brenoch R. Wirthlin, Esq. (10282)
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caseynelson@wedgewood-inc.com
Attorney for Defendant, Counterclaimant, and Cross-Plaintiff
Breckenridge Property Fund 2016, LLC

**THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA**

ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability
company, as Trustee of the Deed of Trust given
by Vicenta Lincicome and dated 5/23/2007; FAY
SERVICING, LLC, a Delaware limited liability
company and subsidiary of Fay Financial, LLC;
PROF-2013-MF LEGAL TITLE TRUST by U.S.
BANK, N.A., as Legal Title Trustee; for BANK
OF AMERICA, N.A.; BRECKENRIDGE
PROPERTY FUND 2016; NEWREZ LLC dba
SHELLPOINT MORTGAGE SERVICING,
LLC; 1900 CAPITAL TRUST II, BY U.S.
BANK TRUST NATIONAL ASSOCIATION;
MCM-2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED MATTERS.

Case No.: 18-CV-01332
Dept No.: II

PERMANENT WRIT OF RESTITUTION

1 THE STATE OF NEVADA TO THE SHERIFF OR CONSTABLE OF LYON COUNT, GREETING.

2 WHEREAS on October 3, 2019, Defendant in Intervention/Counterclaimant Breckenridge
3 Property Fund 2016, LLC ("Counterclaimant") filed its Intervenor's Counterclaim ("Counterclaim")
4 pursuant to which Counterclaimant asserted, among other things, claims for quiet title and writ of
5 restitution regarding that certain real property at issue located at 70 Riverside Drive, Dayton, Nevada
6 89403 ("Property");
7

8 WHEREAS on March 18, 2021, Counterclaimant filed its Motion for Summary Judgment
9 ("Counterclaimant's MSJ") seeking judgment on all counterclaims;

10 WHEREAS on June 23, 2021, this Court entered its Order on Breckenridge Motion for Summary
11 Judgment ("Order") pursuant to which it granted the Counterclaimant's MSJ in its entirety;
12

13 WHEREAS in the Order this Court made numerous findings of fact and conclusions of law,
14 adopted herein by reference, including but not limited to the findings that Counterclaimant purchased the
15 Property at a proper foreclosure sale and is therefore entitled to summary judgment regarding its claims
16 to title of the Property as against plaintiffs Albert Ellis Lincicome, Jr. and Vicenta Lincicome;
17

18 WHEREAS on September 9, 2021, Counterclaimant filed a Motion for Entry of Order Granting
19 Permanent Restitution and Payment of Overdue Rents.

20 WHEREAS on September 14, 2021, Plaintiffs filed and served their Motion for Stay Pending
21 Appeal.

22 WHEREAS on October 12, 2021, at 1:30 p.m., after further briefing had been filed on the motions
23 filed on October 9, 2021 and September 14, 2021, the Court held a hearing on the two motions.
24

25 WHEREAS based on the evidence presented, the Court granted Plaintiff's Motion for Stay
26 Pending Appeal, but required Plaintiffs to post a supersedeas bond of \$140,000.00 to be paid by
27 November 12, 2021, at 5:00 p.m. in order for the stay to be entered.
28

1 WHEREAS the court also granted Counterclaimant's request for a permanent writ of restitution
2 and ordered that a permanent writ of restitution should be issued that states it is effective as of November
3 15, 2021 if no supersedeas bond was posted by November 12, 2021.

4 WHEREAS pursuant to the Order Counterclaimant should have permanent restitution of the
5 Property effective as of November 15, 2021.

6
7 WHEREAS, so long as this writ is delivered to you on or after November 15, 2021 and there has
8 been no supersedeas bond posted with the Court:

9 YOU ARE THEREFORE COMMANDED to take with you the force of the County, if necessary,
10 and cause the said Albert Ellis Lincicome, Jr. and Vicenta Lincicome and any tenants or sub-tenants to
11 be removed from the Property on November 16, 2021 at 9:00 a.m. or as soon as reasonably possible
12 thereafter and allow the Counterclaimant to have permanent peaceable restitution of the same.

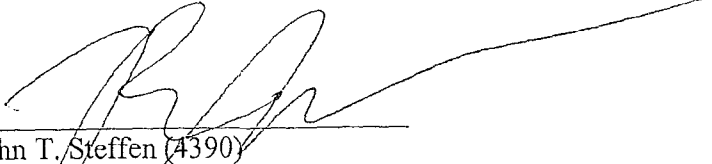
13
14 GIVEN UNDER MY HAND this 17th day of November, 2021.

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28
DISTRICT COURT JUDGE

1 Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document
2 filed in this court does not contain the social security number of any person

3 Respectfully Submitted:
4 HUTCHISON & STEFFEN, PLLC

5 
6
7 John T. Steffen (4390)
8 Brenoch R. Wirthlin (10282)
9 Alex R. Velto (14961)
10 10080 West Alta Drive, Suite 200
11 Las Vegas, NV 89145
12 bwirthlin@hutchlegal.com

13 Wedgewood, LLC
14 Office of the General Counsel
15 Casey J. Nelson, Esq. (12259)
16 2320 Potosi Street, Suite 130
17 Las Vegas, Nevada 89146
18 E-mail: caseynelson@wedgewood-inc.com
19 *Attorney for Defendant, Counterclaimant, and Cross-Plaintiff*
20 *Breckenridge Property Fund 2016, LLC*
21
22
23
24
25
26
27
28

Notice of Entry of Order on Order on Attorney's Fees and
Costs

Exhibit L

1 John T. Steffen (4390)
2 Brenoch R. Wirthlin (10282)
3 Todd W. Prall (9154)
4 HUTCHISON & STEFFEN, PLLC
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12 Facsimile: (310) 730-5967
13 caseynelson@wedgewood-inc.com

14 *Attorney for Defendant / Counterclaimant*
15 *Breckenridge Property Fund 2016, LLC*

12 **THIRD JUDICIAL DISTRICT COURT**
13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR., and
15 VICENTA LINCICOME,

16 Plaintiff,

17 v.

18 SABLES, LLC, a Nevada limited liability
19 company, as Trustee of the Deed of Trust
20 given by Vicenta Lincicome and dated
21 5/23/2007; FAY SERVICING, LLC, a
22 Delaware limited liability company and
23 subsidiary of Fay Financial, LLC; PROF-
24 2013-MF LEGAL TITLE TRUST by U.S.
25 BANK, N.A., as Legal Title Trustee; for
26 BANK OF AMERICA, N.A.;
27 BRECKENRIDGE PROPERTY FUND
2016; NEWREZ LLC dba SHELLPOINT
MORTGAGE SERVICING, LLC; 1900
CAPITAL TRUST II, BY U.S. BANK
TRUST NATIONAL ASSOCIATION;
MCM-2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED ACTIONS

Case No.: 18-CV-01332

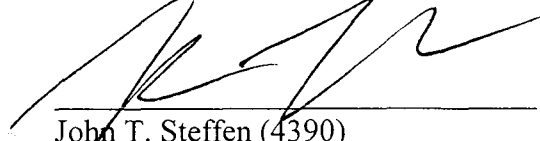
Dept No.: II

NOTICE OF ENTRY OF ORDER

1 Please take notice that an Order on Attorney's Fees and Costs was entered on the 19th day
2 of January, 2022, a copy of which is attached hereto.

3 DATED this 26th day of January, 2022.

4 HUTCHISON & STEFFEN, PLLC

5 
6

7 John T. Steffen (4390)

8 Brenoch R. Wirthlin (10282)

9 Todd W. Prall (9154)

10 10080 W. Alta Dr., Suite 200

11 Las Vegas, NV 89145

12 Casey J. Nelson (12259)

13 WEDGEWOOD, LLC

14 Office of the General Counsel

15 2320 Potosi Street, Suite 130

16 Las Vegas, Nevada 89146

17 *Attorney for Defendant / Counterclaimant*

18 *Breckenridge Property Fund, LLC*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER** via U.S. Mail to the parties designated below.

Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
Minden, NV 89423
Attorney for Plaintiffs

Justin M. Clouser, Esq.
1512 US Highway 395 N, Ste. 1
Gardnerville, NV 89410
Attorney for Plaintiff

Darren T. Brenner, Esq.
Ramir M. Hernandez, Esq.
WRIGHT FINLAY & ZAK, LLP
7785 W. Sahara Avenue, #200
Las Vegas, NV 89117

Shadd A. Wade, Esq.
ZIEVE BRODNAX & STEEL
9435 W. Russell Road, #120
Las Vegas, NV 89148
Attorney for Sables, LLC

*Attorneys for Prof-2013-M4 Legal Title Trust
by US Bank, National Association as Legal Title
Trustee; Fay Servicing, LLC, and Shellpoint
Mortgage Servicing, LLC*

Melanie Morgan, Esq.
Scott R. Lachman, Esq.
ACKERMAN, LLP
1635 Village Center Circle, #200
Las Vegas, NV 89134
Attorney for Bank of America

DATED this ^{27th}~~26th~~ day of January 2022.


An Employee of HUTCHISON & STEFFEN

Case No.: 18-CV-01332

Dept. No.: II

FILED

2022 JAN 19 AM 8:24

TANYA SCIFRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

~~Victoria Tower~~ DEPUTY

IN AND FOR THE COUNTY OF LYON

* * * * *

ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability
company, as Trustee of the Deed of Trust
given by Vicenta Lincicome and dated
5/23/2007; FAY SERVICING, LLC a
Delaware limited liability company and
subsidiary of Fay Financial, LLC; PROF-
20130MF LEGAL TITLE TRUST by U.S.
BANK, N.A., as Legal Title Trustee; for
BANK OF AMERICA, N.A.;
BRECKENRIDGE PROPERTY FUND 2016;
NEWREZ LLC dba SHELLPOINT
MORTGAGE SERVICING, LLC; 1900
CAPITAL TRUST II, BY U.S. BANK TRUST
NATIONAL ASSOCIATION; MCM-2018-
NPL2 and DOES 1-50.,

Defendants.

**ORDER ON ATTORNEY'S FEES AND
COSTS**

On July 20, 2021, Breckenridge Property Fund ("Breckenridge") filed a Motion for Attorney Fees and Cost. On August 5, 2021, Plaintiffs filed an Opposition to Breckenridge's Motion for Attorney Fees and Cost. On September 2, 2021, Breckenridge filed a Reply in Support of its Motion for Attorney Fees and Cost.

I. FINDINGS OF LAW

1 Nevada Law permits an award of attorneys' fees whenever authorized by statute, rule, or
2 contract. *See U.S. Design & Const. Corp. v. Int'l Broth. Of Elec. Workers*, 118 Nev. 458, 462, 50
3 P.3d 170, 173 (2002). NRS 18.010 states:

4 1. The compensation of an attorney and counselor for his or her services is
5 governed by agreement, express or implied, which is not restrained by law.

6 2. In addition to the cases where an allowance is authorized by specific
7 statute, the court may make an allowance of attorney's fees to a prevailing party:

8 (a) When the prevailing party has not recovered more than \$20,000; or

9 (b) Without regard to the recovery sought, when the court finds that the
10 claim, counterclaim, cross-claim or third-party complaint or defense of the
11 opposing party was brought or maintained without reasonable ground or to harass
12 the prevailing party. The court shall liberally construe the provisions of this
13 paragraph in favor of awarding attorney's fees in all appropriate situations. It is
14 the intent of the Legislature that the court award attorney's fees pursuant to this
15 paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil
16 Procedure in all appropriate situations to punish for and deter frivolous or
17 vexatious claims and defenses because such claims and defenses overburden
18 limited judicial resources, hinder the timely resolution of meritorious claims and
19 increase the costs of engaging in business and providing professional services to
20 the public.

21 3. In awarding attorney's fees, the court may pronounce its decision on the
22 fees at the conclusion of the trial or special proceeding without written motion
23 and with or without presentation of additional evidence.

24 4. Subsections 2 and 3 do not apply to any action arising out of a written
25 instrument or agreement which entitles the prevailing party to an award of
26 reasonable attorney's fees.

27 NRS 18.010(2) sets forth situations whereby the court may properly award attorneys'
28 fees: when the prevailing party has not recover more than \$20,000 or, without regard to the
recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party
complaint or defense of the opposing party was brought or maintained without reasonable
ground or to harass the prevailing party. NRS 18.010(2).

In *Capanna v. Orth*, 134 Nev. 888, 895 (2018) the Nevada Supreme Court held:

NRS 18.010(2) (b) allows the district court to award attorney fees to a prevailing
party "when the court finds that the claim, counterclaim ... or defense of the
opposing party was brought or maintained without reasonable ground or to harass
the prevailing party."

"The court shall liberally construe the provisions of [NRS 18.010(2)(b)] in favor
of awarding attorney's fees in all appropriate situations," and "[i]t is the intent of
the Legislature that the court award attorney's fees pursuant to [NRS

1 18.010(2)(b)] ... in all appropriate situations to punish for and deter frivolous or
2 vexatious claims and defenses.” *Id.* “For purposes of NRS 18.010(2) (b), a claim
3 is frivolous or groundless if there is no credible evidence to support it.” *Rodriguez*
4 *v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009).

5 There must be evidence in the record supporting the proposition that the claim was
6 brought or the defense maintained “without reasonable grounds or to harass the other party.”
7 *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005). Further, the decision
8 to award attorney fees is within the sound discretion of the district court and will not be
9 overturned absent a manifest abuse of discretion. *Id.*

10 NRS 107.080 states:

11 1. Except as otherwise provided in NRS
12 106.210, 107.0805, 107.085 and 107.086, if any transfer in trust of any estate in
13 real property is made after March 29, 1927, to secure the performance of an
14 obligation or the payment of any debt, a power of sale is hereby conferred upon
15 the trustee to be exercised after a breach of the obligation for which the transfer is
16 security.

17 2. The power of sale must not be exercised, however, until:

18 (a) In the case of any deed of trust coming into force:

19 (1) On or after July 1, 1949, and before July 1, 1957, the grantor, the
20 person who holds the title of record, a beneficiary under a subordinate deed of
21 trust or any other person who has a subordinate lien or encumbrance of record on
22 the property has, for a period of 15 days, computed as prescribed in subsection 3,
23 failed to make good the deficiency in performance or payment; or

24 (2) On or after July 1, 1957, the grantor, the person who holds the title of
25 record, a beneficiary under a subordinate deed of trust or any other person who
26 has a subordinate lien or encumbrance of record on the property has, for a period
27 of 35 days, computed as prescribed in subsection 3, failed to make good the
28 deficiency in performance or payment.

(b) The beneficiary, the successor in interest of the beneficiary or the trustee
first executes and causes to be recorded in the office of the recorder of the county
wherein the trust property, or some part thereof, is situated a notice of the breach
and of the election to sell or cause to be sold the property to satisfy the obligation.

(c) The beneficiary or its successor in interest or the servicer of the obligation
or debt secured by the deed of trust has instructed the trustee to exercise the
power of sale with respect to the property.

(d) Not less than 3 months have elapsed after the recording of the notice or, if
the notice includes an affidavit and a certification indicating that, pursuant to NRS
107.130, an election has been made to use the expedited procedure for the
exercise of the power of sale with respect to abandoned residential property, not
less than 60 days have elapsed after the recording of the notice.

3. The 15- or 35-day period provided in paragraph (a) of subsection 2
commences on the first day following the day upon which the notice of default

1 and election to sell is recorded in the office of the county recorder of the county in
2 which the property is located and a copy of the notice of default and election to
3 sell is mailed by registered or certified mail, return receipt requested and with
4 postage prepaid to the grantor or, to the person who holds the title of record on the
5 date the notice of default and election to sell is recorded, and, if the property is
6 operated as a facility licensed under chapter 449 of NRS, to the State Board of
7 Health, at their respective addresses, if known, otherwise to the address of the
8 trust property or, if authorized by the parties, delivered by electronic transmission.
9 The notice of default and election to sell must describe the deficiency in
10 performance or payment and may contain a notice of intent to declare the entire
11 unpaid balance due if acceleration is permitted by the obligation secured by the
12 deed of trust, but acceleration must not occur if the deficiency in performance or
13 payment is made good and any costs, fees and expenses incident to the
14 preparation or recordation of the notice and incident to the making good of the
15 deficiency in performance or payment are paid within the time specified in
16 subsection 2.

17 4. The trustee, or other person authorized to make the sale under the terms
18 of the deed of trust, shall, after expiration of the applicable period specified in
19 paragraph (d) of subsection 2 following the recording of the notice of breach and
20 election to sell, and before the making of the sale, give notice of the time and
21 place thereof by recording the notice of sale and by:

22 (a) Providing the notice to each trustor, any other person entitled to notice
23 pursuant to this section and, if the property is operated as a facility licensed
24 under chapter 449 of NRS, the State Board of Health, by personal service, by
25 electronic transmission if authorized by the parties or by mailing the notice by
26 registered or certified mail to the last known address of the trustor and any other
27 person entitled to such notice pursuant to this section;

28 (b) Posting a similar notice particularly describing the property, for 20 days
successively, in a public place in the county where the property is situated; and

(c) Publishing a copy of the notice three times, once each week for 3
consecutive weeks, in a newspaper of general circulation in the county where the
property is situated or, if the property is a time share, by posting a copy of the
notice on an Internet website and publishing a statement in a newspaper in the
manner required by subsection 3 of NRS 119A.560.

5. Every sale made under the provisions of this section and other sections of
this chapter vests in the purchaser the title of the grantor and any successors in
interest without equity or right of redemption. Except as otherwise provided in
subsection 7, a sale made pursuant to this section must be declared void by any
court of competent jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not
substantially comply with the provisions of this section;

(b) Except as otherwise provided in subsection 6, an action is commenced in
the county where the sale took place within 30 days after the date on which the
trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the
county recorder of the county in which the property is located; and

(c) A notice of lis pendens providing notice of the pendency of the action is
recorded in the office of the county recorder of the county where the sale took
place within 5 days after commencement of the action.

1 6. If proper notice is not provided pursuant to subsection 3 or paragraph (a)
2 of subsection 4 to the grantor, to the person who holds the title of record on the
3 date the notice of default and election to sell is recorded, to each trustor or to any
4 other person entitled to such notice, the person who did not receive such proper
notice may commence an action pursuant to subsection 5 within 90 days after the
date of the sale.

5 7. Upon expiration of the time for commencing an action which is set forth
6 in subsections 5 and 6, any failure to comply with the provisions of this section or
any other provision of this chapter does not affect the rights of a bona fide
purchaser as described in NRS 111.180.

7 8. If, in an action brought by the grantor or the person who holds title of
8 record in the district court in and for the county in which the real property is
located, the court finds that the beneficiary, the successor in interest of the
9 beneficiary or the trustee did not comply with any requirement of subsection 2, 3
or 4, the court must award to the grantor or the person who holds title of record:

10 (a) Damages of \$5,000 or treble the amount of actual damages, whichever is
greater;

11 (b) An injunction enjoining the exercise of the power of sale until the
12 beneficiary, the successor in interest of the beneficiary or the trustee complies
with the requirements of subsections 2, 3 and 4; and

13 (c) Reasonable attorney's fees and costs,
14 Ê unless the court finds good cause for a different award. The remedy provided in
this subsection is in addition to the remedy provided in subsection 5.

15 9. The sale or assignment of a proprietary lease in a cooperative vests in the
16 purchaser or assignee title to the ownership interest and votes in the cooperative
association which accompany the proprietary lease.

17 10. After a sale of property is conducted pursuant to this section, the trustee
shall:

18 (a) Within 30 days after the date of the sale, record the trustee's deed upon
19 sale in the office of the county recorder of the county in which the property is
located; or

20 (b) Within 20 days after the date of the sale, deliver the trustee's deed upon
21 sale to the successful bidder. Within 10 days after the date of delivery of the deed
by the trustee, the successful bidder shall record the trustee's deed upon sale in
the office of the county recorder of the county in which the property is located.

22 11. Within 5 days after recording the trustee's deed upon sale, the trustee or
23 successful bidder, whoever recorded the trustee's deed upon sale pursuant to
subsection 10, shall cause a copy of the trustee's deed upon sale to be posted
conspicuously on the property. The failure of a trustee or successful bidder to
24 effect the posting required by this subsection does not affect the validity of a sale
of the property to a bona fide purchaser for value without knowledge of the
failure.

25 12. If the successful bidder fails to record the trustee's deed upon sale
26 pursuant to paragraph (b) of subsection 10, the successful bidder:

27 (a) Is liable in a civil action to any party that is a senior lienholder against the
28 property that is the subject of the sale in a sum of up to \$500 and for reasonable
attorney's fees and the costs of bringing the action; and

1 (b) Is liable in a civil action for any actual damages caused by the failure to
2 comply with the provisions of subsection 10 and for reasonable attorney's fees
and the costs of bringing the action.

3 13. The county recorder shall, in addition to any other fee, at the time of
4 recording a notice of default and election to sell collect:

5 (a) A fee of \$150 for deposit in the State General Fund.

6 (b) A fee of \$95 for deposit in the Account for Foreclosure Mediation
Assistance, which is hereby created in the State General Fund. The Account must
be administered by the Interim Finance Committee and the money in the Account
may be expended only for the purpose of:

7 (1) Supporting a program of foreclosure mediation; and

8 (2) The development and maintenance of an Internet portal for a program
of foreclosure mediation pursuant to subsection 16 of NRS 107.086.

9 (c) A fee of \$5 to be paid over to the county treasurer on or before the fifth
day of each month for the preceding calendar month. The county recorder may
10 direct that 1.5 percent of the fees collected by the county recorder pursuant to this
paragraph be transferred into a special account for use by the office of the county
11 recorder. The county treasurer shall remit quarterly to the organization operating
the program for legal services that receives the fees charged pursuant to NRS
12 19.031 for the operation of programs for the indigent all the money received from
the county recorder pursuant to this paragraph.

13 14. The fees collected pursuant to paragraphs (a) and (b) of subsection 13
must be paid over to the county treasurer by the county recorder on or before the
14 fifth day of each month for the preceding calendar month, and, except as
otherwise provided in this subsection, must be placed to the credit of the State
15 General Fund or the Account for Foreclosure Mediation Assistance as prescribed
pursuant to subsection 13. The county recorder may direct that 1.5 percent of the
16 fees collected by the county recorder be transferred into a special account for use
by the office of the county recorder. The county treasurer shall, on or before the
17 15th day of each month, remit the fees deposited by the county recorder pursuant
to this subsection to the State Controller for credit to the State General Fund or
18 the Account as prescribed in subsection 13.

19 15. The beneficiary, the successor in interest of the beneficiary or the trustee
20 who causes to be recorded the notice of default and election to sell shall not
charge the grantor or the successor in interest of the grantor any portion of any fee
21 required to be paid pursuant to subsection 13.

22 The Nevada Supreme Court in *Las Vegas Development Group, LLC v Blaha*, 134 Nev.
23 252, 256 (2018) held:

24 NRS 107.080 governs nonjudicial deed-of-trust foreclosure sales and sets
25 forth the substantive requirements and procedures for such sales. Subsection 5(a)
states that a sale under "this section may be declared void" if the individual
26 "authorized to make the sale does not substantially comply with the provisions of
this section or any applicable provision of NRS 107.086 and 107.087." 2010 Nev.
27 Stat. 26th Spec. Sess., ch. 10, § 31, at 78. Subsection 5(b) requires that such an
action be commenced "within 90 days after the date of the sale." *Id.* Subsection 6
28

1 allows 120 days to commence an action if proper notice is not given. *Id.* Thus, if
2 the person authorized to conduct the sale fails to substantially comply with NRS
3 107.086, NRS 107.087, or one of NRS 107.080(5)'s provisions, it can render the
4 sale void. By the statute's plain language, challenges to those violations are
5 subject to the time limitations in subsections 5 and 6. However, the language of
6 NRS 107.80 presumes that the person making this sale is authorized to do so as
trustee or as the person designated under the terms of the deed of trust or transfer
in trust. In this case, it is alleged that the security interest of the deed of trust was
extinguished by the prior HOA foreclosure sale leaving the person to conduct the
sale without authority to do so.

7 According to Blaha, we previously determined that NRS 107.080 applies
8 to all challenges to a nonjudicial foreclosure sale in *Building Energetix Corp. v.*
9 *EHE, LP*, 129 Nev. 78, 85–86, 294 P.3d 1228, 1234 (2013). We
10 disagree. *Building Energetix* involved a delinquent-tax certificate issued to the
11 county treasurer prior to a nonjudicial foreclosure sale. *Id.* at 79–80, 294 P.3d at
12 1230. The issue was “whether, consistent with NRS 107.080(5), a trust-deed
beneficiary who acquires such property on credit bid at the foreclosure sale can
later redeem, or obtain reconveyance of, the property from the county
treasurer.” *Id.* at 79, 294 P.3d at 1230. Thus, we were not confronted with, nor did
we decide, whether NRS 107.080 applies to all challenges to an NRS Chapter 107
nonjudicial foreclosure sale.

13 Blaha also contends that the application of NRS 107.080(5)–(6) to all
14 claims challenging an NRS Chapter 107 foreclosure sale is consistent with the
15 legislative history of the statute, which indicates that the legislators were
16 concerned about individuals having the ability to reverse a foreclosure sale
17 indefinitely. While that concern was stated at the hearing on the legislation, it was
18 in the context of the statutory violations of NRS 107.080. *See* Hearing on S.B.
19 217 Before the Senate Judiciary Comm., 74th Leg. (Nev., March 21, 2007);
20 Hearing on S.B. 217 Before the Assembly Judiciary Comm., 74th Leg. (Nev.,
May 2, 2007). The legislators did not discuss scenarios where the deed of trust is
void. Thus, we conclude that the legislative history supports the plain language
of NRS 107.080 and demonstrates that the legislators were not contemplating
challenges to a foreclosing entity's authority. *See* Hearing on S.B. 217 Before the
Senate Judiciary Comm., 74th Leg. (Nev., March 21, 2007).

21 The Nevada Supreme Court in *Brunzell v Golden Gate Nat. Bank*, 85 Nev. 345 (1969),
22 set forth factors a trial court must consider when evaluating the amount of attorneys' fees
23 requested under NRS 18.010. In *Logan v Abe*, 131 Nev. 260, 267 (2015) the Nevada Supreme
24 Court held:

25 In determining the amount of fees to award, the [district] court is not limited to
26 one specific approach; its analysis may begin with any method rationally designed
27 to calculate a reasonable amount, so long as the requested amount is reviewed in
28 light of the” *Brunzell* factors. *Haley v. Eighth Judicial Dist. Court*, — Nev. —
—, 273 P.3d 855, 860 (2012) (internal quotations omitted). While it is
preferable for a district court to expressly analyze each factor relating to an award

1 of attorney fees, express findings on each factor are not necessary for a district
2 court to properly exercise its discretion. Certified Fire Prot., Inc. v. Precision
3 Constr., Inc., —Nev. —, —, 283 P.3d 250, 258 (2012).

4 Costs must be allowed of course to the prevailing party against any adverse party against
5 whom judgment is rendered, in an action for the recovery of real property or a possessory right
6 thereto. NRS. 18.020 states:

7 1. In an action for the recovery of real property or a possessory right
8 thereto.

9 2. In an action to recover the possession of personal property, where the
10 value of the property amounts to more than \$2,500. The value must be determined
11 by the jury, court or master by whom the action is tried.

12 3. In an action for the recovery of money or damages, where the plaintiff
13 seeks to recover more than \$2,500.

14 4. In a special proceeding, except a special proceeding conducted pursuant
15 to NRS 306.040.

16 5. In an action which involves the title or boundaries of real estate, or the
17 legality of any tax, impost, assessment, toll or municipal fine, including the costs
18 accrued in the action if originally commenced in a Justice Court.

19 NRS 18.110 states:

20 1. The party in whose favor judgment is rendered, and who claims costs,
21 must file with the clerk, and serve a copy upon the adverse party, within 5 days
22 after the entry of judgment, or such further time as the court or judge may grant, a
23 memorandum of the items of the costs in the action or proceeding, which
24 memorandum must be verified by the oath of the party, or the party's attorney or
25 agent, or by the clerk of the party's attorney, stating that to the best of his or her
26 knowledge and belief the items are correct, and that the costs have been
27 necessarily incurred in the action or proceeding.

28 2. The party in whose favor judgment is rendered shall be entitled to recover
the witness fees, although at the time the party may not actually have paid them.
Issuance or service of subpoena shall not be necessary to entitle a prevailing party
to tax, as costs, witness fees and mileage, provided that such witnesses be sworn
and testify in the cause.

3. It shall not be necessary to embody in the memorandum the fees of the
clerk, but the clerk shall add the same according to the fees of the clerk fixed by
statute.

4. Within 3 days after service of a copy of the memorandum, the adverse
party may move the court, upon 2 days' notice, to retax and settle the costs, notice
of which motion shall be filed and served on the prevailing party claiming costs.
Upon the hearing of the motion the court or judge shall settle the costs.

II. Arguments

A. Breckenridge

1 Breckenridge argues that its claims to superior title in this matter were supported by the
2 record and well-founded Nevada law. Breckenridge did not become involved in this matter until
3 it purchased the subject property at the foreclosure sale after the Plaintiffs failed to post the bond
4 required by the Court.

5 Breckenridge took title to the Property pursuant to NRS 107.080, which states “every sale
6 made under the provisions of this section and other sections of this chapter vests in the purchaser
7 the title of the grantor and any successors in interest without equity or right of redemption.”
8 Breckenridge argued that the majority of allegations in the Second Amended Complaint occurred
9 prior to the foreclosure sale, which Breckenridge played no role in. Plaintiffs failed to put forth
10 any evidence to support that they had the ability to pay the underlying obligation and foreclosure
11 was not justified.

12 Breckenridge argues that the Plaintiffs filed this lawsuit as a last-minute attempt to stave
13 off the foreclosure. They failed to post the required bond, the foreclosure sale occurred, and
14 therefore the Plaintiffs had no claim to superior title over Breckenridge. The Plaintiffs’
15 allegations of wrongful foreclosure after discovery was completed were not and could not have
16 been established or proven by any legal and factual support.

17 Breckenridge asserts that attorneys’ fees are proper under NRS 18.010(2) because the
18 Plaintiffs brought or maintained a claim against Breckenridge without reasonable grounds or to
19 harass the prevailing party because it could not be supported by any credible evidence at trial.
20 Breckenridge argues that the requested fees meet the *Brunzell* factors. Breckenridge asserts that
21 costs must be awarded as the Plaintiffs did not file a motion to re-tax the costs pursuant to NRS
22 18.110.

23 **B. Plaintiffs**

24 Plaintiffs argue that their claims were brought upon reasonable grounds and not for the
25 purpose of harassment. Plaintiffs point to this Court’s 12/31/18 Order which stated that
26 “Plaintiff is likely to prevail on a Homeowner Bill of Rights claims.” Plaintiffs also argued that
27 Breckenridge knew about the underlying litigation prior to purchasing the property at the time of
28

1 the foreclosure sale. Without providing any authority, Plaintiffs argued that any award should
2 stay pending an appeal. The Court will not consider a stay without being presented any authority.

3 Finally, the Court notes that Plaintiffs did not argue that the requested attorneys' fees did
4 not comply with statute or case law.

5 **III. Issue presented**

6 Did the Plaintiffs bring or maintain their claims against Breckenridge "without
7 reasonable grounds or to harass" Breckenridge?

8 **IV. Conclusions of Law**

9 The facts clearly establish that the original action was brought against the foreclosing
10 parties to prevent foreclosure on the property. Breckenridge was brought into the action after the
11 Plaintiffs failed to obtain the preliminary injunction by failing to post the required bond. The
12 evidence brought at the preliminary injunction hearing was in stark contrast to what was brought
13 out in discovery.

14 NRS 107.080 provides an avenue to set aside a foreclosure sale if the foreclosing party or
15 parties did not substantially comply with the provisions of the statute. Plaintiffs during the
16 injunction hearing raised issues as to whether the foreclosing parties had adequately provided
17 notice of what the deficiency was due based upon allegations of non-performance and
18 intervening agreements. Based upon the limited evidence and case law provided, the Court found
19 that the Plaintiffs had a likelihood of success at this preliminary stage.

20 The gravamen of Breckenridge's arguments correctly focus upon the Plaintiffs
21 maintaining the action after it was clear that they had no basis to claim that a wrongful
22 foreclosure had occurred or that the foreclosing parties had failed to substantially comply with
23 NRS 107.080. Facts raised in discovery clearly presented a picture that was wholly different
24 than what had been presented to the Court during the preliminary injunction hearing. At the
25 completion of discovery, it was clear that the foreclosing parties had substantially complied with
26 NRS 107.080.

27 The evidence also established that the Plaintiffs had abused the foreclosure mediation
28 program in a previous action. The Plaintiffs never had the ability or desire to make payments on

1 the loan obligation. The maintenance of the action appears to the Court as done to prolong the
2 Plaintiffs' ability to live rent free.

3 This Court has previously commented on how unreasonable Plaintiffs' legal theory that
4 one or two unaccepted payments years ago would excuse the Plaintiffs from making years of
5 mortgage payments. Plaintiffs provided no authority that a lender could not require them to
6 make tender of back payments. Plaintiffs were given a second opportunity to settle the matter
7 even after renegeing on the agreement reached during the foreclosure mediation several years
8 prior.

9 The Plaintiffs provided no legal authority that the failure to have an exact amount owed
10 in the required notices compelled a finding that substantial compliance could not occur. The
11 Court cannot find that the Plaintiffs presented novel legal theories concerning the application of
12 NRS 107.080 or actions concerning wrongful foreclosure. See, e.g. *Rodriguez v. Primadonna*
13 *Co.*, 125 Nev. 578, 588 (2009). Plaintiffs' claims were maintained without reasonable grounds as
14 to Breckenridge.

15 The Plaintiffs did not contest the amounts requested for attorneys' fees. The Court
16 reviewed the pleading and finds that Breckenridge has properly supported the amount requested
17 as required under *Brunzell*. The character of the work, the work actually performed, the qualities
18 of the advocacy and the result obtained warrant an award of the amount requested.

19 Breckenridge also correctly cited to NRS 18.110. The Plaintiffs did not file a motion to
20 retax the costs. The Court thereby orders the costs requested.

21 Based upon the above and good cause appearing, **IT IS HEREBY ADJUDGED and**
22 **ORDERED** that Breckenridge's Motion for Attorneys' Fees and Costs is **GRANTED**.

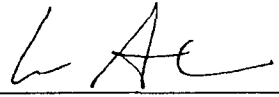
23 **IT IS HEREBY FURTHER ORDERED** that a Judgment in favor of Breckenridge in
24 the amount of Forty Four Thousand Six Hundred Forty Eight Dollars (\$44,648.00) for attorneys'
25 fees is **AWARDED**.

26 ///

27 ///

1 **IT IS HEREBY FURTHER ORDERED** that a Judgment in favor of Breckenridge in
2 the amount of Three Thousand Seven Hundred Eighty Eight Dollars and One Cent (\$3,788.01)
3 for costs is **AWARDED**.

4 DATED: This 18th day of January, 2022.

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8 _____
9 HON. LEON ABERASTURI
10 DISTRICT JUDGE
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Certificate of Mailing

I hereby certify that I, Quoc Thai, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Michael G. Millward, Esq.
Millward Law, Ltd.
1591 Mono Ave.
Minden, NV 89423

Shadd A. Wade
Zieve, Brodnax & Steele, LLP
9435 W. Russel Rd., Ste. 120
Las Vegas, NV 89148

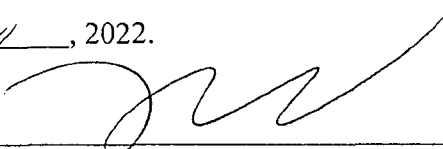
Scott R. Lachman, Esq.
Akerman LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134

Matthew K. Schriever, Esq.
Hutchison & Steffen, PLLC
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Casey J. Nelson, Esq.
Wedgewood, LLC
2320 Potosi St., Ste. 130
Las Vegas, NV 89146

Ramir M. Hernandez, Esq.
Wright, Finlay & Zak, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

DATED: This 18th day of January, 2022.



Employee of Hon. Leon Aberasturi

Notice of Entry of Order on
Order Granting in Part
Breckenridge Property Fund
2016's Motion for Judgment on
its Remaining Claims

Exhibit M

RECEIVED ON
FEB 27 2023
BY MILLWARD LAW

CERTIFICATE OF SERVICE

I hereby certify that I, Azhana Hobemi, am an employee of the Honorable Leon Aberasturi, District Judge and that on this date pursuant to NRCP 5(b), I mailed at Yerington, Nevada, a true copy of the foregoing document addressed to:

Michael G. Millward, Esq.
1591 Mono Avenue
Minden, NV 89423

John T. Steffen, Esq.
Brenoch R. Wirthlin, Esq.
Alex R. Velto, Esq.
Hutchison and Steffen, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson, Esq.
Wedgewood, LLC
Office of General Counsel
2320 Potosi Street, Suite 130
Las Vegas, NV 89146

DATED: This 10 day of February 2023.

Azhana Hobemi
Employee of Hon. Leon Aberasturi

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2. Summary Judgment is **DENIED** as to Breckenridge's Second Cause of Action.

3. Damages are awarded in the amount of eighty-three thousand seven hundred fifty dollars (\$83,750.00) in favor of Breckenridge.

DATED: This 9th day of February 2023.



HON. LEON ABERASTURI
DISTRICT JUDGE

1 No material issues of fact exist regarding the Plaintiffs' occupation and use of the property after
2 receiving notice of the sale and the notice to quit the property. Plaintiffs prevented Breckenridge
3 from using the property for thirty-three and a half months. The Court had previously determined
4 a fair market rental value of two thousand five hundred dollars (\$2,500.00) per month. The total
5 rent equals eighty-three thousand seven hundred fifty dollars (\$83,750.00).
6

7 Less clear from the pleadings provided is whether Breckenridge is entitled to the treble
8 damages. Both parties failed to provide the Court with any analysis regarding damages owed by
9 a tenant at sufferance. The Court found no Nevada case law in which detainer statutes were used
10 as a basis to award treble damages against a mortgagor tenant at sufferance in favor of the
11 purchaser of the property at the foreclosure sale. However, the Plaintiffs would qualify as tenants
12 at sufferance under *Baker*. 79 Nev. at 440 Under *Eikelberger*, the Plaintiffs would be liable for
13 the reasonable rent they should have paid during their occupancy. 94 Nev. at 62.
14

15 The Court finds Breckenridge Fund 2016 is entitled to a reasonable rent of eighty-three
16 thousand seven hundred fifty dollars (\$83,750.00). This conclusion also finds support under the
17 general principles of unjust enrichment and the Fifth Cause of Action, which the Lincicomes did
18 not challenge.

19 NRS 40.385, 40.360, 40.2512 (2) do not appear to this Court as providing a basis for
20 treble damages. Neither Party provided this Court any evidence that the mortgage documents
21 contained any provisions regarding a holdover by the mortgagor after the foreclosure sale.
22

23 Breckenridge provided no proof of malice. The Court cannot award any damages under
24 the slander of title cause of action.

25 Good cause appearing, **IT IS HEREBY ADJUDGED, ORDERED, and DECREED:**

26 1. Summary Judgment is **GRANTED** in favor of Breckenridge's First, Fourth, and Fifth
27 Causes of Action.
28

1 The elements of unjust enrichment are: (1) The Plaintiff confers a benefit to the
2 defendant; (2) the defendant accepts the benefits; (3) there is acceptance and retention by the
3 defendant of such benefit under such circumstances that it would be inequitable for him to retain
4 the benefit without payment of the value thereon. *Cert. Fire Prot. Inc v Precision Construction*,
5 128 Nev 371, 381 (2012).
6

7 The Court will examine the statute's plain meaning to determine if treble damages apply.
8 The Court has held, "Where language of the statute is plain and unambiguous, and its meaning is
9 clear and unmistakable, there is no room for construction, and courts are not permitted to search
10 for its meaning beyond the statute itself. *State v Jepsen*, 46 Nev. 193, 196 (1922). The statutes do
11 not appear to apply to a tenancy at sufferance created due to a dispute over mortgage foreclosure.
12

13 D. SLANDER OF TITLE

14 Slander of title elements requires proof that (1) the words spoken be false, (2) that they be
15 maliciously spoken, and (3) that the plaintiff sustain some special damage as a direct result of
16 their having been spoken.". *DeCarnelle v Guimont*, 101 Nev. 412, 415 (1985), citing to *Rowland*
17 *v. Lepire*, 99 Nev. 308 313 (1983).
18

19 III. CONCLUSIONS OF FACT/ LAW

20 The Court finds no genuine issues of material fact remain after viewing the facts in the
21 light most favorable to the non-moving party. No genuine issues of material fact exist regarding
22 Breckenridge's ownership of the property. Breckenridge is entitled to judgment as a matter of
23 law under the First, Fourth, and Fifth Causes of Action. The Court previously granted the Third
24 Cause of Action. Breckenridge cannot succeed on the slander of title cause of action. The
25 Plaintiffs lost the legal title to the property after the foreclosure sale. The Court must quiet title in
26 favor of Breckenridge. Breckenridge is entitled to restitution of the property.
27
28

proceedings for a summary eviction by serving the tenant with a new notice pursuant to NRS 40.253, 40.254 or 40.2542.

3. NRS 40.360

1. Judgment. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and, if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement.

2. Damages. The jury or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, and any amount found due the plaintiff by reason of waste of the premises by the defendant during the tenancy, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent; and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for the rent and for three times the amount of the damages thus assessed.

3. Execution and enforcement. When the proceeding is for an unlawful detainer after default in the payment of the rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant be restored to the tenant's estate; but, if payment, as herein provided, be not made within the 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

Emphasis Added.

The Nevada Supreme Court has held that NRS 40.360 requires assessment of treble damages only in cases of forcible entry or forcible or unlawful detainer. The Court has held that these causes of actions are all possessory in nature, and their objective is to reinstitute possession of property where one has wrongfully been excluded. *McKinnon v. Cantarutti-Althuisen*, 98 Nev 72, 73 (1982).

C. UNJUST ENRICHMENT

1 (1978), the Nevada Supreme Court held that a landlord is entitled to recovery from tenants at
2 sufferance for "for the use and occupation of the leased property during the holdover period at a
3 rate based upon the previous rental rate, or on the proven reasonable value independently
4 established if that differs from the previous rental rate."

5
6 **1. NRS 40.2512 (2)**

7 1. Except as otherwise provided in subsection 2, a tenant of real property or a
8 mobile home for a term less than life is guilty of an unlawful detainer when the tenant
9 continues in possession, in person or by subtenant, after default in the payment of any
10 rent and after a notice in writing, requiring in the alternative the payment of the rent or
11 the surrender of the detained premises, remains uncomplied with for a period of:

(a) Five days for a commercial premises;

(b) Seven judicial days for real property other than a commercial premises; or

(c) Ten days for a mobile home lot,

after service thereof. The notice may be served at any time after the rent becomes due.

12 2. Except as otherwise provided in NRS 118A.315, the provisions of subsection 1
13 do not apply to a person who provides to the landlord proof that he or she is a federal
14 worker, tribal worker, state worker or household member of such a worker during a
15 shutdown.

16 **2. NRS 40.385**

17 1. Either party may appeal an order entered pursuant to NRS
18 40.253, 40.254 or 40.2542 by filing a notice of appeal within 10 judicial days
19 after the date of entry of the order.

20 2. Except as otherwise provided in this section, a stay of execution may be
21 obtained by filing with the trial court a bond in the amount of \$250 to cover the
22 expected costs on appeal. A surety upon the bond submits to the jurisdiction of
23 the appellate court and irrevocably appoints the clerk of that court as the surety's
24 agent upon whom papers affecting the surety's liability upon the bond may be
25 served. Liability of a surety may be enforced, or the bond may be released, on
26 motion in the appellate court without independent action. A tenant of commercial
27 property may obtain a stay of execution only upon the issuance of a stay pursuant
28 to Rule 8 of the Nevada Rules of Appellate Procedure and the posting of a
supersedeas bond in the amount of 100 percent of any unpaid rent claim of the
landlord.

3. A tenant who retains possession of the premises that are the subject of the
appeal during the pendency of the appeal shall pay to the landlord rent in the
amount provided in the underlying contract between the tenant and the landlord as
it becomes due. If the tenant fails to pay such rent, the landlord may initiate new

1 evidence extrinsic to the issue of immediate possession cannot be introduced at
2 trial). Typically, the issues are whether the plaintiff gave the statutorily required
3 notice, *Davidsohn v. Doyle*, 108 Nev. 145, 150, 825 P.2d 1227, 1230 (1992), and
4 who as between the plaintiff and the defendant has a superior right to
5 possession. NRS 40.320; *Lachman v. Barnett*, 18 Nev. 269, 274, 3 P. 38, 41–42
6 (1884) (holding that unlawful detainer does not adjudicate title or
7 an *absolute* right to possession of property because "[t]he object of the
8 [unlawful detainer] statute was not to try titles, but to preserve the peace and
9 prevent violence"); *Seitz*, 909 F.Supp.2d at 499–500, 2012 WL 5523078, at
10 *7 (unlawful detainer action *32/ limits court to determining possession between
11 plaintiff and defendant). Notably, a superior right to possession does not require
12 proof of title, although title can be evidence of the right to possession. *Yori v.*
13 *Phenix*, 38 Nev. 277, 282, 149 P. 180, 180–81 (1915) ("[I]t has universally been
14 held that title to property cannot be an issue in such actions ... even though such
15 pleading and proof may incidentally involve the question of title."). If after a trial,
16 the court determines that the occupant has no legal defense to the
17 alleged unlawful detainer, it will issue a summary order for restitution of the
18 premises. NRS 40.360(1).

12 Although possession of property differs from ownership of property, possession is
13 nonetheless a type of property interest. *Loretto v. Teleprompter Manhattan CATV*
14 *Corp.*, 458 U.S. 419, 435, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) ("Property
15 rights in a physical thing have been described as the rights 'to possess, use and
16 dispose of it.'" (quoting *1108 *United States v. General Motors Corp.*, 323 U.S.
17 373, 378, 65 S.Ct. 357, 89 L.Ed. 311 (1945))); *Seitz*, 909 F.Supp.2d at 497, 2012
18 WL 5523078, at *5. In his *Commentaries on the Laws of England*, Blackstone
19 instructed that "there are four 'degrees' of title: (1) 'naked possession,' (2) 'right of
20 possession,' (3) 'mere right of property,' and (4) 'complete title.'" *Seitz*, 909
21 F.Supp.2d at 497, 2012 WL 5523078, at *5 (quoting 2 William Blackstone,
22 *Commentaries* *195–99). Unlawful detainer actions fall into the second "degree"
23 of title in a property, "right of possession," and accordingly, are actions that affect
24 interests in a thing—real property. As such, unlawful detainer is in rem or quasi
25 in rem. *See G.C. Wallace*, 127 Nev. at —, 262 P.3d at 1140–41 (explaining in the
26 analogous summary eviction setting that the key elements and defenses
27 of unlawful detainer center on possession and property rights, rather than personal
28 rights or obligations.); *Seitz*, 909 F.Supp.2d at 500, 2012 WL 5523078, at *8; *see*
also Hepburn & Dundas' Heirs v. Dunlop & Co., 14 U.S. 179, 203 n. d, 1 Wheat.
179, 4 L.Ed. 65 (1816) (describing ejectment as a proceeding in
rem); *Scherbenske v. Wachovia Mortg., FSB*, 626 F.Supp.2d 1052, 1057
(E.D.Cal.2009) (holding that the unlawful detainer action plaintiff sought to
enjoin was a quasi-in-rem action).

25 A tenancy at sufferance "arises when one, who came into possession rightfully, continues
26 in possession wrongfully after his right thereto has terminated. *Baker v. Simonds*, 79 Nev. 434,
27 440 (1963) citing to Restatement, Property, Section 22. In *Eikelberger v Tolotti*, 94 Nev. 58, 62

1 equitable relief. *Shadow Wood HOA v. NY Camty Bancorp*, 132 Nev 49 (2016). An issue is
2 genuine for purposes of summary judgment if there is a sufficient evidentiary basis on which a
3 reasonable fact-finder could find for the non-moving party and a dispute is material if it could
4 affect the outcome of the suit under the governing law. *Amerson v. Clark County*, 995 F. Supp 2d
5 1155 (U.S. Dist. Court, District of Nevada 2014).

6
7 The Purpose of the summary judgment rule is not to deprive litigants of their right to a
8 trial on merits if they have issues to try. *Pine v. Leavitt*, 84 Nev 507 (1968). The principal
9 purpose of summary judgment is to isolate and dispose of factually unsupported claims. *Las*
10 *Vegas Tribe of Paiute Indians v. Phebus*, 5 F. Supp 3d 1221 (U.S. Dist. Court, District of Nevada
11 2014).

12 B. UNLAWFUL DETAINER

13
14 In *Chapman v. Deutsche Bank Nat'l Trust Co.*, 129 Nev. 314 (2013), the Nevada
15 Supreme Court held:

16 The primary purpose of an unlawful detainer action is to restore the possession of
17 property to one from whom it has been forcibly taken or to give possession to one
18 from whom it is unlawfully being withheld. *G.C. Wallace, Inc. v. Eighth Judicial*
19 *Dist. Court*, 127 Nev. —, —, 262 P.3d 1135, 1140 (2011); *Seitz*, 909
F.Supp.2d at 496, 2012 WL 5523078, at *4 (citing *Shorter v. Shelton*, 183 Va.
819, 33 S.E.2d 643, 647 (1945)).

20 Consistent with this purpose, a person who obtains title to property at a trustee's
21 sale may remove holdover tenants by means of an unlawful detainer action
under NRS 40.255(1) (c).

22 To initiate an action under NRS 40.255, the would-be plaintiff must serve the
23 property's occupants with a notice to quit. If the occupants do not vacate the
24 property within the time set by the notice, the owner may file a written complaint
25 for unlawful detainer, seeking restitution of the premises. NRS 40.300. The
26 plaintiff must serve the complaint with summons on the occupants, *id.*, and
provide the court with proof of service of the notice to quit as required by NRS
40.280(3) or (4).

27 Thereafter, a trial may ensue if the parties' pleadings demonstrate an issue of
28 fact. NRS 40.310. But the proceedings are summary and their scope
limited. See *G.C. Wallace*, 127 Nev. at —, 262 P.3d at 1140 (explaining that

1 (B) showing that the materials cited do not establish the absence or presence of a
2 genuine dispute, or that an adverse party cannot produce admissible evidence to
3 support the fact.

4 (2) Objection That a Fact Is Not Supported by Admissible Evidence. A party may
5 object that the material cited to support or dispute a fact cannot be presented in a
6 form that would be admissible in evidence.

7 (3) Materials Not Cited. The court need consider only the cited materials, but it
8 may consider other materials in the record.

9 (4) Affidavits or Declarations. An affidavit or declaration used to support or
10 oppose a motion must be made on personal knowledge, set out facts that would be
11 admissible in evidence, and show that the affiant or declarant is competent to
12 testify on the matters stated.

13 (d) If a nonmovant shows by affidavit or declaration that, for specified reasons, it
14 cannot present facts essential to justify its opposition, the court may:

15 (1) defer considering the motion or deny it;

16 (2) allow time to obtain affidavits or declarations or to take discovery; or

17 (3) issue any other appropriate order.

18 (e) If a party fails to properly support an assertion of fact or fails to properly
19 address another party's assertion of fact as required by Rule 56(c), the court may:

20 (1) give an opportunity to properly support or address the fact;

21 (2) consider the fact undisputed for purposes of the motion;

22 (3) grant summary judgment if the motion and supporting materials--including the
23 facts considered undisputed--show that the movant is entitled to it; or

24 (4) issue any other appropriate order.

25 (f) After giving notice and a reasonable time to respond, the court may:

26 (1) grant summary judgment for a nonmovant;

27 (2) grant the motion on grounds not raised by a party; or

28 (3) consider summary judgment on its own after identifying for the parties
material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the
relief requested by the motion, it may enter an order stating any material fact--
including an item of damages or other relief--that is not genuinely in dispute and
treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit
or declaration under this rule is submitted in bad faith or solely for delay, the
court--after notice and a reasonable time to respond--may order the submitting
party to pay the other party the reasonable expenses, including attorney fees, it
incurred as a result. An offending party or attorney may also be held in contempt
or subjected to other appropriate sanctions.

Summary Judgment is appropriate when the evidence, viewed in the light most favorable
to the non-moving party, demonstrates that no genuine issue of material fact remains and that the
moving party is entitled to judgment as a matter of law. *Palmieri v. Clark County*, 131 Nev 1028
(2015). If a genuine issue of fact exists, summary judgment must be denied in a proceeding for

1 The Plaintiffs paid no rent. The Plaintiffs paid no damages during this period. The
2 Plaintiffs did not leave the property until November 15, 2021. This equates to thirty-three and
3 one-half (33.5) months that the Lincicomes lived rent-free on the property. Breckenridge now
4 controls the property, and restitution of the property is no longer at issue.

5 Breckenridge alleged five causes of action. Breckenridge sought to quiet title in the first
6 cause of action. In the Second cause of action, Breckenridge requested damages for slander of
7 title. Breckenridge requested and this Court granted a Writ of Restitution in the Third Cause of
8 action on November 22, 2021. The Fourth Cause of Action requested the Court to award
9 damages for unjust enrichment. The final cause of action requested the Court to award rent for
10 the use of the property.

11 The Supreme Court has affirmed this Court's ruling that no wrongful foreclosure
12 occurred. The Supreme Court declared that the Lincicomes breached the foreclosure mediation
13 agreement by failing to prepare and deliver a deed in lieu of foreclosure. The Lincicomes' breach
14 permitted the foreclosing defendants to proceed with the foreclosure. Breckenridge purchased the
15 property at a legal foreclosure sale.

16 II. FINDINGS OF LAW

17 A. SUMMARY JUDGMENT

18 Nevada Rule of Civil Procedure, Rule 56 states:

- 19 (a) A party may move for summary judgment, identifying each claim or defense--or
20 the part of each claim or defense--on which summary judgment is sought. The
21 court shall grant summary judgment if the movant shows that there is no genuine
22 dispute as to any material fact and the movant is entitled to judgment as a matter
23 of law. The court should state on the record the reasons for granting or denying
24 the motion.
- 25 (b) Unless a different time is set by local rule or the court orders otherwise, a party
26 may file a motion for summary judgment at any time until 30 days after the close
27 of all discovery.
- 28 (c)
- (1) A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
 - (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

1 BRECKENRIDGE PROPERTY FUND 2016,
2 LLC

3 Counterclaimant,

4 vs.

5 ALBERT ELLIS LICICOME, JR., an
6 individual; VICENTA LINCICOME, an
7 individual; and DOE OCCUPANT 1-5,

8 Counterdefendants.
9

10 On August 26, 2022, Breckenridge Property Fund 2016 filed a Motion for Judgment on its
11 Remaining Claims. On September 13, 2022, the Plaintiffs filed an Opposition to Breckenridge
12 Property Fund 2016's Motion for Judgment on its Remaining Claim. On September 30, 2022,
13 Breckenridge Property Fund 2016 filed a Reply in Support of its Motion for Judgment on its
14 Remaining Claims. On December 29, 2022, the Supreme Court filed an Order of Affirmance.
15 The Nevada Supreme Court affirmed the judgment of this Court regarding the Plaintiffs' claims
16 of wrongful foreclosure.
17

18 I. STATEMENT OF FACTS

19 In the Order Concerning: Breckenridge Property Fund 2106, LLC's Motion for Entry of
20 Order Granting Permanent Writ of Restitution and Payments of Overdue Rents and Plaintiffs
21 Motion for Stay of Pending Appeal filed on November 5, 2021, this Court found that the fair
22 rental market value of the property in dispute was \$2,500.00 per month. P. 5, ll. 3-4.

23 Breckenridge purchased the Property on January 4, 2019, and a Three-Day Notice to
24 vacate the Property was served on the Plaintiffs on January 28, 2019. This Court found that the
25 Plaintiffs had lived in the property from February 1, 2019, and that the fair market rental value of
26 the Property was \$2,500.00 per month. Further, on November 17, 2021, this Court entered its
27 Permanent Writ of Restitution ("Permanent Writ") in favor of Breckenridge regarding the
28 Property, requiring the Plaintiffs to vacate the property on or before November 16, 2021.

Case No.: 18-CV-01332

Dept. No.: II

The undersigned hereby affirms that
this document does not contain the
social security number of any person.

FILED

FEB 10 PM 1:26

APPROVED
CHURCH & DWIGHT
THIRD JUDICIAL DISTRICT
ANDREA ANDERSEN COUNTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

ALBERT ELLIS LICICOME, JR. and
VICENTA LINCICOME,

Plaintiffs,

vs.

SABLE, LLC, a Nevada Limited Liability
Company, as Trustee of the Deed of Trust
given by Vicenta Lincicome and dated
5/23/2007; FAY SERVICING, LLC, a
Delaware limited liability company and
subsidiary of Fay Financial, LLC; PROF-2013-
M4 LEGAL TITLE TRUST by U.S. BANK,
N.A., as Legal Title Trustee; BANK OF
AMERICA, N.A.; BRECKENRIDGE
PROPERTY FUND 2016, a Utah limited
liability company; NEWREZ, LLC, d/b/a
SHELLPOINT MORTGAGE SERVICING,
LLC, substituted in for DOE 1; 1900
CAPITAL TRUST II, BY U.S. BANK TRUST
NATIONAL ASSOCIATION, substituted in
for DOE 3; and DOES 4-10,

Defendants.

ORDER GRANTING IN PART
BRECKENRIDGE PROPERTY FUND
2016'S MOTION FOR JUDGMENT ON
ITS REMAINING CLAIMS

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER** via U.S. Mail to the parties designated below.

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Mortgage Servicing, LLC*
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Attorney for Sables, LLC

DATED this 22nd day of February, 2023.

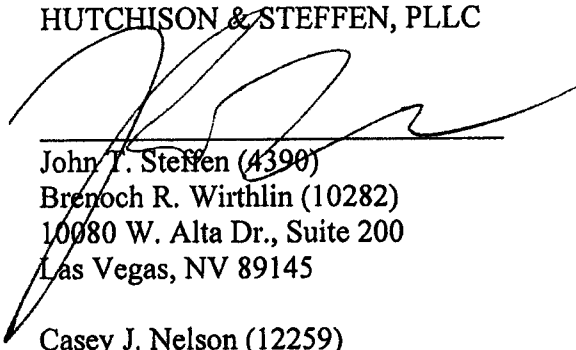


An Employee of HUTCHISON & STEFFEN

1 Please take notice that an ORDER GRANTING IN PART BRECKENRIDGE
2 PROPERTY FUND 2016'S MOTION FOR JUDGMENT ON ITS REMAINING CLAIMS was
3 entered on the 10th day of February, 2023, a copy of which is attached hereto.

4 DATED this 22nd day of February, 2023.

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Breckenridge Property Fund 2016, LLC*

THIRD JUDICIAL DISTRICT COURT LYON COUNTY, NEVADA

ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability
company, as Trustee of the Deed of Trust
given by Vicenta Lincicome and dated
5/23/2007; FAY SERVICING, LLC, a
Delaware limited liability company and
subsidiary of Fay Financial, LLC; PROF-
2013-MF LEGAL TITLE TRUST by U.S.
BANK, N.A., as Legal Title Trustee; for
BANK OF AMERICA, N.A.;
BRECKENRIDGE PROPERTY FUND
2016; NEWREZ LLC dba SHELLPOINT
MORTGAGE SERVICING, LLC; 1900
CAPITAL TRUST II, BY U.S. BANK
TRUST NATIONAL ASSOCIATION;
MCM-2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED ACTIONS

Case No.: 18-CV-01332
Dept No.: II

NOTICE OF ENTRY OF ORDER